

DEPENDENCY AND INDEMNITY COMPENSATION;
ELIGIBILITY

Section 8 of Pub. L. 92-197 provided that: "Any person who before January 1, 1972, was not eligible for dependency and indemnity compensation under such title by reason of the provisions of the prior section 417(a) of title 38, United States Code, may elect, in such manner as the Administrator of Veterans' Affairs shall prescribe, to receive dependency and indemnity compensation, and an election so made shall be final. A person receiving, or entitled to receive, death compensation on December 31, 1971, shall continue to receive death compensation, if otherwise eligible, in the absence of an election to receive dependency and indemnity compensation."

§ 1318. Benefits for survivors of certain veterans rated totally disabled at time of death

(a) The Secretary shall pay benefits under this chapter to the surviving spouse and to the children of a deceased veteran described in subsection (b) of this section in the same manner as if the veteran's death were service connected.

(b) A deceased veteran referred to in subsection (a) of this section is a veteran who dies, not as the result of the veteran's own willful misconduct, and who 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 rated totally disabling if—

(1) the disability was continuously rated totally disabling for a period of 10 or more years immediately preceding death;

(2) the disability was continuously rated totally disabling for a period of not less than five years from the date of such veteran's discharge or other release from active duty; or

(3) the veteran was a former prisoner of war who died after September 30, 1999, and the disability was continuously rated totally disabling for a period of not less than one year immediately preceding death.

(c) Benefits may not be paid under this chapter by reason of this section to a surviving spouse of a veteran unless—

(1) the surviving spouse was married to the veteran for one year or more immediately preceding the veteran's death; or

(2) a child was born of the marriage or was born to them before the marriage.

(d) 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 subsection (a) of this section, benefits under this chapter payable to such surviving spouse or child by virtue of this section 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.

(e) For purposes of sections 1448(d) and 1450(c) of title 10, eligibility for benefits under this chapter by virtue of this section shall be deemed eligibility for dependency and indemnity compensation under section 1311(a) of this title.

(Added Pub. L. 100-687, div. B, title XIV, §1403(a)(1), Nov. 18, 1988, 102 Stat. 4130, §418; amended Pub. L. 101-237, title I, §113, Dec. 18, 1989, 103 Stat. 2065; renumbered §1318 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 106-117, title V, §501(b), Nov. 30, 1999, 113 Stat. 1573; Pub. L. 106-419, title IV, §404(a)(2), Nov. 1, 2000, 114 Stat. 1864.)

AMENDMENTS

2000—Subsec. (b)(3). Pub. L. 106-419 substituted "not less than" for "not later than".

1999—Subsec. (b). Pub. L. 106-117, §501(b)(1), substituted "rated totally disabling if—" for "that either—" in introductory provisions.

Subsec. (b)(1). Pub. L. 106-117, §501(b)(2), inserted "the disability" after "(1)" and struck out "or" after "death;"

Subsec. (b)(2). Pub. L. 106-117, §501(b)(3), substituted "the disability was continuously rated totally disabling" for "if so rated for a lesser period, was so rated continuously" and substituted "; or" for the period at the end.

Subsec. (b)(3). Pub. L. 106-117, §501(b)(4), added par. (3).

1991—Pub. L. 102-83, §5(a), renumbered section 418 of this title as this section.

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

Subsec. (e). Pub. L. 102-83, §5(c)(1), substituted "1311(a)" for "411(a)".

1989—Subsec. (c)(1). Pub. L. 101-237 substituted "one year" for "two years".

SUBCHAPTER III—CERTIFICATIONS

§ 1321. Certifications with respect to pay grade

The Secretary concerned shall, at the request of the Secretary, certify to the Secretary the pay grade of deceased persons with respect to whose deaths applications for benefits are filed under this chapter. The certification of the Secretary concerned shall be binding upon the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1132, §421; Pub. L. 91-96, §4, Oct. 27, 1969, 83 Stat. 145; Pub. L. 94-433, title IV, §405(17), Sept. 30, 1976, 90 Stat. 1380; renumbered §1321 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 421 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary, certify to the Secretary" for "Administrator, certify to the Administrator" and "upon the Secretary" for "upon the Administrator".

1976—Pub. L. 94-433 substituted "to the Administrator" for "to him".

