

PENSION, DEPENDENCY, AND INDEMNITY COMPENSATION;
RELATION TO SOCIAL SECURITY AMENDMENTS OF 1967

Payments for balance of calendar year 1968 and calendar year 1969, calendar year 1970, and during each successive calendar year at prescribed monthly rates when payments would be less under this title as a result of increase in monthly insurance benefits provided by Social Security Amendments of 1967, see section 3 of Pub. L. 90-275, set out as a note under section 1521 of this title.

§ 1316. Dependency and indemnity compensation in cases of prior deaths

(a)(1) Any person who is eligible as a surviving spouse or child for death compensation by reason of a death occurring before January 1, 1957, may receive dependency and indemnity compensation upon application therefor.

(2) Any person who is eligible as a parent, or, but for such person's annual income, would be eligible as a parent, for death compensation by reason of a death occurring before January 1, 1957, may receive dependency and indemnity compensation upon application therefor; however, the annual income limitations established by section 1315 of this title shall apply to each such parent.

(b)(1) Whenever the surviving spouse of a veteran has been granted dependency and indemnity compensation by reason of this section, payments to such surviving spouse and to the children of the veteran shall thereafter be made under this chapter, and shall not thereafter be made to them by reason of the death of the veteran under (A) other provisions of law administered by the Secretary providing for the payment of compensation or pension, or (B) subchapter I of chapter 81 of title 5.

(2) Whenever the child or parent of any veteran is granted dependency and indemnity compensation, payments shall not thereafter be made to such child or parent by reason of the death of the veteran under (A) other provisions of law administered by the Secretary providing for the payment of compensation or pension, or (B) subchapter I of chapter 81 of title 5.

(c) If children of a deceased individual are receiving death compensation, and all such children have not applied for dependency and indemnity compensation, (1) dependency and indemnity compensation paid to each child who has applied therefor shall not exceed the amounts which would be paid if the application had been made by, or on behalf of, all such children, and (2) benefits paid under other provisions of law administered by the Secretary providing for the payment of compensation or pension, or under subchapter I of chapter 81 of title 5, to each child who has not so applied therefor shall not exceed the amounts which would be paid to such child if no such application had been made.

(d) If there are two parents of a deceased individual eligible for benefits by reason of subsection (a), and an application for dependency and indemnity compensation is not made by both parents, (1) dependency and indemnity compensation paid to the parent who applies therefor shall not exceed the amounts which would be paid to such parent if both parents had so applied, and (2) benefits paid under other provisions of law administered by the Secretary

providing for the payment of compensation, or under subchapter I of chapter 81 of title 5, to the parent who has not so applied therefor shall not exceed the amounts which would be paid to such parent if no such application had been made.

(e)(1) Except as provided in paragraphs (3) and (4), no person who, on January 1, 1957, was a principal or contingent beneficiary of any payments under the Servicemen's Indemnity Act of 1951 may receive any such payments based upon the death giving rise to such payments after such person has been granted dependency and indemnity compensation based upon that death. No principal or contingent beneficiary who has assigned such beneficiary's interest in payments under the Servicemen's Indemnity Act of 1951 after June 28, 1956, may receive any payments under this chapter based upon the death giving rise to such payments until the portion of the indemnity so assigned is no longer payable to any person.

(2) Where a beneficiary is barred from the receipt of payments under the Servicemen's Indemnity Act of 1951 by virtue of the first sentence of paragraph (1), no payments of the portion of indemnity in which such beneficiary had an interest shall be made to any other beneficiary.

(3) In the case of a child who has applied for dependency and indemnity compensation pursuant to this section or prior corresponding provisions of law, and who is or becomes a beneficiary under the Servicemen's Indemnity Act of 1951 by reason of the death giving rise to such child's eligibility for dependency and indemnity compensation, the Secretary shall determine and pay to such child for each month, or part thereof, payments under this chapter or under such Act, whichever payment the Secretary determines to be the greater amount.

(4) Notwithstanding paragraph (2), where a child receives dependency and indemnity compensation under this chapter, and thereafter dies, the portion of servicemen's indemnity in which such child had an interest may be paid (subject to paragraph (3)) to another child of the person by reason of whose death such servicemen's indemnity was payable.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1130, §416; Pub. L. 94-433, title IV, §405(11)-(16), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 97-295, §4(11), Oct. 12, 1982, 96 Stat. 1305; renumbered §1316 and amended Pub. L. 102-83, §§4(a)(1), (b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 403-406.)

