

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-689 effective July 1, 1985, with respect to individuals discharged or released for medical condition which preexisted service on active duty or in Selected Reserve and which Administrator determines is not service connected, and effective Oct. 1, 1987, with respect to individuals involuntarily discharged or released for convenience of Government as a result of reduction in force, see section 102(c) of Pub. L. 100-689, set out as a note under section 3011 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1981, see section 701(b)(1) of Pub. L. 97-66, set out as an Effective Date of 1981 Amendment note under section 1114 of this title.

DELAYED APPLICATION OF EXCLUSION; ADDITIONAL WAGES CONSIDERED BENEFIT

Pub. L. 97-306, title IV, § 408(b), Oct. 14, 1982, 96 Stat. 1446, provided that:

“(1) Subsection (d) of section 3103A [now 5303A] of title 38, United States Code, as added by subsection (a)(2), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 14, 1982].

“(2) For the purposes of paragraph (1) of this subsection, additional wages deemed to have been paid under section 229(a) of the Social Security Act (42 U.S.C. 429(a)) shall be considered to be a benefit that was received by a person on the date that such person was discharged or released from active duty (as defined in section 101(21) of title 38, United States Code).”

SCOPE OF EXCLUSION

Pub. L. 97-306, title IV, § 408(d), Oct. 14, 1982, 96 Stat. 1446, provided that: “Section 3103A [now 5303A] of title 38, United States Code, as amended by subsection (a), is the law with respect to the matters stated in such section and applies, in accordance with its terms, with respect to benefits under Federal law, regardless of the particular title of the United States Code or other law under which any such benefit is provided or the department, agency, or instrumentality which administers any such benefit.”

APPLICABILITY

Pub. L. 97-66, title VI, § 604(b), Oct. 17, 1981, 95 Stat. 1036, provided that: “Section 5303A [formerly 3103A] of title 38, United States Code, as added by subsection (a), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 17, 1981]. Notwithstanding such section, a person who before such date has received a certificate of eligibility from the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] for benefits under chapter 37 of title 38, United States Code, is eligible for such benefits after such date.”

§ 5303B. Character of service determinations

(a) DETERMINATION.—The Secretary shall establish a process by which an individual who served in the Armed Forces and was discharged or dismissed therefrom may seek a determination from the Secretary with respect to whether such discharge or release was under a condition that bars the right of such individual to a benefit under the laws administered by the Secretary based upon the period of service from which discharged or dismissed.

(b) PROVISION OF INFORMATION.—If the Secretary determines under subsection (a) that an individual is barred to a benefit under the laws administered by the Secretary, the Secretary

shall provide to such individual information regarding the ability of the individual to address such condition, including pursuant to section 5303 of this title and chapter 79 of title 10.

(Added Pub. L. 115-141, div. J, title II, § 259(a), Mar. 23, 2018, 132 Stat. 828.)

§ 5304. Prohibition against duplication of benefits

(a)(1) Except as provided in section 1414 of title 10 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.

(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and in section 1521(i) of this title, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of such person's own service, shall not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other person.

(2) Benefits other than insurance under laws administered by the Secretary may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

(3) Benefits other than insurance under laws administered by the Secretary may not be paid to any person by reason of the death of more than one person to whom such person was married; however, the person may elect one or more times to receive benefits by reason of the death of any one spouse.

(c) Pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

(d)(1) Other than amounts payable under section 1413a or 1414 of title 10, the amount of pension and compensation benefits payable to a person under this title shall be reduced by the amount of any lump sum payment made to such person under section 1415 of title 10.

(2) The Secretary shall collect any reduction under paragraph (1) from amounts otherwise payable to the person under this title, including pension and compensation payable under this title, before any pension and compensation payments under this title may be paid to the person.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, §3104; Pub. L. 86-495, §1, June 8, 1960, 74 Stat. 163; Pub. L. 88-664, §9, Oct. 13, 1964, 78 Stat. 1096; Pub. L. 91-376, §6, Aug. 12, 1970, 84 Stat. 790; Pub. L. 95-588, title III, §304, Nov. 4, 1978, 92 Stat. 2507; Pub. L. 96-385, title V, §503(a), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 99-576, title VII, §701(71), Oct. 28, 1986, 100 Stat. 3297; renumbered §5304 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(a)(1), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 108-454, title III, §308(a), Dec. 10, 2004, 118 Stat. 3614; Pub. L. 114-92, div. A, title VI, §633(b), Nov. 25, 2015, 129 Stat. 850.)

