

21, 1976, 90 Stat. 2865, relating to the construction and repair of hospitals, domiciliaries, and outpatient dispensary facilities, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96-22. See section 8103 of this title.

A prior section 5003 was renumbered section 8103 of this title.

Another prior section 5003, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1252, relating to the use by the Veterans' Administration of Armed Forces' facilities, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96-22. See section 8111 of this title.

A prior section 5004 was renumbered section 8104 of this title.

Another prior section 5004, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 152; Pub. L. 89-785, title II, § 201(a), Nov. 7, 1966, 80 Stat. 1372; Pub. L. 94-581, title II, § 210(e)(3), Oct. 21, 1976, 90 Stat. 2865, relating to garage and parking facilities, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96-22. See section 8109 of this title.

A prior section 5005 was renumbered section 8105 of this title.

Another prior section 5005, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1252; Pub. L. 94-581, title II, § 210(e)(4), Oct. 21, 1976, 90 Stat. 2865, relating to the acceptance by the President of buildings, structures, equipment, or grounds from States or other political subdivisions or from persons, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96-22. See section 8115 of this title.

A prior section 5006 was renumbered section 8106 of this title.

Another prior section 5006, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1253, relating to property formerly owned by the National Home for Disabled Volunteer Soldiers, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96-22. See section 8113 of this title.

A prior section 5007 was renumbered section 8107 of this title.

Another prior section 5007, added Pub. L. 93-82, title III, § 302(1), Aug. 2, 1973, 87 Stat. 195, and amended Pub. L. 94-581, title II, § 210(e)(5), Oct. 21, 1976, 90 Stat. 2865, relating to partial relinquishment of legislative jurisdiction, was omitted in the general revision of subchapter I of chapter 81 of this title by Pub. L. 96-22. See section 8112 of this title.

Prior sections 5008 to 5011 were renumbered sections 8108 to 8111 of this title, respectively.

Another prior section 5011 was renumbered section 5021 of this title.

Prior sections 5011A and 5012 were renumbered sections 8111A and 8112 of this title, respectively.

Another prior section 5012 was renumbered section 5022 of this title.

A prior section 5013 was renumbered section 8113 of this title.

Another prior section 5013 was renumbered section 5023 of this title.

A prior section 5014 was renumbered section 8114 of this title.

Another prior section 5014 was renumbered section 5024 of this title.

Prior sections 5015, 5016, 5021 to 5025, 5031 to 5037, and 5051 to 5056 were renumbered sections 8115, 8116, 8121 to 8125, 8131 to 8137, and 8151 to 8156 of this title, respectively.

A prior section 5057, added Pub. L. 89-785, title II, § 203, Nov. 7, 1966, 80 Stat. 1376, directed Administrator to submit to Congress not more than sixty days after end of each fiscal year separate reports on activities carried out under sections 5053 and 5054 of this title, prior to repeal by Pub. L. 99-576, title II, § 231(c)(2)(A), Oct. 28, 1986, 100 Stat. 3264.

Prior sections 5070, 5071 to 5074, 5081 to 5083, 5091 to 5093, and 5096 were renumbered sections 8201, 8211 to 8214, 8221 to 8223, 8231 to 8233, and 8241 of this title, respectively.

## EFFECTIVE DATE

Pub. L. 108-454, title II, § 203(c), Dec. 10, 2004, 118 Stat. 3606, provided that:

“(1) Not later than the date that is 90 days after the date of the enactment of this Act [Dec. 10, 2004], the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code, as added by subsection (a).

“(2) The amendments made by this section [enacting this section] shall apply to employers under chapter 43 of title 38, United States Code, on and after the first date referred to in paragraph (1).”

## PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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## AMENDMENTS

2002—Pub. L. 107-330, title III, § 308(g)(1)(A), Dec. 6, 2002, 116 Stat. 2828, substituted “5100” for “5101” in item for chapter 51.

1991—Pub. L. 102-40, title IV, § 402(c)(2), May 7, 1991, 105 Stat. 239, substituted “5101” for “3001” in item for chapter 51, “5301” for “3101” in item for chapter 53, “5501” for “3201” in item for chapter 55, “5701” for “3301” in item for chapter 57, “5901” for “3401” in item for chapter 59, and “6101” for “3501” in item for chapter 61.

1988—Pub. L. 100-687, div. A, title I, § 103(c)(1), Nov. 18, 1988, 102 Stat. 4107, substituted “Claims” for “Applications” in item for chapter 51.

### CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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<sup>1</sup> So in original. Does not conform to section catchline.

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## AMENDMENTS

2003—Pub. L. 108-183, title VII, §707(a)(2), Dec. 16, 2003, 117 Stat. 2673, added item 5109B.

2000—Pub. L. 106-475, §6, Nov. 9, 2000, 114 Stat. 2099, added items 5100, 5102 to 5103A, 5107, and 5126, and struck out former items 5102 "Application forms furnished upon request", 5103 "Incomplete applications", and 5107 "Burden of proof; benefit of the doubt".

Pub. L. 106-398, §1 [[div. A], title XVI, §1611(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-360, directed amendment of table of sections by striking the item relating to section 5017 and inserting item 5107 "Assistance to claimants; benefit of the doubt; burden of proof". Pub. L. 106-419, title I, §104(c)(2), Nov. 1, 2000, 114 Stat. 1828, provided that, as of the enactment of Pub. L. 106-419, the amendments made by Pub. L. 106-398, §1 [[div. A], title XVI, §1611(b)], were deemed for all purposes not to have taken effect and that Pub. L. 106-398, §1 [[div. A], title XVI, §1611(b)], ceased to be in effect.

1997—Pub. L. 105-111, §1(a)(2), Nov. 21, 1997, 111 Stat. 2271, added item 5109A.

1994—Pub. L. 103-446, title III, §301(c), Nov. 2, 1994, 108 Stat. 4658, added items 5124 and 5125.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3001 to 3023 as 5101 to 5123, respectively.

1989—Pub. L. 101-237, title I, §115(a)(2), Dec. 18, 1989, 103 Stat. 2066, added item 3004.

1988—Pub. L. 100-687, div. A, title I, §103(a)(2), (c)(2), (3), Nov. 18, 1988, 102 Stat. 4107, 4108, substituted "CLAIMS" for "APPLICATIONS" in heading for chapter and in item for subchapter I and added items 3007, 3008, and 3009.

1982—Pub. L. 97-253, title IV, §§401(a)(2), 403(a)(2), Sept. 8, 1982, 96 Stat. 802, added items 3011 and 3023, respectively.

1977—Pub. L. 95-117, title IV, §402(b)(2), Oct. 3, 1977, 91 Stat. 1066, struck out "by check" after "benefit" in item 3020.

1976—Pub. L. 94-432, title IV, §403(1), Sept. 30, 1976, 90 Stat. 1372, added item 3006.

1962—Pub. L. 87-825, §5(b), Oct. 15, 1962, 76 Stat. 950, struck out items 3004 and 3011.

## SUBCHAPTER I—CLAIMS

## AMENDMENTS

1988—Pub. L. 100-687, div. A, title I, §103(c)(4), Nov. 18, 1988, 102 Stat. 4108, substituted "CLAIMS" for "APPLICATIONS" in heading for subchapter I.

**§ 5100. Definition of "claimant"**

For purposes of this chapter, the term "claimant" means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.

(Added Pub. L. 106-475, §2, Nov. 9, 2000, 114 Stat. 2096.)

**§ 5101. Claims and forms**

(a) A specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by section 5105 of this title) must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary.

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity

compensation shall also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension shall be considered to be a claim for death compensation (or dependency and indemnity compensation) and accrued benefits.

