

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-622, §2, Oct. 4, 1966, 80 Stat. 873, provided that: "The amendment made by this Act [amending this section] shall take effect on the first day of the second calendar month after the date of enactment of this Act [Oct. 4, 1966]."

§ 1303. Cost-of-living adjustments

(a) In the computation of cost-of-living adjustments for fiscal years 1998 through 2013 in the rates of dependency and indemnity compensation payable under this chapter, such adjustments (except as provided in subsection (b)) shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates (other than increased rates equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

(b) For purposes of this section, the term "social security increase" means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(Added Pub. L. 105-33, title VIII, §8031(b)(1), Aug. 5, 1997, 111 Stat. 668; amended Pub. L. 107-103, title II, §205, Dec. 27, 2001, 115 Stat. 990; Pub. L. 108-183, title VII, §706, Dec. 16, 2003, 117 Stat. 2672.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Act is classified generally to subchapter II (§401 et seq.) 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

2003—Subsec. (a). Pub. L. 108-183 substituted "2013" for "2011".

2001—Subsec. (a). Pub. L. 107-103 substituted "2011" for "2002".

§ 1304. Special provisions relating to surviving spouses

No dependency and indemnity compensation shall be paid to the surviving spouse of a veteran dying after December 31, 1956, unless such surviving spouse was married to such veteran—

(1) before the expiration of fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1127, §404; Pub. L. 90-77, title I, §101(a), Aug. 31, 1967, 81 Stat. 178; Pub. L. 94-433, title IV, §405(4), (5), Sept. 30, 1976, 90 Stat. 1379; renumbered §1304, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-83 renumbered section 404 of this title as this section.

1976—Pub. L. 94-433, §405(4), (5), substituted "surviving spouse", "such surviving spouse", and "such veteran" for "widow", "she", and "him", respectively, in introductory clause and "surviving spouses" for "widows" in section catchline.

1967—Pub. L. 90-77 qualified widow of a veteran for receipt of compensation by reducing in par. (2) the requisite marriage period from five years to one year and by making her eligible for benefits in par. (3) in event of antenuptial birth.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-77 effective first day of first calendar month which begins more than ten days after Aug. 31, 1967, see section 405 of Pub. L. 90-77, set out as a note under section 101 of this title.

§ 1305. Reevaluation of dependency and indemnity compensation determinations pursuant to changes in presumptions of service connection

(a) REEVALUATION.—Whenever a law, including through a regulation or Federal court decision or settlement, establishes or modifies a presumption of service connection, the Secretary shall—

(1) identify all claims for dependency and indemnity compensation under this chapter that—

(A) were submitted to the Secretary;

(B) were evaluated and denied by the Secretary before the date on which such provision of law went into effect; and

(C) might have been evaluated differently had the establishment or modification been applicable to the claim;

(2) allow for the reevaluation of such claims at the election of the claimant; and

(3) notwithstanding section 5110 of this title, with respect to claims approved pursuant to such reevaluation, provide compensation under this chapter effective as if the establishment or modification of the presumption of service connection had been in effect on the date of the submission of the original claim described in paragraph (1).

(b) OUTREACH.—(1) The Secretary shall conduct outreach to inform relevant claimants that they may elect to have a claim be reevaluated in light of the establishment or modification of a presumption of service connection described in subsection (a).

(2) Outreach under paragraph (1) shall include the following:

(A) The Secretary shall publish on the internet website of the Department a notice that such claimants may elect to have a claim so reevaluated.

(B) The Secretary shall notify, in writing or by electronic means, veterans service organi-

zations of the ability of such claimants to elect to have a claim so reevaluated.

(C) The Secretary shall contact each claimant identified under subsection (a) in the same manner that the Department last provided notice of a decision.

(Added Pub. L. 117-168, title II, §204(a), Aug. 10, 2022, 136 Stat. 1776.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117-168, title II, §204(b), Aug. 10, 2022, 136 Stat. 1777, provided that: “Section 1305 of title 38, United States Code, as added by subsection (a), shall apply with respect to presumptions of service connection established or modified on or after the date of the enactment of this Act [Aug. 10, 2022], including pursuant to amendments made by this Act [see Short Title of 2022 Amendment note set out under section 101 of this title].”