Editorial Notes

AMENDMENTS

2015—Subsec. (d). Pub. L. 114-92 added subsec. (d).
 2004—Subsec. (a)(1). Pub. L. 108-454 inserted “as provided in section 1414 of title 10 or” after “Except”.
 1991—Pub. L. 102-40, §402(b)(1), renumbered section 3104 of this title as this section.
 Subsec. (a)(2). Pub. L. 102-83, §5(c)(1), substituted “1521” and “1541” for “521” and “541”, respectively.
 Pub. L. 102-40, §402(d)(1), substituted “5305” for “3105” in two places.
 Subsec. (b)(1). Pub. L. 102-83, §5(c)(1), substituted “1521(i)” for “521(i)”.
 Subsec. (b)(2), (3). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.
 1986—Subsec. (a)(1). Pub. L. 99-576, §701(71)(A), substituted “such person’s” for “his”.
 Subsec. (b)(1). Pub. L. 99-576, §701(71)(B)(i), (ii), substituted “surviving spouse” for “widow” and “such person’s” for “his”.
 Subsec. (b)(3). Pub. L. 99-576, §701(71)(B)(iii), substituted “such person” for “he or she”.
 Subsec. (c). Pub. L. 99-576, §701(71)(C), substituted “any person’s” for “his”, “to such person” for “to any person”, and “such person” for “he”.
 1980—Subsec. (a). Pub. L. 96-385 designated existing provisions as par. (1) and added par. (2).
 1978—Subsec. (b)(1). Pub. L. 95-588 inserted “of this subsection and in section 521(i) of this title” after “(2) and (3)”.
 1970—Subsec. (b)(1), (3). Pub. L. 91-376 inserted reference to par. (3) in par. (1) and added par. (3).
 1964—Subsec. (a). Pub. L. 88-664 inserted “or concurrently to any person based on the service of any other person” after “own service”.
 1960—Subsec. (b)(2). Pub. L. 86-495 substituted provisions prohibiting the payment or furnishing of benefits other than insurance to or on account of any child by reason of the death of more than one parent in the same parental line, and permitting the child to elect one or more times to receive benefits by reason of the death of any one of such parents, for provisions which prohibited the payment of dependency and indemnity compensation to or on account of a child by reason of the death of another parent where the child receives or there is paid by the Veterans’ Administration on account of a child dependency and indemnity compensation, or death compensation, by reason of the death of a parent.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, set out as a note under section 8432 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-385 effective Oct. 1, 1980, see section 601(b) of Pub. L. 96-385, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-588 effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-376 effective Jan. 1, 1971, see section 9 of Pub. L. 91-376, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-664 effective Jan. 1, 1965, see section 11 of Pub. L. 88-664, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-495, §2, June 8, 1960, 74 Stat. 163, provided that: “The amendment made by this Act [amending this section] shall apply only to cases where the death of a parent occurs after the date of enactment of this Act [June 8, 1960].”

§ 5305. Waiver of retired pay

Except as provided in section 1414 of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of such person’s retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, §3105; Pub. L. 91-621, §6(a)(3), Dec. 31, 1970, 84 Stat. 1864; Pub. L. 99-576, title VII, §701(72), Oct. 28, 1986, 100 Stat. 3297; renumbered §5305, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (2)(A)(viii), Aug. 6, 1991, 105 Stat. 403; Pub. L. 108-454, title III, §308(b), Dec. 10, 2004, 118 Stat. 3614.)

Editorial Notes

AMENDMENTS

2004—Pub. L. 108-454 substituted “Except as provided in section 1414 of title 10, any” for “Any” in first sentence.
 1991—Pub. L. 102-40 renumbered section 3105 of this title as this section.
 Pub. L. 102-83, §4(a)(2)(A)(viii), substituted “Secretary” for “Veterans’ Administration”.
 Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.
 1986—Pub. L. 99-576 substituted “such person” for “he” and “such person’s” for “his”.
 1970—Pub. L. 91-621 substituted “National Oceanic and Atmospheric Administration” for “Coast and Geodetic Survey”.