1969—Pub. L. 91-96 substituted "Certifications with respect to pay grade" for "Certifications with respect to basic pay" in section catchline and substituted provisions authorizing certifications with respect to the pay grade of deceased persons for provisions authorizing certifications with respect to the basic pay of deceased persons, considering rank or grade and cumulative years of service for pay purposes, and struck out the provision requiring the adjustment of basic pay as determined by this chapter whenever basic pay (as defined under the former provisions of section 401 of this title) is adjusted.

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 1969 AMENDMENT

Amendment by Pub. L. 91-96 effective first day of second calendar month which begins after Oct. 27, 1969, see section 8 of Pub. L. 91-96, set out as a note under section 1302 of this title.

§ 1322. Certifications with respect to social security entitlement

(a) Determinations required by section 1312(a) of this title (other than a determination required by section 1312(a)(2) of this title) as to whether any survivor described in section 1312(a)(3) of this title of a deceased individual would be entitled to benefits under section 202 of the Social Security Act (42 U.S.C. 402) for any month and as to the amount of the benefits which would be paid for such month, if the deceased veteran had been a fully and currently insured individual at the time of such veteran's death, shall be made by the Commissioner of Social Security, and shall be certified by the Commissioner to the Secretary upon request of the Secretary.

(b) The Secretary shall pay to the Commissioner of Social Security an amount equal to the costs which will be incurred in making determinations and certifications under subsection (a). Such payments shall be made with respect to the costs incurred during such period (but not shorter than a calendar quarter) as the Secretary and the Commissioner may prescribe, with the amount of such payments to be made on the basis of estimates made by the Commissioner after consultation with the Secretary. The amount payable for any period shall be increased or reduced to compensate for any underpayment or overpayment, as the case may be, of the costs incurred in any preceding period.

(c) Except with respect to determinations made under subsection (a) of this section, the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section and section 1312(a) of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1132, § 422; Pub. L. 87-268, § 1(b), (c), Sept. 21, 1961, 75 Stat. 566; Pub. L. 94-433, title IV, § 405(18), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 97-295, § 4(12), (95)(A), Oct. 12, 1982, 96 Stat. 1305, 1313; renumbered § 1322 and amended Pub. L. 102-83, §§ 4(b)(1), (2)(A), (E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 108-183, title VII, § 708(c)(1), Dec. 16, 2003, 117 Stat. 2673.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183, § 708(c)(1)(A), substituted "Commissioner of Social Security, and shall be certified by the Commissioner to the Secretary upon request of the Secretary." for "Secretary of Health and Human Services, and shall be certified by such Secretary to the Secretary of Veterans Affairs upon request of the Secretary of Veterans Affairs."

Subsec. (b). Pub. L. 108-183, § 708(c)(1)(B), substituted "Commissioner of Social Security" for "Secretary of Health and Human Services" in first sentence and substituted "the Secretary and the Commissioner" for "the two Secretaries" and "Commissioner" for "Secretary of Health and Human Services" in second sentence.

1991—Pub. L. 102-83, § 5(a), renumbered section 422 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 5(c)(1), substituted "1312(a)" for "412(a)", "1312(a)(2)" for "412(a)(2)", "1312(a)(3)" for "412(a)(3)".

Pub. L. 102-83, § 4(b)(2)(A)(i), substituted "Secretary of Veterans Affairs" for "Administrator" in two places.

Subsec. (b). Pub. L. 102-83, § 4(b)(2)(A)(ii), substituted "The Secretary shall pay to the Secretary of Health and Human Services" for "Upon the basis of estimates made by the Secretary of Health and Human Services after consultation with the Administrator, the Administrator shall pay to the Secretary" and "as the two Secretaries may prescribe, with the amount of such payments to be made on the basis of estimates made by the Secretary of Health and Human Services after consultation with the Secretary" for "as the Secretary and the Administrator may prescribe".

Subsec. (c). Pub. L. 102-83, § 5(c)(1), substituted "1312(a)" for "412(a)".

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

1982—Subsec. (a). Pub. L. 97-295, § 4(12), (95)(A), substituted "section 202 of the Social Security Act (42 U.S.C. 402)" for "section 402 of title 42", and "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (b). Pub. L. 97-295, § 4(95)(A), substituted "Health and Human Services" for "Health, Education, and Welfare".