RULE OF CONSTRUCTION

Pub. L. 117-168, title II, §204(c), Aug. 10, 2022, 136 Stat. 1777, provided that: “Nothing in this section [enacting this section and provisions set out as a note above] shall be construed as modifying the obligations of the Department of Veterans Affairs under Federal court decisions or settlements in effect as of the date of the enactment of this Act [Aug. 10, 2022].”

SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

§ 1310. Deaths entitling survivors to dependency and indemnity compensation

(a) When any veteran dies after December 31, 1956, from a service-connected or compensable disability, the Secretary shall pay dependency and indemnity compensation to such veteran's surviving spouse, children, and parents. The standards and criteria for determining whether or not a disability is service-connected shall be those applicable under chapter 11 of this title.

(b) Dependency and indemnity compensation shall not be paid to the surviving spouse, children, or parents of any veteran dying after December 31, 1956, unless such veteran (1) was discharged or released under conditions other than dishonorable from the period of active military, naval, air, or space service in which the disability causing such veteran's death was incurred or aggravated, or (2) died while in the active military, naval, air, or space service.

(c) A person who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of dependency and indemnity compensation to which that person is otherwise entitled, but there shall be deducted from payment of such dependency and indemnity compensation the amount of the payment under that Act.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1127, §410; Pub. L. 94-433, title IV, §405(7), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 95-479, title II, §204, Oct. 18, 1978, 92 Stat. 1564; Pub. L. 97-306, title I, §112(a), Oct. 14, 1982, 96 Stat. 1432; Pub. L. 100-687, div. B, title XIV, §1403(b), Nov. 18, 1988, 102 Stat. 4131; renumbered §1310 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat.

404-406; Pub. L. 108-454, title III, §302(b), Dec. 10, 2004, 118 Stat. 3610; Pub. L. 116-283, div. A, title IX, §926(a)(18), Jan. 1, 2021, 134 Stat. 3830.)

Editorial Notes

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (c), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, which is set out as a note under section 2210 of Title 42, The Public Health and Welfare.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116-283 substituted “air, or space service” for “or air service” in two places.

2004—Subsec. (c). Pub. L. 108-454 added subsec. (c).

1991—Pub. L. 102-83, §5(a), renumbered section 410 of this title as this section.

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

1988—Subsecs. (b), (c). Pub. L. 100-687 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

“(1) Notwithstanding the provisions of subsection (a) of this section, when any veteran dies, not as the result of the veteran's own willful misconduct, if the veteran was in receipt of or entitled to receive (or but for the receipt of retired or retirement pay was entitled to receive) compensation at the time of death for a service-connected disability that either (A) was continuously rated totally disabling for a period of ten or more years immediately preceding death, or (B) if so rated for a lesser period, was so rated continuously for a period of not less than five years from the date of such veteran's discharge or other release from active duty, the Administrator shall pay benefits under this chapter to the veteran's surviving spouse, if such surviving spouse was married to such veteran for not less than two years immediately preceding such veteran's death, and to such veteran's children, in the same manner as if the veteran's death were service connected.

“(2) If a surviving spouse or a child receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the death of a veteran described in paragraph (1) of this subsection, benefits under this chapter payable to such surviving spouse or child by virtue of this subsection shall not be paid for any month following a month in which any such money or property is received until such time as the total amount of such benefits that would otherwise have been payable equals the total of the amount of the money received and the fair market value of the property received.

“(3) For purposes of sections 1448(d) and 1450(c) of title 10, eligibility for benefits under this chapter by virtue of this subsection shall be deemed eligibility for dependency and indemnity compensation under section 411(a) of this title.”

1982—Subsec. (b)(1). Pub. L. 97-306 inserted “or entitled to receive” after “was in receipt of”.

1978—Subsecs. (b), (c). Pub. L. 95-479 added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94-433 substituted “such veteran's surviving spouse” for “his widow”.

Subsec. (b). Pub. L. 94-433 substituted “surviving spouse”, “such veteran”, and “such veteran's” for “widow”, “he”, and “his”, respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Subsec. (c) of this section effective with respect to dependency and indemnity compensation payments for months beginning after Mar. 26, 2002, see section 302(c) of Pub. L. 108-454, set out as a note under section 1112 of this title.