

## Department of Veterans Affairs

## § 3.55

(1) Before the expiration of 15 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 1 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.

(Authority: 38 U.S.C. 1304)

(d) *Child born*. The term *child born of the marriage* means a birth on or after the date of the marriage on which the surviving spouse's entitlement is predicated. The term *born to them before the marriage* means a birth prior to the date of such marriage. Either term includes a fetus advanced to the point of gestation required to constitute a birth under the law of the jurisdiction in which the fetus was delivered.

(e) *More than one marriage to veteran*. For periods commencing on or after January 1, 1958, where a surviving spouse has been married legally to a veteran more than once, the date of the original marriage will be used in determining whether the statutory requirement as to date of marriage has been met.

(Authority: 38 U.S.C. 103(b))

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 6498, July 10, 1962; 32 FR 13224, Sept. 19, 1967; 40 FR 16064, Apr. 9, 1975; 40 FR 48680, Oct. 17, 1975; 41 FR 18300, May 3, 1976; 44 FR 22718, Apr. 17, 1979; 54 FR 31829, Aug. 2, 1989; 56 FR 5756, Feb. 13, 1991; 56 FR 57986, Nov. 15, 1991; 65 FR 3392, Jan. 21, 2000]

### § 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.

(a) *Surviving spouse*. (1) Remarriage of a surviving spouse shall not bar the furnishing of benefits to such surviving spouse if the marriage:

(i) Was void, or

(ii) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

(2) On or after January 1, 1971, remarriage of a surviving spouse terminated prior to November 1, 1990, or terminated by legal proceedings commenced

prior to November 1, 1990, by an individual who, but for the remarriage, would be considered the surviving spouse, shall not bar the furnishing of benefits to such surviving spouse provided that the marriage:

(i) Has been terminated by death, or

(ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by the surviving spouse or by collusion.

(3) On or after October 1, 1998, remarriage of a surviving spouse terminated by death, divorce, or annulment, will not bar the furnishing of dependency and indemnity compensation, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion.

(Authority: 38 U.S.C. 1311(e))

(4) On or after December 1, 1999, remarriage of a surviving spouse terminated by death, divorce, or annulment, will not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1713, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion.

(Authority: 38 U.S.C. 103(d))

(5) On or after January 1, 1971, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person shall not bar the furnishing of benefits to him or her after he or she terminates the relationship, if the relationship terminated prior to November 1, 1990.

(6) On or after October 1, 1998, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person will not bar the furnishing of dependency and indemnity compensation to the surviving spouse if he or she ceases living with such other person and holding himself or herself out openly to the public as such other person's spouse.

(Authority: 38 U.S.C. 1311(e))

### § 3.56

(7) On or after December 1, 1999, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person will not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1713, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 to the surviving spouse if he or she ceases living with such other person and holding himself or herself out openly to the public as such other person's spouse.

(Authority: 38 U.S.C. 103(d)).

(8) On or after January 1, 1971, the fact that benefits to a surviving spouse may previously have been barred because his or her conduct or a relationship into which he or she had entered had raised an inference or presumption that he or she had remarried or had been determined to be open and notorious adulterous cohabitation, or similar conduct, shall not bar the furnishing of benefits to such surviving spouse after he or she terminates the conduct or relationship, if the relationship terminated prior to November 1, 1990.

(b) *Child*. (1) Marriage of a child shall not bar the furnishing of benefits to or on account of such child, if the marriage:

(i) Was void, or

(ii) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

(2) On or after January 1, 1975, marriage of a child terminated prior to November 1, 1990, shall not bar the furnishing of benefits to or for such child provided that the marriage:

(i) Has been terminated by death, or

(ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by either party or by collusion.

(Authority: 38 U.S.C. 103; 105 Stat. 424, 106 Stat. 4322)

### 38 CFR Ch. I (7-1-05 Edition)

CROSS REFERENCES: Evidence. See §§ 3.206 and 3.207. Termination of marital relationship or conduct. See § 3.215.

[58 FR 32444, June 10, 1993, as amended at 60 FR 52863, Oct. 11, 1995; 64 FR 30245, June 7, 1999; 65 FR 43700, July 14, 2000]

### § 3.56 [Reserved]

### § 3.57 Child.

(a) *General*. (1) Except as provided in paragraphs (a)(2) and (3) of this section, the term *child* of the veteran means an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and

(i) Who is under the age of 18 years; or

(ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. For the purposes of this section and § 3.667, the term "educational institution" means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities, but does not include home-school programs.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

(2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term *child* of the veteran also includes the following unmarried persons:

(i) A person who was adopted by the veteran between the ages of 18 and 23 years.

(ii) A person who became a stepchild of the veteran between the ages of 18 and 23 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death.