1976—Subsec. (a). Pub. L. 94-433 substituted "such veteran's" and "such Secretary" for "his" and "him", respectively.

1961—Subsec. (a). Pub. L. 87-268 § 1(c), substituted "section 412(a)" for "section 412", "section 412(a)(2)" for "section 412(2)", and "section 412(a)(3)" for "section 412(3)".

Subsec. (c). Pub. L. 87-268, § 1(b), substituted "section 412(a)" for "section 412".

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 1961 AMENDMENT

Amendment by Pub. L. 87-268 effective Oct. 1, 1961, see section 3 of Pub. L. 87-268, set out as a note under section 1312 of this title.

§ 1323. Certifications with respect to circumstances of death

Whenever the Secretary determines on the basis of a claim for benefits filed with the Secretary that a death occurred under the circumstances referred to in section 1476(a) of title 10, the Secretary shall certify that fact to the Secretary concerned. In all other cases, the Secretary shall make the determination referred to in such section at the request of the Secretary concerned.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1133, § 423; Pub. L. 94-433, title IV, § 405(19), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 102-54, § 14(b)(4), June 13, 1991, 105 Stat. 283; renumbered § 1323 and amended Pub. L. 102-83, §§ 4(b)(1), (2)(E), (3)(A), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

PRIOR PROVISIONS

Prior sections 1401, 1402, 1411 to 1419, 1421 to 1423, 1431 to 1436, and 1500 were renumbered sections 3001, 3002, 3011 to 3019, 3021 to 3023, 3031 to 3036, and 3100 of this title, respectively.

AMENDMENTS

1991—Pub. L. 102-83, § 5(a), renumbered section 423 of this title as this section.

Pub. L. 102-83, § 4(b)(3)(A), substituted "Certifications with respect to circumstances of death" for "Certifications by Administrator" in section catchline.

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary determines" for "Administrator determines", "Sec-

retary that" for "Administrator that", and in two places "Secretary shall" for "Administrator shall".

Pub. L. 102-54 struck out "or section 321(b) of title 32," after "title 10," and "1476(a) or 321(b)" after "such section".

1976—Pub. L. 94-433 substituted "with the Administrator" for "with him" and "the Administrator" for "he" before "shall certify" and "shall make".

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.

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

SUBCHAPTER I—GENERAL

- Sec.
1501. Definitions.
1502. Determinations with respect to disability.
1503. Determinations with respect to annual income.
1504. Persons heretofore having a pensionable status.
1505. Payment of pension during confinement in penal institutions.
1506. Resource reports and overpayment adjustments.
1507. Disappearance.
1508. Frequency of payment of pension benefits.

SUBCHAPTER II—VETERANS' PENSIONS

SERVICE PENSION

1511. Indian War veterans.
1512. Spanish-American War veterans.
1513. Veterans 65 years of age and older.

NON-SERVICE-CONNECTED DISABILITY PENSION

1521. Veterans of a period of war.
1522. Net worth limitation.
1523. Combination of ratings.
1524. Vocational training for certain pension recipients.
1525. Protection of health-care eligibility.

SUBCHAPTER III—PENSIONS TO SURVIVING SPOUSES AND CHILDREN

WARS BEFORE WORLD WAR I

1532. Surviving spouses of Civil War veterans.
1533. Children of Civil War veterans.
1534. Surviving spouses of Indian War veterans.
1535. Children of Indian War veterans.
1536. Surviving spouses of Spanish-American War veterans.
1537. Children of Spanish-American War veterans.

OTHER PERIODS OF WAR

1541. Surviving spouses of veterans of a period of war.
1542. Children of veterans of a period of war.
1543. Net worth limitation.

SUBCHAPTER IV—ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

1560. Medal of Honor Roll; persons eligible.
1561. Certificate.
1562. Special provisions relating to pension.

AMENDMENTS

2001—Pub. L. 107-103, title II, § 207(a)(2), Dec. 27, 2001, 115 Stat. 991, added item 1513.