(2) A claim by a parent for compensation or dependency and indemnity compensation shall also be considered to be a claim for accrued benefits.

(c)(1) Any person who applies for or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number.

(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, §3001; Pub. L. 97-295, §4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 99-576, title VII, §701(61), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101-508, title VIII, §8053(a), Nov. 5, 1990, 104 Stat. 1388-352; renumbered §5101 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 108-183, title VII, §708(c)(2), Dec. 16, 2003, 117 Stat. 2674.)

## PRIOR PROVISIONS

Prior section 5101 was renumbered section 8301 of this title.

## AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3001 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" after "prescribed by the".

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

Pub. L. 102-40, §402(d)(1), substituted "5105" for "3005".

1990—Subsec. (c). Pub. L. 101-508 added subsec. (c).

1986—Subsec. (b)(1). Pub. L. 99-576 substituted "surviving spouse or" for "widow or" in two places.

1982—Subsec. (a). Pub. L. 97-295 substituted "Health and Human Services" for "Health, Education, and Welfare".

TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS

Pub. L. 108-183, title VII, §704, Dec. 16, 2003, 117 Stat. 2672, provided that:

“(a) AUTHORITY.—Using appropriated funds, other than funds available for compensation and pension, the Secretary of Veterans Affairs may provide for the conduct of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary by persons other than Department of Veterans Affairs employees. The authority under this section is in addition to the authority provided in section 504(b) of the Veterans' Benefits Improvement Act of 1996 (Public Law 104-275; 38 U.S.C. 5101 note).

“(b) PERFORMANCE BY CONTRACT.—Examinations under the authority provided in subsection (a) shall be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits.

“(c) EXPIRATION.—The authority in subsection (a) shall expire on December 31, 2009. No examination may be carried out under the authority provided in that subsection after that date.

“(d) REPORT.—Not later than four years after the date of the enactment of this Act [Dec. 16, 2003], the Secretary shall submit to Congress a report on the use of the authority provided in subsection (a). The Secretary shall include in the report an assessment of the effect of examinations under that authority on the cost, timeliness, and thoroughness of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary.”

PILOT PROGRAM FOR USE OF CONTRACT PHYSICIANS FOR DISABILITY EXAMINATIONS

Pub. L. 104-275, title V, §504, Oct. 9, 1996, 110 Stat. 3341, provided that:

“(a) AUTHORITY.—The Secretary of Veterans Affairs, acting through the Under Secretary for Benefits, may conduct a pilot program under this section under which examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary that are carried out through the Under Secretary for Benefits may be made by persons other than employees of the Department of Veterans Affairs. Any such examination shall be performed pursuant to contracts entered into by the Under Secretary for Benefits with those persons.

“(b) LIMITATION.—The Secretary may carry out the pilot program under this section through not more than 10 regional offices of the Department of Veterans Affairs.

“(c) SOURCE OF FUNDS.—Payments for contracts under the pilot program under this section shall be made from amounts available to the Secretary of Veterans Affairs for payment of compensation and pensions.

“(d) REPORT TO CONGRESS.—Not later than three years after the date of the enactment of this Act [Oct. 9, 1996], the Secretary shall submit to the Congress a report on the effect of the use of the authority provided by subsection (a) on the cost, timeliness, and thoroughness of medical disability examinations.”

EXPEDITED TREATMENT OF REMANDED CLAIMS

Pub. L. 103-446, title III, §302, Nov. 2, 1994, 108 Stat. 4658, as amended by Pub. L. 105-368, title V, §512(c), Nov. 11, 1998, 112 Stat. 3342, provided that Secretary of Veterans Affairs was to take necessary actions to provide for expeditious treatment, by the Board of Veterans' Appeals and by regional offices of the Veterans Benefits Administration, of any claim that had been remanded by the Board of Veterans' Appeals or by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action, prior to repeal by Pub. L. 108-183, title VII, §707(c), Dec. 16, 2003, 117 Stat. 2673.

VETERANS' CLAIMS ADJUDICATION COMMISSION

Pub. L. 103-446, title IV, Nov. 2, 1994, 108 Stat. 4659, as amended by Pub. L. 104-275, title V, §503(a), Oct. 9, 1996,

110 Stat. 3341, established Veterans' Claims Adjudication Commission which was directed to conduct comprehensive evaluation and assessment of Department of Veterans Affairs system for disposition of claims for veterans benefits and of system for delivery of such benefits, together with any related issues determined to be relevant to study, for purpose of determining means of increasing efficiency of system, means of reducing number of claims under system for which final disposition is pending, and means of enhancing ability of Department of Veterans Affairs to achieve final determination regarding claims under system in prompt and appropriate manner, and further provided for membership and powers of Commission, personnel matters, definitions and funding, and for submission of preliminary report to Secretary of Veterans Affairs and Congress not later than one year after Nov. 2, 1994, submission of final report not later than Dec. 31, 1996, and for termination of Commission 90 days after submission of final report.

**§ 5102. Application forms furnished upon request; notice to claimants of incomplete applications**

(a) FURNISHING FORMS.—Upon request made by any person claiming or applying for, or expressing an intent to claim or apply for, a benefit under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all instructions and forms necessary to apply for that benefit.

(b) INCOMPLETE APPLICATIONS.—If a claimant's application for a benefit under the laws administered by the Secretary is incomplete, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application.

(c) TIME LIMITATION.—(1) If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary within one year from the date such notice is sent, no benefit may be paid or furnished by reason of the claimant's application.

(2) This subsection shall not apply to any application or claim for Government life insurance benefits.

(Added Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 108-183, title VII, §701(a), Dec. 16, 2003, 117 Stat. 2670.)

PRIOR PROVISIONS

A prior section 5102, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, §3002; renumbered §5102, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405, related to application forms, prior to repeal by Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096.

Another prior section 5102 was renumbered section 8302 of this title.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-183 added subsec. (c).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title VII, §701(c), Dec. 16, 2003, 117 Stat. 2670, provided that: “The amendments made by this section [amending this section and section 5103 of this title] shall take effect as if enacted on November 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000 (Public Law 106-475; 114 Stat. 2096).”

### § 5103. Notice to claimants of required information and evidence

(a) **REQUIRED INFORMATION AND EVIDENCE.**— Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

(b) **TIME LIMITATION.**—(1) In the case of information or evidence that the claimant is notified under subsection (a) is to be provided by the claimant, such information or evidence must be received by the Secretary within one year from the date such notice is sent.

(2) This subsection shall not apply to any application or claim for Government life insurance benefits.

(3) Nothing in paragraph (1) shall be construed to prohibit the Secretary from making a decision on a claim before the expiration of the period referred to in that subsection.

(Added Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 107-14, §8(a)(12), June 5, 2001, 115 Stat. 35; Pub. L. 108-183, title VII, §701(b), Dec. 16, 2003, 117 Stat. 2670.)

#### PRIOR PROVISIONS

A prior section 5103, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, §3003; Pub. L. 99-570, title XI, §11007(a)(1), Oct. 27, 1986, 100 Stat. 3207-170; renumbered §5103, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405, related to incomplete applications, prior to repeal by Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096.

Another prior section 5103 was renumbered section 8303 of this title.

#### AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-183, §701(b)(1), substituted “such information or evidence must be received by the Secretary within one year from the date such notice is sent” for “if such information or evidence is not received by the Secretary within one year from the date of such notification, no benefit may be paid or furnished by reason of the claimant's application”.

Subsec. (b)(3). Pub. L. 108-183, §701(b)(2), added par. (3).

2001—Subsec. (b)(1). Pub. L. 107-14 substituted “one year” for “1 year”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment effective as if enacted Nov. 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000, Pub. L. 106-475, see section 701(c) of Pub. L. 108-183, set out as a note under section 5102 of this title.

