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

(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; Pub. L. 111–275, title VI, § 603(a), Oct. 13, 2010, 124 Stat. 2885.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–275 struck out ''who died after September 30, 1999,'' after ''prisoner of war''.

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''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–275, title VI, § 603(b), Oct. 13, 2010, 124 Stat. 2885, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2011.''

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 cumu-