REFERENCES IN TEXT

The Servicemen's Indemnity Act of 1951, referred to in subsec. (e), is act Apr. 25, 1951, ch. 39, pt. I, 65 Stat. 33, as amended, which was classified generally to subchapter II (§851 et seq.) of chapter 13 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by act Aug. 1, 1956, ch. 837, title V, §502(9), 70 Stat. 886.

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 416 of this title as this section.

Subsec. (a)(2). Pub. L. 102-83, §5(c)(1), substituted "1315" for "415".

Subsecs. (b) to (d). Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" wherever appearing.

Subsec. (e)(3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

1982—Subsecs. (b)(1)(B), (2)(B), (c)(2), (d)(2). Pub. L. 97-295 substituted "subchapter I of chapter 81 of title 5" for "the Federal Employees' Compensation Act" wherever appearing.

1976—Subsec. (a). Pub. L. 94-433, §405(11), substituted "surviving spouse" for "widow" in par. (1) and "such person's" for "his" in par. (2).

Subsec. (b)(1). Pub. L. 94-433, §405(12), substituted "surviving spouse" and "such surviving spouse" for "widow" and "her", respectively.

Subsec. (c). Pub. L. 94-433, §405(13), substituted "paid to such child" for "paid to him".

Subsec. (d). Pub. L. 94-433, §405(14), substituted "such parent" for "him" in cls. (1) and (2).

Subsec. (e). Pub. L. 94-433, §405(15), (16), substituted "such person" and "such beneficiary's" for "he" and "his", respectively, in par. (1) and "such child's" and "the Administrator" for "his" and "he", respectively, in par. (3).

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.

§ 1317. Restriction on payments under this chapter

(a) Except as provided in subsection (b), no person eligible for dependency and indemnity compensation by reason of any death occurring after December 31, 1956, shall be eligible by reason of such death for any payments under (1) provisions of law administered by the Secretary providing for the payment of death compensation or death pension, or (2) subchapter I of chapter 81 of title 5.

(b) A surviving spouse who is eligible for dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1132, §417; Pub. L. 91-291, §13(a), (b), June 25, 1970, 84 Stat. 332; Pub. L. 92-197, §5, Dec. 15, 1971, 85 Stat. 662; Pub. L. 97-295, §4(11), Oct. 12, 1982, 96 Stat. 1305; renumbered §1317 and amended Pub. L. 102-83, §§4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 103-446, title I, §111(a), Nov. 2, 1994, 108 Stat. 4654.)

AMENDMENTS

1994—Pub. L. 103-446 designated existing provisions as subsec. (a), substituted "Except as provided in subsection (b), no person" for "No person", and added subsec. (b).

1991—Pub. L. 102-83, §5(a), renumbered section 417 of this title as this section.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1982—Pub. L. 97-295 substituted "subchapter I of chapter 81 of title 5" for "the Federal Employees' Compensation Act".

1971—Pub. L. 92-197 struck out subsec. (a) which, among other provisions, restricted payment of dependency and indemnity compensation in certain cases where death of a veteran occurred while United States Government life insurance or National Service Life Insurance was in force under an in-service waiver of premiums continued under section 724 of this title, and designated subsec. (b) as entire section.

1970—Subsec. (a). Pub. L. 91-291 designated material after "unless" in first sentence as cl. (1), added cl. (2),

and in last sentence substituted "first sentence" for "preceding sentence".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-197 effective Jan. 1, 1972, see section 10 of Pub. L. 92-197, set out as a note under section 1311 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 13(c) of Pub. L. 91-291 provided that: "No dependency and indemnity compensation shall be payable to any person by virtue of the amendments made by subsection (a) of this section [amending this section] for any person prior to the effective date of this Act [June 25, 1970]."

Section 14(a) of Pub. L. 91-291 provided that: "The amendments made by this Act [amending this section and sections 705, 707, 745, 765, 767, 768, 769, 770, and 774 [now 1905, 1907, 1945, 1965, 1967, 1968, 1969, 1970, and 1974] of this title and enacting provisions set out as notes under this section] shall take effect as of the date of enactment [June 25, 1970], except that sections 10 and 12 [amending sections 717 and 752 [now 1917 and 1952] of this title] shall take effect as of the first day of the first calendar month which begins more than six calendar months after the date of enactment of this Act [June 25, 1970]."

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 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