#### READJUDICATION OF CERTAIN CLAIMS; NOTICE

Pub. L. 108-183, title VII, §701(d), (e), Dec. 16, 2003, 117 Stat. 2670, 2671, provided that:

“(d) **PROCEDURES FOR READJUDICATION OF CERTAIN CLAIMS.**—(1) The Secretary of Veterans Affairs shall readjudicate a claim of a qualified claimant if the request for such readjudication is received not later than the

end of the one-year period that begins on the date of the enactment of this Act [Dec. 16, 2003].

“(2) For purposes of this subsection, a claimant is qualified within the meaning of paragraph (1) if the claimant—

“(A) received notice under section 5103(a) of title 38, United States Code, requesting information or evidence to substantiate a claim;

“(B) did not submit such information or evidence within a year after the date such notice was sent;

“(C) did not file a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims; and

“(D) submits such information or evidence during the one-year period referred to in paragraph (1).

“(3) If the decision of the Secretary on a readjudication under this subsection is in favor of the qualified claimant, the award of the grant shall take effect as if the prior decision by the Secretary on the claim had not been made.

“(4) Nothing in this subsection shall be construed to establish a duty on the part of the Secretary to identify or readjudicate any claim that—

“(A) is not submitted during the one-year period referred to in paragraph (1); or

“(B) has been the subject of a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims.

“(e) **CONSTRUCTION ON PROVIDING RENOTIFICATION.**— Nothing in this section [amending this section and section 5102 of this title and enacting provisions set out as a note under section 5102 of this title], or the amendments made by this section, shall be construed to require the Secretary of Veterans Affairs—

“(1) to provide notice under section 5103(a) of such title with respect to a claim insofar as the Secretary has previously provided such notice; or

“(2) to provide for a special notice with respect to this section and the amendments made by this section.”

### § 5103A. Duty to assist claimants

(a) **DUTY TO ASSIST.**—(1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary.

(2) The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

(3) The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant's application.

(b) **ASSISTANCE IN OBTAINING RECORDS.**—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.

(2) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall—

(A) identify the records the Secretary is unable to obtain;

(B) briefly explain the efforts that the Secretary made to obtain those records; and

(C) describe any further action to be taken by the Secretary with respect to the claim.

(3) Whenever the Secretary attempts to obtain records from a Federal department or agency

under this subsection or subsection (c), the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

(c) **OBTAINING RECORDS FOR COMPENSATION CLAIMS.**—In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (b) shall include obtaining the following records if relevant to the claim:

(1) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

(2) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(3) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

(d) **MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.**—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

(2) The Secretary shall treat an examination or opinion as being necessary to make a decision on a claim for purposes of paragraph (1) if the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

(C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

(e) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section.

(f) **RULE WITH RESPECT TO DISALLOWED CLAIMS.**—Nothing in this section shall be construed to require the Secretary to reopen a claim that has been disallowed except when new and material evidence is presented or secured, as described in section 5108 of this title.

(g) **OTHER ASSISTANCE NOT PRECLUDED.**—Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.

(Added Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2097.)

#### § 5104. Decisions and notices of decisions

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

(b) In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary.

(Added Pub. L. 101-237, title I, §115(a)(1), Dec. 18, 1989, 103 Stat. 2065, §3004; renumbered §5104, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, §14(d)(1), June 13, 1991, 105 Stat. 285; Pub. L. 103-446, title XII, §1201(d)(15), Nov. 2, 1994, 108 Stat. 4684.)

#### PRIOR PROVISIONS

Prior section 5104 was renumbered section 8304 of this title.

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 substituted "section 511" for "section 211(a)".

1991—Pub. L. 102-40 renumbered section 3004 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before enactment of Pub. L. 102-40 by striking out "(1)" after "(a)" and substituting "(b)" for "(2)", "subsection (a)" for "paragraph (1) of this subsection", "(1)" for "(A)", and "(2)" for "(B)".

#### EFFECTIVE DATE

Section 115(b) of Pub. L. 101-237 provided that: "Section 3004 [now 5104] of title 38, United States Code, as added by subsection (a), shall apply with respect to decisions by the Secretary of Veterans Affairs made after January 31, 1990."

#### § 5105. Joint applications for social security and dependency and indemnity compensation

(a) The Secretary and the Commissioner of Social Security shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.).

(b) When an application on such a form is filed with either the Secretary or the Commissioner of Social Security, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with either the Secretary or the Commissioner, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary or the Commissioner with such application, and which may be needed by the other official in connection therewith, shall be transmitted by the Secretary or the Commissioner receiving the application to the other of-

ficial. The preceding sentence shall not prevent the Secretary and the Commissioner of Social Security from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1226, §3005; Pub. L. 97-295, §4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title VII, §702(16), Nov. 21, 1983, 97 Stat. 1010; renumbered §5105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(9), Aug. 6, 1991, 105 Stat. 405; Pub. L. 103-296, title I, §108(k), Aug. 15, 1994, 108 Stat. 1488.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security 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.

#### PRIOR PROVISIONS

Prior section 5105 was renumbered section 8305 of this title.

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-296, §108(k)(1), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

Subsec. (b). Pub. L. 103-296, §108(k), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services” in two places and amended second sentence generally. Prior to amendment, second sentence read as follows: “A copy of each such application filed with either Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by that Secretary with such application, and which may be needed by the other Secretary in connection therewith, shall be transmitted by the Secretary receiving the application to the other Secretary.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3005 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(9)(A)–(C), substituted “(a) The Secretary” for “The Administrator” at the beginning of text and substituted “401 et seq.” for “401 et seq.”; and in second sentence.

Subsec. (b). Pub. L. 102-83, §4(b)(9)(D)–(J), substituted “(b) When an application on such a form is filed with either the Secretary” for “when an application on such form has been filed with either the Administrator”, “filed with either Secretary” for “filed with the Administrator”, “received by that Secretary” for “received by the Administrator”, “needed by the other Secretary” for “needed by the Secretary”, and “by the Secretary receiving the application to the other Secretary.” for “by the Administrator to the Secretary.”; struck out “and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator.” before “The preceding sentence”, and substituted “the Secretary and the Secretary of Health and Human Services” for “the Secretary and the Administrator”.

1983—Pub. L. 98-160 substituted “title II of the Social Security Act (42 U.S.C. 401 et seq.)” for “subchapter II of chapter 7 of title 42” wherever appearing.

1982—Pub. L. 97-295 substituted “Health and Human Services” for “Health, Education, and Welfare” wherever appearing.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

#### § 5106. Furnishing of information by other agencies

The head of any Federal department or agency shall provide such information to the Secretary as the Secretary may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto. The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.

(Added Pub. L. 94-432, title IV, §403(2), Sept. 30, 1976, 90 Stat. 1372, §3006; amended Pub. L. 99-576, title VII, §701(62), Oct. 28, 1986, 100 Stat. 3296; renumbered §5106, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 106-475, §5, Nov. 9, 2000, 114 Stat. 2099.)

#### AMENDMENTS

2000—Pub. L. 106-475 inserted at end “The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.”

1991—Pub. L. 102-40 renumbered section 3006 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places.

1986—Pub. L. 99-576 substituted “the Administrator” for “he” before “may request”.

#### EFFECTIVE DATE

Section effective Sept. 30, 1976, see section 405(a) of Pub. L. 94-432, set out as an Effective Date of 1976 Amendment note under section 1521 of this title.

#### § 5107. Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY.—Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

(Added Pub. L. 100-687, div. A, title I, §103(a)(1), Nov. 18, 1988, 102 Stat. 4106, §3007; renumbered §5107 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 106-419, title I, §104(c)(2), Nov. 1, 2000, 114 Stat. 1828; Pub. L. 106-475, §4, Nov. 9, 2000, 114 Stat. 2098.)

