

### § 3.55

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(c) *Dependency and indemnity compensation.* Dependency and indemnity compensation payable under 38 U.S.C. 1310(a) may be paid to the surviving spouse of a veteran who died on or after January 1, 1957, who was married to the veteran:

(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. 1781, 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

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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))

(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. 1781, 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.

(9) *Benefits under 38 U.S.C. 1781 for a surviving spouse who remarries after age 55.* (i) On or after February 4, 2003, the remarriage of a surviving spouse after age 55 shall not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781, subject to the limitation in paragraph (a)(9)(ii) of this section.

(ii) A surviving spouse who remarried after the age of 55, but before December 6, 2002, may be eligible for benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781 pursuant to paragraph (a)(9)(i) only if the application for such benefits was received by VA before December 16, 2004.

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

(10) *Benefits for a surviving spouse who remarries after age 57.* (i) On or after January 1, 2004, the remarriage of a surviving spouse after the age of 57 shall not bar the furnishing of benefits relating to dependency and indemnity compensation under 38 U.S.C. 1311, medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, subject to the limitation in paragraph (a)(10)(ii) of this section.

(ii) A surviving spouse who remarried after the age of 57, but before December 16, 2003, may be eligible for dependency and indemnity compensation under 38 U.S.C. 1311, medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 pursuant to paragraph (a)(10)(i) only if the application for such benefits was received by VA before December 16, 2004.

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

(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)

### § 3.56

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; 71 FR 29084, May 19, 2006]

### § 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 educational institution approved by the Department of Veterans Affairs. 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, including schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term "home schools" is limited to courses of instruction for grades kindergarten through 12.

(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:

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(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.

(3) Subject to the provisions of paragraphs (c) and (e) of this section, the term *child* also includes a person who became permanently incapable of self-support before reaching the age of 18 years, who was a member of the veteran's household at the time he or she became 18 years of age, and who was adopted by the veteran, regardless of the age of such person at the time of adoption.

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

(b) *Stepchild.* The term means a legitimate or an illegitimate child of the veteran's spouse. A child of a surviving spouse whose marriage to the veteran is deemed valid under the provisions of § 3.52, and who otherwise meets the requirements of this section is included.

(c) *Adopted child.* Except as provided in paragraph (e) of this section, the term means a child adopted pursuant to a final decree of adoption, a child adopted pursuant to an unrescinded interlocutory decree of adoption while remaining in the custody of the adopting parent (or parents) during the interlocutory period, and a child who has been placed for adoption under an agreement entered into by the adopting parent (or parents) with any agency authorized under law to so act, unless and until such agreement is terminated, while the child remains in the custody of the adopting parent (or parents) during the period of placement for adoption under such agreement. The term includes, as of the date of death of a veteran, such a child who:

(1) Was living in the veteran's household at the time of the veteran's death, and

(2) Was adopted by the veteran's spouse under a decree issued within 2 years after August 25, 1959, or the veteran's death whichever is later, and

(3) Was not receiving from an individual other than the veteran or the