

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.

EFFECTIVE DATE OF 1982 AMENDMENT; RETROSPECTIVE PAYMENTS

Pub. L. 97-306, title I, §112(b), Oct. 14, 1982, 96 Stat. 1432, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1982.

“(2)(A) As soon as practicable after September 30, 1982, the Administrator of Veterans' Affairs shall pay an amount determined under subparagraph (B) to each person who would have been entitled to a payment under chapter 13 of title 38, United States Code, for any part of the period beginning on October 1, 1978, and ending on September 30, 1982, if the amendment made by subsection (a) [amending this section] had taken effect on October 1, 1978.

“(B) The amount of any payment to a person under subparagraph (A) is the amount equal to the total of all payments under chapter 13 of title 38, United States Code, that would have been made to that person for the period described in such subparagraph if the amendment made by subsection (a) [amending this section] had taken effect on October 1, 1978.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-479 effective Oct. 1, 1978, see section 401(a) of Pub. L. 95-479, set out as a note under section 1114 of this title.

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.

GAO REPORT RELATING TO BENEFITS FOR SURVIVORS OF VETERANS AND MEMBERS OF ARMED FORCES

Pub. L. 102-568, title I, §104, Oct. 29, 1992, 106 Stat. 4322, required the Comptroller General of the United States to submit to Congress a report, with specified contents and due not later than Apr. 1, 1994, with respect to the most appropriate combination of financial, health-care, educational, and other survivor benefits to meet the needs of survivors of veterans.

DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

Pub. L. 94-433, title II, §204, Sept. 30, 1976, 90 Stat. 1376, directed Administrator of Veterans' Affairs to study dependency and indemnity compensation program authorized by this chapter in order to evaluate benefits provided by program and to determine whether, or to what extent, benefits should be based on military pay grade of person upon whose death entitlement is predicated, and directed Administrator to submit to Congress and President not later than Oct. 1, 1977, a report containing results of study together with Administrator's recommendations for improvement of program.

STUDY BY ADMINISTRATOR OF DEPENDENCY AND INDEMNITY COMPENSATION CLAIMS

Pub. L. 94-71, §204, Aug. 5, 1975, 89 Stat. 397, directed Administrator of Veterans' Affairs to make a study of claims for dependency and indemnity compensation relating to veterans who at time of death during period Sept. 1, 1975 to Mar. 1, 1976, were receiving disability compensation based upon a total and permanent disability and required report to be submitted to Speaker of House and President of Senate no later than Oct. 1, 1976.

Pub. L. 93-295, title II, §207, May 31, 1974, 88 Stat. 183, directed Administrator to make a study of claims for dependency and indemnity compensation relating to veterans who, at time of death within six months of May 31, 1974, were receiving disability compensation, and to report to Speaker of House and President of Senate no more than 30 days after beginning of 94th Congress.

§ 1311. Dependency and indemnity compensation to a surviving spouse

(a)(1) Dependency and indemnity compensation shall be paid to a surviving spouse at the monthly rate of \$1,154.

(2) The rate under paragraph (1) shall be increased by \$246 in the case of the death of a veteran who at the time of death was in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death. In determining the period of a veteran's disability for purposes of the preceding sentence, only periods in which the veteran was married to the surviving spouse shall be considered.

(3) In the case of dependency and indemnity compensation paid to a surviving spouse that is predicated on the death of a veteran before January 1, 1993, the monthly rate of such compensation shall be the amount based on the pay grade of such veteran, as set forth in the following table, if the amount is greater than the total amount determined with respect to that veteran under paragraphs (1) and (2):

| Pay grade | Monthly rate | Pay grade | Monthly rate |
|-----------|----------------------|------------|----------------------|
| E-1 | \$1,154 | W-4 | \$1,380 |
| E-2 | \$1,154 | O-1 | \$1,219 |
| E-3 | \$1,154 | O-2 | \$1,260 |
| E-4 | \$1,154 | O-3 | \$1,347 |
| E-5 | \$1,154 | O-4 | \$1,427 |
| E-6 | \$1,154 | O-5 | \$1,571 |
| E-7 | \$1,194 | O-6 | \$1,771 |
| E-8 | \$1,260 | O-7 | \$1,912 |
| E-9 | \$1,314 ¹ | O-8 | \$2,100 |
| W-1 | \$1,219 | O-9 | \$2,246 |
| W-2 | \$1,267 | O-10 | \$2,463 ² |
| W-3 | \$1,305 | | |

¹If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be \$1,419.

²If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be \$2,643.

(b) If there is a surviving spouse with one or more children below the age of eighteen of a deceased veteran, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by \$286 for each such child.

(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by \$286 if the spouse is (1) a patient in a nursing home or (2) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by \$135 if the surviving