#### AMENDMENTS

2000—Pub. L. 106-475 substituted “Claimant responsibility; benefit of the doubt” for “Burden of proof; ben-

efit of the doubt" in section catchline and amended text generally. Prior to amendment, text read as follows:

"(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

"(b) When, after consideration of all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. Nothing in this subsection shall be construed as shifting from the claimant to the Secretary the burden specified in subsection (a) of this section."

Pub. L. 106-398, § 1 [div. A], title XVI, § 1611(a)], directed the general amendment of the section catchline and text. Pub. L. 106-419, § 104(c)(2), provided that, as of the enactment of Pub. L. 106-419, the amendment made by Pub. L. 106-398, § 1 [div. A], title XVI, § 1611(a)], was deemed for all purposes not to have taken effect and that Pub. L. 106-398, § 1 [div. A], title XVI, § 1611(a)], ceased to be in effect.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3007 of this title as this section.

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

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

Pub. L. 102-40, § 402(d)(1), substituted "5106" for "3006".

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" before "the burden".

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

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

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-475, § 7, Nov. 9, 2000, 114 Stat. 2099, provided that:

"(a) IN GENERAL.—Except as specifically provided otherwise, the provisions of section 5107 of title 38, United States Code, as amended by section 4 of this Act, apply to any claim—

"(1) filed on or after the date of the enactment of this Act [Nov. 9, 2000]; or

"(2) filed before the date of the enactment of this Act and not final as of that date.

"(b) RULE FOR CLAIMS THE DENIAL OF WHICH BECAME FINAL AFTER THE COURT OF APPEALS FOR VETERANS CLAIMS DECISION IN THE MORTON CASE.—(1) In the case of a claim for benefits denied or dismissed as described in paragraph (2), the Secretary of Veterans Affairs shall, upon the request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such title, as amended by this Act, as if the denial or dismissal had not been made.

"(2) A denial or dismissal described in this paragraph is a denial or dismissal of a claim for a benefit under the laws administered by the Secretary of Veterans Affairs that—

"(A) became final during the period beginning on July 14, 1999, and ending on the date of the enactment of this Act; and

"(B) was issued by the Secretary of Veterans Affairs or a court because the claim was not well grounded (as that term was used in section 5107(a) of title 38, United States Code, as in effect during that period).

"(3) A claim may not be readjudicated under this subsection unless a request for readjudication is filed by the claimant, or a motion is made by the Secretary, not later than 2 years after the date of the enactment of this Act.

"(4) In the absence of a timely request of a claimant under paragraph (3), nothing in this Act [see Short Title of 2000 Amendments note set out under section 101 of this title] shall be construed as establishing a duty on the part of the Secretary of Veterans Affairs to locate and readjudicate a claim described in this subsection."

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

#### § 5108. Reopening disallowed claims

If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary shall reopen the claim and review the former disposition of the claim.

(Added Pub. L. 100-687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, § 3008; renumbered § 5108, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3008 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator".

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

#### § 5109. Independent medical opinions

(a) When, in the judgment of the Secretary, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in a case being considered by the Department, the Secretary may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Secretary shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Secretary.

(Added Pub. L. 100-687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, § 3009; renumbered § 5109, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3009 of this title as this section.

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

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsecs. (b), (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

#### § 5109A. Revision of decisions on grounds of clear and unmistakable error

(a) A decision by the Secretary under this chapter is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

(b) For the purposes of authorizing benefits, a rating or other adjudicative decision that constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Secretary on the Secretary's own motion or upon request of the claimant.

(d) A request for revision of a decision of the Secretary based on clear and unmistakable error may be made at any time after that decision is made.

(e) Such a request shall be submitted to the Secretary and shall be decided in the same manner as any other claim.

(Added Pub. L. 105-111, §1(a)(1), Nov. 21, 1997, 111 Stat. 2271.)

#### EFFECTIVE DATE

Section 1(c)(1) of Pub. L. 105-111 provided that: "Sections 5109A and 7111 of title 38, United States Code, as added by this section, apply to any determination made before, on, or after the date of the enactment of this Act [Nov. 21, 1997]."

#### § 5109B. Expedited treatment of remanded claims

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans' Appeals.

(Added Pub. L. 108-183, title VII, §707(a)(1), Dec. 16, 2003, 117 Stat. 2672.)

### SUBCHAPTER II—EFFECTIVE DATES

#### § 5110. Effective dates of awards

(a) Unless specifically provided otherwise in this chapter, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.

(b)(1) The effective date of an award of disability compensation to a veteran shall be the day

following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release.

(2) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

(3)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

(c) The effective date of an award of disability compensation by reason of section 1151 of this title shall be the date such injury or aggravation was suffered if an application therefor is received within one year from such date.

(d) The effective date of an award of death compensation, dependency and indemnity compensation, or death pension for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(e)(1) Except as provided in paragraph (2) of this subsection, the effective date of an award of dependency and indemnity compensation to a child shall be the first day of the month in which the child's entitlement arose if application therefor is received within one year from such date.

(2) In the case of a child who is eighteen years of age or over and who immediately before becoming eighteen years of age was counted under section 1311(b) of this title in determining the amount of the dependency and indemnity compensation of a surviving spouse, the effective date of an award of dependency and indemnity compensation to such child shall be the date the child attains the age of eighteen years if application therefor is received within one year from such date.

(f) An award of additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating; but only if proof of dependents is received within one year from the date of notification of such rating action.

(g) Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue. In no event shall such award or increase be retroactive for more than one year from the date of application therefor or the date of administra-

tive determination of entitlement, whichever is earlier.

(h) Where an award of pension has been deferred or pension has been awarded at a rate based on anticipated income for a year and the claimant later establishes that income for that year was at a rate warranting entitlement or increased entitlement, the effective date of such entitlement or increase shall be fixed in accordance with the facts found if satisfactory evidence is received before the expiration of the next calendar year.

(i) Whenever any disallowed claim is reopened and thereafter allowed on the basis of new and material evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of reopening of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

(j) Where a report or a finding of death of any person in the active military, naval, or air service has been made by the Secretary concerned, the effective date of an award of death compensation, dependency and indemnity compensation, or death pension, as applicable, shall be the first day of the month fixed by that Secretary as the month of death in such report or finding, if application therefor is received within one year from the date such report or finding has been made; however, such benefits shall not be payable to any person for any period for which such person has received, or was entitled to receive, an allowance, allotment, or service pay of the deceased.

(k) The effective date of the award of benefits to a surviving spouse or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(l) The effective date of an award of benefits to a surviving spouse based upon a termination of a remarriage by death or divorce, or of an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce, shall be the date of death or the date the judicial decree or divorce becomes final, if an application therefor is received within one year from such termination.

