

§ 5310. Payment of benefits for month of death

(a) IN GENERAL.—(1) A surviving spouse of a veteran is entitled to a benefit for the month of the veteran's death if—

(A) at the time of the veteran's death, the veteran was receiving compensation or pension under chapter 11 or 15 of this title; or

(B) the veteran is determined for purposes of section 5121 or 5121A of this title as having been entitled to receive compensation or pension under chapter 11 or 15 of this title for the month of the veteran's death.

(2) The amount of the benefit under paragraph (1) is the amount that the veteran would have received under chapter 11 or 15 of this title, as the case may be, for the month of the veteran's death had the veteran not died.

(b) CLAIMS PENDING ADJUDICATION.—If a claim for entitlement to compensation or additional compensation under chapter 11 of this title or pension or additional pension under chapter 15 of this title is pending at the time of a veteran's death and the check or other payment issued to the veteran's surviving spouse under subsection (a) is less than the amount of the benefit the veteran would have been entitled to for the month of death pursuant to the adjudication of the pending claim, an amount equal to the difference between the amount to which the veteran would have been entitled to receive under chapter 11 or 15 of this title for the month of the veteran's death had the veteran not died and the amount of the check or other payment issued to the surviving spouse shall be treated in the same manner as an accrued benefit under section 5121 of this title.

(Added Pub. L. 87-825, §4(a), Oct. 15, 1962, 76 Stat. 950, §3110; amended Pub. L. 98-160, title VII, §703(3), Nov. 21, 1983, 97 Stat. 1010; renumbered §5310 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 104-275, title V, §506(a), Oct. 9, 1996, 110 Stat. 3343; Pub. L. 105-114, title IV, §401(f), Nov. 21, 1997, 111 Stat. 2294; Pub. L. 112-154, title V, §507(a), Aug. 6, 2012, 126 Stat. 1194.)

Editorial Notes**AMENDMENTS**

2012—Pub. L. 112-154, §507(a), amended section generally. Prior to amendment, text read as follows:

“(a) If, in accordance with the provisions of section 5110(d) of this title, a surviving spouse is entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which a veteran's death occurs, the amount of such death benefits for that month shall be not less than the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

“(b)(1) If the surviving spouse of a veteran who was in receipt of compensation or pension at the time of death is not entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which the veteran's death occurs, that surviving spouse shall be entitled to a benefit for that month in the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

“(2) If (notwithstanding section 5112(b)(1) of this title) a check or other payment is issued to, and in the name of, the deceased veteran as a benefit payment under chapter 11 or 15 of this title for the month in which

death occurs, that check or other payment (A) shall be treated for all purposes as being payable to the surviving spouse, and (B) if that check or other payment is negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (1). However, if such check or other payment is in an amount less than the amount of the benefit under paragraph (1), the unpaid amount shall be treated in the same manner as an accrued benefit under section 5121 of this title.”

1997—Subsec. (b)(2). Pub. L. 105-114 substituted “under paragraph (1)” for “under this paragraph” before period at end of first sentence.

1996—Pub. L. 104-275 designated existing provisions as subsec. (a) and added subsec. (b).

1991—Pub. L. 102-40 renumbered section 3110 of this title as this section and substituted “5110(d)” for “3010(d)”.

1983—Pub. L. 98-160 substituted “surviving spouse” for “widow”, and “the death of the veteran” for “his death”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2012 AMENDMENT**

Amendment by Pub. L. 112-154 effective Aug. 6, 2012, and applicable with respect to deaths that occur on or after that date, see section 507(c) of Pub. L. 112-154, set out as a note under section 5111 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-275, title V, §506(b), Oct. 9, 1996, 110 Stat. 3343, provided that: “The amendments made by this section [amending this section] shall apply with respect to the death of compensation and pension recipients occurring after December 31, 1996.”

EFFECTIVE DATE

Section effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87-825, set out as an Effective Date of 1962 Amendment note under section 110 of this title.

§ 5311. Prohibition of certain benefit payments

There shall be no payment of dependency and indemnity compensation, death compensation, or death pension which, because of a widow's relationship with another man before enactment of Public Law 87-674, would not have been payable by the Veterans' Administration under the standard for determining remarriage applied by that agency before said enactment.

(Added Pub. L. 91-376, §8(b), Aug. 12, 1970, 84 Stat. 790, §3111; renumbered §5311, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

Editorial Notes**REFERENCES IN TEXT**

Public Law 87-674, referred to in text, is Pub. L. 87-674, Sept. 19, 1962, 76 Stat. 558, which was enacted Sept. 19, 1962, and amended sections 101, 103, and 3010 [now 5110] of this title to provide for the restoration of certain widows and children to the benefit rolls upon annulment of their marriages or remarriages.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3111 of this title as this section.

§ 5312. Annual adjustment of certain benefit rates

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a

determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 1521, 1541, and 1542 of this title, the rate of increased pension paid under such sections 1521 and 1541 on account of children, and each rate of monthly allowance paid under section 1805 of this title, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 1315 of this title and the annual income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title, as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2)(A) Whenever there is an increase under paragraph (1) of this subsection in such rates and annual income limitations, the Secretary shall, effective on the date of such increase in such rates and limitations, adjust (as provided in subparagraph (B) of this paragraph) the rates of dependency and indemnity compensation payable under subsection (b)(1) or (c)(1) of section 1315 of this title to any parent whose annual income is more than \$800 but not more than the annual income limitation in effect under subsection (b)(3) or (c)(3) of such section, as appropriate, and adjust the rates of such compensation payable under subsection (d)(1) of such section to any parent whose annual income is more than \$1,000 but not more than the annual income limitation in effect under subsection (d)(3) of such section.