1992—Pub. L. 102-568, title IV, §§ 402(c)(2)(B), 403(b)(2), Oct. 29, 1992, 106 Stat. 4337, 4338, substituted "Vocational training for certain pension recipients" for "Temporary program of vocational training for certain

new pension recipients" in item 1524 and "Protection" for "Temporary protection" in item 1525.

1991—Pub. L. 102-83, § 5(b)(1), Aug. 6, 1991, 105 Stat. 406, renumbered items 501 to 562 as 1501 to 1562, respectively.

Pub. L. 102-25, title III, § 333(c)(2), Apr. 6, 1991, 105 Stat. 88, substituted "OTHER PERIODS OF WAR" for "MEXICAN BORDER PERIOD, WORLD WAR I, WORLD WAR II, KOREAN CONFLICT, AND THE VIETNAM ERA" as subheading preceding item 541.

1986—Pub. L. 99-576, title VII, § 703(b)(3), Oct. 28, 1986, 100 Stat. 3303, inserted "program of" after "Temporary" in item 524.

1984—Pub. L. 98-543, title III, § 301(a)(2), Oct. 24, 1984, 98 Stat. 2746, added items 524 and 525.

1982—Pub. L. 97-295, § 4(14), Oct. 12, 1982, 96 Stat. 1305, substituted "Honor Roll" for "honor roll" in item 560.

1978—Pub. L. 95-588, title I, §§ 104(b), 106(b), 109(b), 110(b), 112(b), Nov. 4, 1978, 92 Stat. 2499, 2502, 2504, 2505, added item 508, substituted "Veterans of a period of war" for "Veterans of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era" in item 521, substituted "Surviving spouses of veterans of a period of war" for "Surviving spouses of Mexican border period, World War I, World War II, Korean conflict, or Vietnam era veterans" in item 541, substituted "Children of veterans of a period of war" for "Children of Mexican border period, World War I, World War II, Korean conflict, or Vietnam era veterans" in item 542, struck out heading "SURVIVING SPOUSES OF VETERANS OF ALL PERIODS OF WAR" following item 543, and struck out item 544.

1975—Pub. L. 94-169, title I, §§ 101(2)(J), 106(24), (30), (38), Dec. 23, 1975, 89 Stat. 1014, 1018, 1019, struck out items 510 relating to confederate forces veterans, and 531 relating to widows of Mexican War veterans, substituted "Surviving Spouses" for "Widows" in heading of Subchapter III and subheading preceding item 544, and substituted "Surviving spouses" for "Widows" in items 532, 534, 536 and 541.

1970—Pub. L. 91-588, § 9(h), Dec. 24, 1970, 84 Stat. 1585, inserted references to the Mexican border period in subheading preceding item 541 and in items 521, 541, and 542, respectively.

1967—Pub. L. 90-77, title I, § 108(b), title II, § 202(i), Aug. 31, 1967, 81 Stat. 180, 183, added item 544 and included references to Vietnam era in subheading preceding item 541 and in items 521, 541, and 542, respectively.

1966—Pub. L. 89-467, § 1(b), June 22, 1966, 80 Stat. 218, added item 507.

1963—Pub. L. 88-77, § 5(3), July 25, 1963, 77 Stat. 96, substituted "ARMY, NAVY, AIR FORCE, AND COAST GUARD" for "ARMY, NAVY, AND AIR FORCE", in heading of Subchapter IV.

1961—Pub. L. 87-138, § 2(b), Aug. 14, 1961, 75 Stat. 339, struck out "entitling holder to pension" after "Certificate" in item 561.

1959—Pub. L. 86-211, § 7(a), Aug. 29, 1959, 73 Stat. 436, substituted "Determinations with respect to annual income" for "Items not considered in determining income" in item 503, "Net worth limitation" for "Income limitations" in item 522, and "Net worth limitation" for "Widows of World War II or Korean conflict veterans" in item 543, included widows of World War II and Korean conflict veterans in item 541 and children of World War II and Korean conflict veterans in item 542, added item 506, and struck out items 544 and 545 which related to children of World War II or Korean conflict veterans and to income limitations.

SUBCHAPTER I—GENERAL

§ 1501. Definitions

For the purposes of this chapter—

(1) The term "Indian Wars" means the campaigns, engagements, and expeditions of the United States military forces against Indian tribes or nations, service in which has been recognized heretofore as pensionable service.