[ (m) Repealed. Pub. L. 103-446, title XII, § 1201(i)(8), Nov. 2, 1994, 108 Stat. 4688. ]

(n) The effective date of the award of any benefit or any increase therein by reason of marriage or the birth or adoption of a child shall be the date of such event if proof of such event is

received by the Secretary within one year from the date of the marriage, birth, or adoption.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1226, § 3010; Pub. L. 87-674, § 3, Sept. 19, 1962, 76 Stat. 558; Pub. L. 87-825, § 1, Oct. 15, 1962, 76 Stat. 948; Pub. L. 91-376, § 7, Aug. 12, 1970, 84 Stat. 790; Pub. L. 91-584, § 13, Dec. 24, 1970, 84 Stat. 1578; Pub. L. 93-177, § 6(a), Dec. 6, 1973, 87 Stat. 696; Pub. L. 93-527, § 9(b), Dec. 21, 1974, 88 Stat. 1705; Pub. L. 94-71, title I, § 104, Aug. 5, 1975, 89 Stat. 396; Pub. L. 97-66, title II, § 204(b), Oct. 17, 1981, 95 Stat. 1029; Pub. L. 98-160, title VII, § 703(1), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-223, title II, § 213(3), Mar. 2, 1984, 98 Stat. 46; Pub. L. 98-369, div. B, title V, § 2501(a), July 18, 1984, 98 Stat. 1116; Pub. L. 99-576, title VII, § 701(63), Oct. 28, 1986, 100 Stat. 3296; renumbered § 5110 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§ 4(a)(2)(A)(vi), (b)(4)(B), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 405, 406; Pub. L. 103-446, title XII, § 1201(i)(8), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 108-454, title III, § 305, Dec. 10, 2004, 118 Stat. 3611.)

#### AMENDMENTS

2004—Subsec. (d). Pub. L. 108-454 struck out par. (1) designation after subsec. (d) designation, substituted “death compensation, dependency and indemnity compensation, or death pension” for “death compensation or dependency and indemnity compensation”, and struck out par.(2) which read as follows: “The effective date of an award of death pension for which application is received within 45 days from the date of death shall be the first day of the month in which the death occurred.”

1994—Subsec. (m). Pub. L. 103-446 struck out subsec. (m) which read as follows: “The effective date of an award of benefits to a surviving spouse based upon termination of actions described in section 103(d)(3) of this title shall not be earlier than the date of receipt of application therefor filed after termination of such actions and after December 31, 1970.”

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3010 of this title as this section.

Subsec. (c). Pub. L. 102-83, § 5(c)(1), substituted “1151” for “351”.

Subsec. (e)(2). Pub. L. 102-83, § 5(c)(1), substituted “1311(b)” for “411(b)”.

Subsec. (g). Pub. L. 102-40, § 402(d)(1), substituted “5101” for “3001”.

Subsec. (j). Pub. L. 102-83, § 4(b)(4)(B), substituted “that Secretary” for “the Secretary” after “month fixed by”.

Subsec. (n). Pub. L. 102-83, § 4(a)(2)(A)(vi), substituted “Secretary” for “Veterans’ Administration”.

1986—Subsec. (b)(1). Pub. L. 99-576 substituted “the veterans” for “his”.

1984—Subsec. (b)(3)(A). Pub. L. 98-369, § 2501(a)(1), designated existing provisions as subpar. (A), inserted “described in subparagraph (B) of this paragraph” after “to a veteran”, substituted “the veteran applies for a retroactive award” for “an application therefor is received”, and added subpar. (B).

Subsec. (d). Pub. L. 98-369, § 2501(a)(2), designated existing provisions as par. (1), substituted “dependency and indemnity compensation for which application is received” for “dependency and indemnity compensation, or death pension, where application is received”, and added par. (2).

Subsec. (m). Pub. L. 98-223 substituted “section” for “subsection”.

1983—Subsecs. (k) to (m). Pub. L. 98-160 substituted “surviving spouse” for “widow” wherever appearing.

1981—Subsec. (e). Pub. L. 97-66 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2) of this subsection, the” for “The”, and added par. (2).

1975—Subsec. (b)(2), (3). Pub. L. 94-71 added par. (2) and redesignated former par. (2) as (3).

1974—Subsec. (l). Pub. L. 93-527 inserted provisions relating to an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce.

1973—Subsec. (b). Pub. L. 93-177 designated existing provisions as par. (1) and added par. (2).

1970—Subsecs. (l), (m). Pub. L. 91-376 added subsecs. (l) and (m).

Subsec. (n). Pub. L. 91-584 added subsec. (n).

1962—Subsec. (a). Pub. L. 87-825 inserted "based on an original claim, a claim reopened after final adjudication, or a claim for increase".

Subsec. (c). Pub. L. 87-825 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 87-825 redesignated former subsec. (c) as (d) and substituted first day of month in which the death occurred, for the day after the day of death, as the effective date. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 87-825 redesignated former subsec. (d) as (e), substituted "first day of the month" for "date", and struck out "the entitlement arose" after "from such date." Former subsec. (e) redesignated (j).

Subsec. (f). Pub. L. 87-825 added subsec. (f). A prior subsec. (f) added by Pub. L. 87-674 was redesignated (k) by Pub. L. 87-825.

Subsecs. (g) to (i). Pub. L. 87-825 added subsecs. (g) to (i).

Subsec. (j). Pub. L. 87-825 redesignated former subsec. (e) as (j), and substituted "first day of the month" for "day after the date", and "month of death" for "date of death".

Subsec. (k). Pub. L. 87-825 redesignated former subsec. (f), added by Pub. L. 87-674, as (k).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 2501(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a)(1) [amending this section] and the provisions of paragraph (2) of section 3010(d) [now 5110(d)] of title 38, United States Code, as added by subsection (a)(2), shall take effect with respect to applications that are first received after September 30, 1984, for benefits under chapter 15 of title 38, United States Code."

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 effective Oct. 1, 1981, see section 701(a) of Pub. L. 97-66, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-71 effective Aug. 1, 1975, see section 301 of Pub. L. 94-71, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-527 effective Jan. 1, 1975, see section 10 of Pub. L. 93-527, set out as a note under section 1521 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Section 6(b) of Pub. L. 93-177 provided that: "Subsection (a) of this section [amending this section] shall apply to applications filed after its effective date [Jan. 1, 1974], but in no event shall an award made thereunder be effective prior to such effective date."

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-376 effective Jan. 1, 1971, see section 9 of Pub. L. 91-376, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-825 effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87-825, set out as a note under section 110 of this title.

## § 5111. Commencement of period of payment

(a) Notwithstanding section 5110 of this title or any other provision of law and except as provided in subsection (c) of this section, payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension may not be made to an individual for any period before the first day of the calendar month following the month in which the award or increased award became effective as provided under section 5110 of this title or such other provision of law.

(b)(1) Except as provided in paragraph (2) of this subsection, during the period between the effective date of an award or increased award as provided under section 5110 of this title or other provision of law and the commencement of the period of payment based on such award as provided under subsection (a) of this section, an individual entitled to receive monetary benefits shall be deemed to be in receipt of such benefits for the purpose of all laws administered by the Secretary.

(2) If any person who is in receipt of retired or retirement pay would also be eligible to receive compensation or pension upon the filing of a waiver of such pay in accordance with section 5305 of this title, such waiver shall not become effective until the first day of the month following the month in which such waiver is filed, and nothing in this section shall prohibit the receipt of retired or retirement pay for any period before such effective date.

(c)(1) This section shall apply to payments made pursuant to section 5310 of this title only if the monthly amount of dependency and indemnity compensation or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred.

(2) In the case of a temporary increase in compensation for hospitalization or treatment where such hospitalization or treatment commences and terminates within the same calendar month, the period of payment shall commence on the first day of such month.

(d) For the purposes of this section, the term "award or increased award" means—

(1) an original or reopened award; or

(2) an award that is increased because of an added dependent, increase in disability or disability rating, or reduction in income.

(Added Pub. L. 97-253, title IV, §401(a)(1), Sept. 8, 1982, 96 Stat. 801, §3011; amended Pub. L. 98-223, title I, §113, Mar. 2, 1984, 98 Stat. 40; renumbered §5111 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

#### AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3011 of this title as this section.

Subsec. (a). Pub. L. 102-40, §402(d)(1), substituted "5110" for "3010" in two places.

Subsec. (b)(1). Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "5110" for "3010".