(B) The adjustment in rates of dependency and indemnity compensation referred to in subparagraph (A) of this paragraph shall be made by the Secretary in accordance with regulations which the Secretary shall prescribe.

(c)(1) Whenever there is an increase under subsection (a) in benefit rates payable under sections 1521, 1541, 1542, and 1805 of this title and an increase under subsection (b) in benefit rates and annual income limitations under section 1315 of this title, the Secretary shall publish such rates and limitations (including those rates adjusted by the Secretary under subsection (b)(2) of this section), as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a deter-

mination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) Whenever such rates and income limitations are so increased, the Secretary may round such rates and income limitations in such manner as the Secretary considers equitable and appropriate for ease of administration.

(Added Pub. L. 95-588, title III, §305(a), Nov. 4, 1978, 92 Stat. 2507, §3112; amended Pub. L. 97-295, §4(76), Oct. 12, 1982, 96 Stat. 1311; renumbered §5312, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 104-204, title IV, §421(c), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 108-454, title V, §506, Dec. 10, 2004, 118 Stat. 3622.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-454 inserted “and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title,” after “(d)(3) of such section.”

1996—Subsec. (a). Pub. L. 104-204, §421(c)(1), substituted “, the rate of increased pension” for “and the rate of increased pension” and inserted “and each rate of monthly allowance paid under section 1805 of this title,” after “on account of children.”

Subsec. (c)(1). Pub. L. 104-204, §421(c)(2), substituted “1542, and 1805” for “and 1542”.

1991—Pub. L. 102-40 renumbered section 3112 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1521”, “1541”, and “1542” for “521”, “541”, and “542”, respectively, wherever appearing.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(1), (2)(A). Pub. L. 102-83, §5(c)(1), substituted “1315” for “415”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(2)(B). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Subsec. (c)(1). Pub. L. 102-83, §5(c)(1), substituted “1521”, “1541”, and “1542” for “521”, “541”, and “542”, respectively, and “1315” for “415”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Subsec. (c)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

1982—Subsec. (a). Pub. L. 97-295, §4(76)(A), (B), inserted “(42 U.S.C. 401 et seq.)” after first reference to “title II of the Social Security Act”, and inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”.

Subsec. (b)(1). Pub. L. 97-295, §4(76)(A)-(C), inserted “(42 U.S.C. 401 et seq.)” after first reference to “title II of the Social Security Act”, inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”, and substituted “subsection (g), of section 415 of this title” for “subsection (h), of section 415 of such title”.

Subsec. (c)(1). Pub. L. 97-295, §4(76)(B), (D), inserted “(42 U.S.C. 415(i)(2)(D))” after “section 215(i)(2)(D) of the Social Security Act”, and inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-454, title V, §507, Dec. 10, 2004, 118 Stat. 3622, provided that:

“(a) IN GENERAL.—Except as otherwise provided, this title [enacting sections 5506 to 5510 and 6106 to 6108 of this title and amending this section and sections 5502 and 6101 of this title] and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act [Dec. 10, 2004].

“(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section 505(a), shall take effect on the date of the enactment of this Act [Dec. 10, 2004].

“(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 503(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-204 effective Oct. 1, 1997, notwithstanding section 421(d) of Pub. L. 104-204, set out as an Effective Date note under section 1801 of this title, unless legislation other than Pub. L. 104-204 is enacted providing for an earlier effective date, see section 422(c) of Pub. L. 104-204, set out as a note under section 1151 of this title.

Amendment by Pub. L. 104-204 effective Jan. 1, 1997, see section 421(d) of Pub. L. 104-204, set out as an Effective Date note under section 1801 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as an Effective Date of 1978 Amendment note under section 101 of this title.

§ 5313. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 1114(a) of this title; or

(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 1114(a) of this title.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 5307 of this title.

(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.

(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony.

(c) The Secretary shall not assign to any veteran a rating of total disability based on the individual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony.

(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after October 7, 1980, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

(e) For purposes of this section—

(1) The term “compensation” includes disability compensation payable under section 1151 of this title.

(2) The term “dependency and indemnity compensation” means death compensation payable under section 1121 or 1141 of this title, death compensation and dependency and indemnity compensation payable under section 1151 of this title, and any benefit payable under chapter 13 of this title.

(Added Pub. L. 96-385, title V, §504(a), Oct. 7, 1980, 94 Stat. 1534, §3113; amended Pub. L. 98-160, title VII, §702(17), Nov. 21, 1983, 97 Stat. 1010; renumbered §5313 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title X, §1005(b)(16), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 109-461, title X, §1002(f), Dec. 22, 2006, 120 Stat. 3465.)

Editorial Notes

AMENDMENTS

2006—Subsecs. (a)(1), (b)(3), (c). Pub. L. 109-461 substituted “local, or other penal institution or correctional facility” for “or local penal institution”.

1998—Subsec. (d)(1). Pub. L. 105-368 substituted “October 7, 1980,” for “the date of the enactment of this section.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3113 of this title as this section.