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.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. 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.)

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.

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.

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, or air service in which the disability causing such veteran's death was incurred or aggravated, or (2) died while in the active military, naval, or air 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.)

REFERENCES IN TEXT

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

AMENDMENTS

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.

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

Section 112(b) of Pub. L. 97–306 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, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report with respect to the most appropriate combination of financial, health-care, educational, and other survivor benefits to meet the needs of survivors of veterans.

''(b) CONTENTS OF REPORT.—The report shall include the following:

''(1) A review and compilation of data on current and proposed survivor benefits programs that will permit an assessment of the adequacy of such benefits programs, including information on—

''(A) in the case of each current and proposed alternative survivor benefits program—

''(i) each benefit provided;

''(ii) the survivors entitled to the benefit;

''(iii) the extent to which survivors are entitled to similar benefits under the program; and

''(iv) the costs of providing such benefits under the program;

''(B) the extent to which current and anticipated benefits under current survivor benefits programs meet the current and anticipated financial, health-care, educational, and other needs of survivors; and

''(C) the differences, if any, in the survivor benefits provided under current and proposed survivor benefits programs to survivors of various categories of veterans and members of the Armed Forces (including survivors of veterans having service-connected disabilities, veterans without such disabilities, members of the Armed Forces who die during service in the Armed Forces, members of the Armed Forces retired under any provision of law other than chapter 61 of title 10, United States Code, and members of the Armed Forces retired under chapter 61 of title 10, United States Code (relating to retirement or separation for physical disability)).

''(2) A review and compilation of existing studies on the adequacy of survivor benefits provided under current and proposed survivor benefits programs to meet the financial, health-care, educational, and other needs of survivors.

''(3) A comprehensive assessment and evaluation of the adequacy of current and proposed survivor benefits programs, including data and methods for an assessment and evaluation of—

''(A) the feasibility and desirability of limiting the period of entitlement of survivors to survivor benefits;

''(B) the feasibility and desirability of modifying the provision of monetary benefits to survivors by—

''(i) revising the term of payment of any such benefits;

''(ii) replacing the periodic payment of such benefits with a lump sum payment;

''(iii) providing such benefits through insurance or other premium-based payment mechanisms; or

''(iv) carrying out any other revision or modification proposed before the date of the enactment of this Act [Oct. 29, 1992] by the Secretary of Veterans Affairs, the Secretary of Defense, the Secretary of Health and Human Services, or organizations recognized by the Secretary of Veterans Affairs under section 5902(a)(1) of title 38, United States Code;

''(C) the feasibility and desirability of modifying the provision of health-care benefits to survivors;

''(D) the feasibility and desirability of modifying the provision of benefits to children survivors; and

''(E) the feasibility and desirability of consolidating, expanding, or otherwise modifying any program relating to the provision of survivor benefits.

''(4) The recommendations of the Comptroller General (including a proposal for legislation) on the most appropriate combination of survivor benefits to meet the current and anticipated financial, health-care, educational, and other needs of survivors.

''(c) SUBMISSION OF REPORT.—The Comptroller General shall submit the report not later than April 1, 1994.

''(d) DEFINITIONS.—In this section:

''(1) The term 'survivor', in the case of a veteran or member of the Armed Forces who dies, means the surviving spouse or surviving dependent child of the veteran or member.

''(2) The term 'survivor benefit' means any monetary, health-care, educational, or other benefit paid, payable, or otherwise provided to survivors of veterans and survivors of members of the Armed Forces under the following:

''(A) Laws administered by the Secretary of Veterans Affairs.

''(B) Laws administered by the Secretary of Defense.

''(C) The Social Security Act (42 U.S.C. 301 et seq.).

''(3) The term 'veteran' has the meaning given such term in section 101(2) of title 38, United States Code.''

DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

Section 204 of Pub. L. 94–433 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 $1,091.

(2) The rate under paragraph (1) shall be increased by $233 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	$1,091	W–4	$1,305
E–2	$1,091	O–1	$1,153
E–3	$1,091	O–2	$1,191
E–4	$1,091	O–3	$1,274
E–5	$1,091	O–4	$1,349
E–6	$1,091	O–5	$1,485
E–7	$1,129	O–6	$1,674
E–8	$1,191	O–7	$1,808
E–9	$1,242[1]	O–8	$1,985
W–1	$1,153	O–9	$2,123
W–2	$1,198	O–10	$2,328[2]
W–3	$1,234		

[1] If 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 $1,342.

[2] If 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 $2,499.

(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 $271 for each such child.

(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $271 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 $128 if the surviving spouse is, by reason of disability, permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For the purposes of this subsection, the requirement of ''permanently housebound'' will be considered to have been met when the surviving spouse is substantially confined to such surviving spouse's home (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities which it is reasonably certain will remain throughout such surviving spouse's lifetime.

(e) In the case of an individual who is eligible for dependency and indemnity compensation under this section by reason of section 103(d)(2)(B) of this title who is also eligible for benefits under another provision of law by reason of such individual's status as the surviving spouse of a veteran, then, notwithstanding any other provision of law (other than section 5304(b)(3) of this title), no reduction in benefits under such other provision of law shall be made by reason of such individual's eligibility for benefits under this section.