Subsec. (b)(2). Pub. L. 102-40, §402(d)(1), substituted "5305" for "3105".

Subsec. (c)(1). Pub. L. 102-40, §402(d)(1), substituted "5310" for "3110".

1984—Subsec. (c). Pub. L. 98-223 designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-223 effective Oct. 1, 1983, see section 114 of Pub. L. 98-223, set out as a note under section 1112 of this title.

#### EFFECTIVE DATE

Section 401(b) of Pub. L. 97-253 provided that: "Section 3011 [now 5111] of title 38, United States Code, as added by subsection (a), shall apply to awards and increased awards the effective dates of which are after September 30, 1982."

### § 5112. Effective dates of reductions and discontinuances

(a) Except as otherwise specified in this section, the effective date of reduction or discontinuance of compensation, dependency and indemnity compensation, or pension shall be fixed in accordance with the facts found.

(b) The effective date of a reduction or discontinuance of compensation, dependency and indemnity compensation, or pension—

(1) by reason of marriage or remarriage, or death of a payee shall be the last day of the month before such marriage, remarriage, or death occurs;

(2) by reason of marriage, annulment, divorce, or death of a dependent of a payee shall be the last day of the month in which such marriage, annulment, divorce, or death occurs;

(3) by reason of receipt of active service pay or retirement pay shall be the day before the date such pay began;

(4) by reason of—

(A) change in income shall (except as provided in section 5312 of this title) be the last day of the month in which the change occurred; and

(B) change in corpus of estate shall be the last day of the calendar year in which the change occurred;

(5) by reason of a change in disability or employability of a veteran in receipt of pension shall be the last day of the month in which discontinuance of the award is approved;

(6) by reason of change in law or administrative issue, change in interpretation of a law or administrative issue, or, for compensation purposes, a change in service-connected or employability status or change in physical condition shall be the last day of the month following sixty days from the date of notice to the payee (at the payee's last address of record) of the reduction or discontinuance;

(7) by reason of the discontinuance of school attendance of a payee or a dependent of a payee shall be the last day of the month in which such discontinuance occurred;

(8) by reason of termination of a temporary increase in compensation for hospitalization or treatment shall be the last day of the month in which the hospital discharge or termination of treatment occurred, whichever is earlier;

(9) by reason of an erroneous award based on an act of commission or omission by the beneficiary, or with the beneficiary's knowledge, shall be the effective date of the award; and

(10) by reason of an erroneous award based solely on administrative error or error in judgment shall be the date of last payment.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1227, §3012; Pub. L. 87-825, §2, Oct. 15, 1962, 76 Stat. 949; Pub. L. 89-730, §3, Nov. 2, 1966, 80 Stat. 1159; Pub. L. 90-275, §5, Mar. 28, 1968, 82 Stat. 68; Pub. L. 92-198, §3, Dec. 15, 1971, 85 Stat. 664; Pub. L. 94-433, title IV, §402, Sept. 30, 1976, 90 Stat. 1378; Pub. L. 95-588, title III, §303, Nov. 4, 1978, 92 Stat. 2506; Pub. L. 97-253, title IV, §402(a), Sept. 8, 1982, 96 Stat. 802; Pub. L. 99-576, title V, §503, title VII, §701(64), Oct. 28, 1986, 100 Stat. 3286, 3296; renumbered §5112 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 107-103, title II, §204(b)(2), Dec. 27, 2001, 115 Stat. 990.)

#### AMENDMENTS

2001—Subsec. (c). Pub. L. 107-103 struck out subsec. (c) which read as follows: "The effective date of a discontinuance under section 5503(b)(1)(A) of this title of pension, compensation, or emergency officers' retirement pay by reason of hospital treatment or institutional or domiciliary care shall be the last day of the first month of such treatment or care during which the value of the veteran's estate, as determined under such section, equals or exceeds \$1,500."

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3012 of this title as this section.

Subsec. (b)(4)(A). Pub. L. 102-40, §402(d)(1), substituted "5312" for "3112".

Subsec. (c). Pub. L. 102-40, §402(d)(1), substituted "5503(b)(1)(A)" for "3203(b)(1)(A)".

1986—Subsec. (b)(6). Pub. L. 99-576, §701(64), substituted "the payee's" for "his".

Subsec. (c). Pub. L. 99-576, §503, added subsec. (c).

1982—Subsec. (b)(2). Pub. L. 97-253 substituted "month" for "calendar year".

1978—Subsec. (b)(4). Pub. L. 95-588 restructured subsection and, as so restructured, provided that the effective date of a change in compensation by reason of a change in income would be the last day of the month in which the change occurred rather than the last day in the calendar year in which such change in income occurred.

1976—Subsec. (b)(2). Pub. L. 94-433, §402(1), inserted "annulment," before "divorce" in two places.

Subsec. (b)(9). Pub. L. 94-433, §402(2), substituted "the beneficiary's" for "his" before "knowledge".

1971—Subsec. (b)(2). Pub. L. 92-198 substituted "last day of the calendar year" for "last day of the month".

1968—Subsec. (b)(4). Pub. L. 90-275 struck out exception which provided that where change in income is due to an increase in payments under a public or private retirement plan the effective date of the resulting reduction or discontinuance shall be the last day of the calendar year in which the change occurred.

1966—Subsec. (b)(4). Pub. L. 89-730 provided for exception that where change in income is due to an increase in payments under a public or private retirement plan the effective date of the resulting reduction or discontinuance shall be the last day of the calendar year in which the change occurred.

1962—Subsecs. (b), (c). Pub. L. 87-825 redesignated subsec. (c) as (b), amended such subsec. generally, and among other changes, inserted provisions relating to the marriage, divorce, or death of a dependent of a payee, the change in income or corpus of an estate, the change in disability or employability of a veteran, the change in law or administrative issue of service-connected or employability status or physical condition,

the discontinuance of school attendance, the termination of a temporary increase in compensation for hospitalization or treatment, an erroneous award based on an act or omission of the beneficiary or with his knowledge, and an erroneous award based solely on administrative error or error in judgment, changed the effective date by reason of death, or by reason of marriage or remarriage, from the date of death, or the day before the date of marriage or remarriage, respectively, to the last day of the month before such death, marriage or remarriage occurs, and eliminated provisions relating to attaining age 18 or 21, as applicable, and to fraud on the part of the beneficiary or with his knowledge. Former subsec. (b), which related to the effective date of a reduction or discontinuance in rates, of a compensation, dependency and indemnity compensation, or a pension award, was struck out.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 402(b) of Pub. L. 97-253 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to any marriage, annulment, divorce, or death that occurs after September 30, 1982."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-588 effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as a note under section 101 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.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-198 effective Jan. 1, 1972, see section 6 of Pub. L. 92-198, set out as a note under section 1521 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-275 effective first day of first calendar month following month of initial payment of increases in monthly insurance benefits provided by Social Security Amendments of 1967, see section 6(b) of Pub. L. 90-275, set out as a note under section 1521 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-730 effective first day of second calendar month following Nov. 2, 1966, see section 7(a) of Pub. L. 89-730, set out as a note under section 1315 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-825 effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87-825, set out as a note under section 110 of this title.

### § 5113. Effective dates of educational benefits

(a) Except as provided in subsections (b) and (c), effective dates relating to awards under chapters 30, 31, 32, 34, and 35 of this title or chapter 106 of title 10 shall, to the extent feasible, correspond to effective dates relating to awards of disability compensation.

(b)(1) When determining the effective date of an award under chapter 35 of this title for an individual described in paragraph (2) based on an original claim, the Secretary may consider the individual's application as having been filed on the eligibility date of the individual if that eligibility date is more than one year before the date of the initial rating decision.

(2) An individual referred to in paragraph (1) is an eligible person who—

(A) submits to the Secretary an original application for educational assistance under chapter 35 of this title within one year of the date that the Secretary makes the rating decision;

(B) claims such educational assistance for pursuit of an approved program of education during a period preceding the one-year period ending on the date on which the application was received by the Secretary; and

(C) would have been entitled to such educational assistance for such course pursuit if the individual had submitted such an application on the individual's eligibility date.

(3) In this subsection:

(A) The term "eligibility date" means the date on which an individual becomes an eligible person.

(B) The term "eligible person" has the meaning given that term under section 3501(a)(1) of this title under subparagraph (A)(i), (A)(ii), (B), or (D) of such section by reason of either (i) the service-connected death or (ii) service-connected total disability permanent in nature of the veteran from whom such eligibility is derived.

(C) The term "initial rating decision" means with respect to an eligible person a decision made by the Secretary that establishes (i) service connection for such veteran's death or (ii) the existence of such veteran's service-connected total disability permanent in nature, as the case may be.

(c) The effective date of an adjustment of benefits under any chapter referred to in subsection (a) of this section, if made on the basis of a certification made by the veteran or person and accepted by the Secretary under section 3680(g) of this title, shall be the date of the change.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1227, § 3013; Pub. L. 89-358, § 4(p), Mar. 3, 1966, 80 Stat. 25; Pub. L. 99-576, title III, § 321(10), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100-322, title III, § 323, May 20, 1988, 102 Stat. 536; Pub. L. 101-237, title IV, § 419, Dec. 18, 1989, 103 Stat. 2087; Pub. L. 102-16, § 10(a)(9), Mar. 22, 1991, 105 Stat. 56; renumbered § 5113, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 106-419, title I, § 113(a), Nov. 1, 2000, 114 Stat. 1832.)

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-419, § 113(a)(2), substituted "subsections (b) and (c)" for "subsection (b) of this section".

Subsecs. (b), (c). Pub. L. 106-419, § 113(a)(1), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1991—Pub. L. 102-40 renumbered section 3013 of this title as this section.

Subsec. (a). Pub. L. 102-16 inserted "or chapter 106 of title 10" after "of this title".

Subsec. (b). Pub. L. 102-83 substituted "3680(g)" for "1780(g)".

1989—Pub. L. 101-237 designated existing provisions as subsec. (a), substituted "Except as provided in subsection (b) of this section, effective" for "Effective", and added subsec. (b).

1988—Pub. L. 100-322 inserted reference to chapter 32.

1986—Pub. L. 99-576 inserted reference to chapter 30.

1966—Pub. L. 89-358 substituted "34" for "33".

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-419, title I, § 113(b), Nov. 1, 2000, 114 Stat. 1832, provided that: "The amendments made by sub-

section (a) [amending this section] shall apply to applications first made under section 3513 of title 38, United States Code, that—

“(1) are received on or after the date of the enactment of this Act [Nov. 1, 2000]; or

“(2) on the date of the enactment of this Act, are pending (A) with the Secretary of Veterans Affairs, or (B) exhaustion of available administrative and judicial remedies.”

### SUBCHAPTER III—PAYMENT OF BENEFITS

#### § 5120. Payment of benefits; delivery

(a) Monetary benefits under laws administered by the Secretary shall be paid by checks drawn, pursuant to certification by the Secretary, in such form as to protect the United States against loss, and payable by the Treasurer of the United States. Such checks shall be payable without separate vouchers or receipts except in any case in which the Secretary may consider a voucher necessary for the protection of the Government. Such checks shall be transmitted by mail to the payee thereof at the payee's last known address and, if the payee has moved and filed a regular change of address notice with the United States Postal Service, shall be forwarded to the payee. The envelope or cover of each such checks shall bear on the face thereof the following notice: “POSTMASTER: PLEASE FORWARD if addressee has moved and filed a regular change-of-address notice. If addressee is deceased, return the letter with date of death, if known.”

(b) Postmasters, delivery clerks, letter carriers, and all other postal employees are prohibited from delivering any mail addressed by the United States and containing any such check to any person whomsoever if such person has died or in the case of a surviving spouse, if the postal employee believes that the surviving spouse has remarried (unless the mail is addressed to the surviving spouse in the name the surviving spouse has acquired by the remarriage). The preceding sentence shall apply in the case of checks in payment of benefits other than pension, compensation, dependency and indemnity compensation, and insurance, only insofar as the Secretary deems it necessary to protect the United States against loss.

(c) Whenever mail is not delivered because of the prohibition of subsection (b), such mail shall be returned forthwith by the postmaster with a statement of the reason for so doing, and if because of death or remarriage, the date thereof, if known. Checks returned under this subsection because of death or remarriage shall be canceled.

(d) Notwithstanding subsection (a) of this section, pursuant to an agreement with the Department of the Treasury under which the Secretary certifies such benefits for payment, monetary benefits under laws administered by the Secretary may be paid other than by check upon the written request of the person to whom such benefits are to be paid, if such noncheck payment is determined by the Secretary to be in the best interest of such payees and the management of monetary benefits programs by the Department.

(e) Whenever the first day of any calendar month falls on a Saturday, Sunday, or legal pub-

lic holiday (as defined in section 6103 of title 5), the Secretary shall, to the maximum extent practicable, certify benefit payments for such month in such a way that such payments will be delivered by mail, or transmitted for credit to the payee's account pursuant to subsection (d) of this section, on the Friday immediately preceding such Saturday or Sunday, or in the case of a legal holiday, the weekday (other than Saturday) immediately preceding such legal public holiday, notwithstanding that such delivery or transmission of such payments is made in the same calendar month for which such payments are issued.

(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Secretary shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

(2) The Secretary shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Secretary in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1227, § 3020; Pub. L. 95-117, title IV, § 402(a), (b)(1), Oct. 3, 1977, 91 Stat. 1065, 1066; Pub. L. 97-295, § 4(73), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-570, title XI, § 11007(a)(2), Oct. 27, 1986, 100 Stat. 3207-170; Pub. L. 99-576, title VII, § 701(65), Oct. 28, 1986, 100 Stat. 3296; renumbered § 5120, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3020 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

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

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (d). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” before period at end.

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

Subsec. (e). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

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

Subsec. (f)(2). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

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

1986—Subsec. (a). Pub. L. 99-576, § 701(65)(A), substituted “the payee's” for “his”, and “the payee” for “he” and “him” in third sentence.

Subsec. (b). Pub. L. 99-576, § 701(65)(B), substituted “such person” for “he”, “surviving spouse” for “widow”, “the surviving spouse” for “she” in two places, “to the surviving spouse” for “to her”, and “by the” for “by her” in first sentence.

Subsec. (f). Pub. L. 99-570 added subsec. (f).  
 1982—Subsec. (a). Pub. L. 97-295 substituted “United States Postal Service” for “Post Office Department”.  
 1977—Pub. L. 95-117, § 402(b)(1), struck out “by check” after “benefits” in section catchline.  
 Subsecs. (d), (e). Pub. L. 95-117, § 402(a), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11007(b)(2) of Pub. L. 99-570 provided that: “The amendment made by subsection (a)(2) [amending this section] shall take effect with respect to payments made on or after October 1, 1986.”

EFFECTIVE DATE OF 1977 AMENDMENT

Section 402(c) of Pub. L. 95-117 provided that: “The amendments made by this section [amending this section] shall be effective on the date of enactment of this Act [Oct. 3, 1977].”

**§ 5121. Payment of certain accrued benefits upon death of a beneficiary**

(a) Except as provided in sections 3329 and 3330 of title 31, periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions or those based on evidence in the file at date of death (hereinafter in this section and section 5122 of this title referred to as “accrued benefits”) and due and unpaid, shall, upon the death of such individual be paid as follows:

(1) Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such benefits to the veteran or to any other dependent or dependents of the veteran, as may be determined by the Secretary.

(2) Upon the death of a veteran, to the living person first listed below:

(A) The veteran's spouse.

(B) The veteran's children (in equal shares).

(C) The veteran's dependent parents (in equal shares).

(3) Upon the death of a surviving spouse or remarried surviving spouse, to the children of the deceased veteran.

(4) Upon the death of a child, to the surviving children of the veteran who are entitled to death compensation, dependency and indemnity compensation, or death pension.

(5) Upon the death of a child claiming benefits under chapter 18 of this title, to the surviving parents.

(6) In all other cases, only so much of the accrued benefits may be paid as may be necessary to reimburse the person who bore the expense of last sickness and burial.

(b) No part of any accrued benefits shall be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary.

(c) Applications for accrued benefits must be filed within one year after the date of death. If a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application. If such evidence is not received within one year from the

date of such notification, no accrued benefits may be paid.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1228, § 3021; Pub. L. 92-328, title I, § 105(b), June 30, 1972, 86 Stat. 395; Pub. L. 97-258, § 3(k)(4), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 98-160, title VII, § 703(1), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 99-576, title VII, § 701(66), Oct. 28, 1986, 100 Stat. 3296; renumbered § 5121 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 104-275, title V, § 507, Oct. 9, 1996, 110 Stat. 3343; Pub. L. 107-14, § 8(a)(16), June 5, 2001, 115 Stat. 35; Pub. L. 108-183, title I, § 104(a)-(c), Dec. 16, 2003, 117 Stat. 2656.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183, § 104(c)(1), struck out comma after “or decisions” in introductory provisions.

Pub. L. 108-183, § 104(a), struck out “for a period not to exceed two years” after “unpaid” in introductory provisions.

Subsec. (a)(1) to (4). Pub. L. 108-183, § 104(c)(2), substituted period for semicolon at end of pars. (1) to (4) and subpars. (A) and (B) of par. (2).

Subsec. (a)(5), (6). Pub. L. 108-183, § 104(b), added par. (5) and redesignated former par. (5) as (6).

2001—Subsec. (a). Pub. L. 107-14 substituted “hereinafter” for “hereafter” in introductory provisions.

1996—Subsec. (a). Pub. L. 104-275 substituted “two years” for “one year” in introductory provisions.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3021 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in par. (1).

Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans' Administration” in introductory provisions.

Pub. L. 102-40, § 402(d)(1), substituted “5122” for “3022” in introductory provisions.

Subsec. (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

1986—Subsec. (a). Pub. L. 99-576, § 701(66)(A), struck out “his” after “entitled at”.

Subsec. (a)(2)(A) to (C). Pub. L. 99-576, § 701(66)(B), substituted “The veteran's” for “His”.

1983—Subsec. (a)(3). Pub. L. 98-160 substituted “surviving spouse” for “widow” in two places.

1982—Subsec. (a). Pub. L. 97-258 substituted “sections 3329 and 3330 of title 31” for “sections 123-128 of title 31”.

1972—Subsec. (a). Pub. L. 92-328 struck out reference to section 3203(a)(2)(A) of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title I, § 104(d), Dec. 16, 2003, 117 Stat. 2656, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to deaths occurring on or after the date of the enactment of this Act [Dec. 16, 2003].”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective first day of second calendar month which begins after June 30, 1972, see section 301(a) of Pub. L. 92-328, set out as a note under section 1114 of this title.

**§ 5122. Cancellation of checks mailed to deceased payees**

A check received by a payee in payment of accrued benefits shall, if the payee died on or after the last day of the period covered by the check, be returned to the issuing office and canceled,

unless negotiated by the payee or the duly appointed representative of the payee's estate. The amount represented by such check, or any amount recovered by reason of improper negotiation of any such check, shall be payable in the manner provided in section 5121 of this title, without regard to section 5121(c) of this title. Any amount not paid in the manner provided in section 5121 of this title shall be paid to the estate of the deceased payee unless the estate will escheat.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1229, §3022; Pub. L. 99-576, title VII, §701(67), Oct. 28, 1986, 100 Stat. 3296; renumbered §5122 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 104-316, title II, §202(t), Oct. 19, 1996, 110 Stat. 3845.)

#### AMENDMENTS

1996—Pub. L. 104-316 in last sentence struck out “upon settlement by the General Accounting Office” after “shall be paid”.

1991—Pub. L. 102-40 renumbered section 3022 of this title as this section and substituted “5121” for “3021” in two places and “5121(c)” for “3021(c)”.

1986—Pub. L. 99-576 substituted “the payee’s” for “his” in first sentence.

#### § 5123. Rounding down of pension rates

The monthly or other periodic rate of pension payable to an individual under section 1521, 1541, or 1542 of this title or under section 306(a) of the Veterans' and Survivors' Pension Improvement Act of 1978 (Public Law 95-588), if not a multiple of \$1, shall be rounded down to the nearest dollar.

(Added Pub. L. 97-253, title IV, §403(a)(1), Sept. 8, 1982, 96 Stat. 802, §3023; renumbered §5123, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406.)

#### REFERENCES IN TEXT

Section 306(a) of the Veterans' and Survivors' Pension Improvement Act of 1978 (Public Law 95-588), referred to in text, is section 306(a) of Pub. L. 95-588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of this title.

#### PRIOR PROVISIONS

Prior sections 5201 to 5228 were renumbered sections 8501 to 8528 of this title, respectively.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3023 of this title as this section.

Pub. L. 102-83 substituted “1521, 1541, or 1542” for “521, 541, or 542”.

#### EFFECTIVE DATE

Section 403(b) of Pub. L. 97-253, as amended by Pub. L. 98-21, title I, §111(e), Apr. 20, 1983, 97 Stat. 73; Pub. L. 98-369, div. B, title VI, §2662(j), July 18, 1984, 98 Stat. 1160, provided that:

“(1) Except as provided in paragraph (2), the amendment made by subsection (a)(1) [enacting this section] shall apply with respect to amounts payable for periods beginning after May 31, 1983.

“(2) In the cases of individuals to whom pension is payable under sections 521, 541, and 542 [now 1521, 1541, and 1542] of title 38, United States Code, the amendment made by subsection (a)(1) shall take effect on the first day after May 31, 1983, that an increase is made in

maximum annual rates of pension pursuant to section 3112 [now 5312] of title 38, United States Code.”

#### § 5124. Acceptance of claimant's statement as proof of relationship

(a) For purposes of benefits under laws administered by the Secretary, the Secretary may accept the written statement of a claimant as proof of the existence of any relationship specified in subsection (b) for the purpose of acting on such individual's claim for benefits.

(b) Subsection (a) applies to proof of the existence of any of the following relationships between a claimant and another person:

- (1) Marriage.
- (2) Dissolution of a marriage.
- (3) Birth of a child.
- (4) Death of any family member.

(c) The Secretary may require the submission of documentation in support of the claimant's statement if—

- (1) the claimant does not reside within a State;
- (2) the statement on its face raises a question as to its validity;
- (3) there is conflicting information of record; or
- (4) there is reasonable indication, in the statement or otherwise, of fraud or misrepresentation.

(Added Pub. L. 103-446, title III, §301(a), Nov. 2, 1994, 108 Stat. 4657.)

#### § 5125. Acceptance of reports of private physician examinations

For purposes of establishing any claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim.

(Added Pub. L. 103-446, title III, §301(b), Nov. 2, 1994, 108 Stat. 4658.)

#### § 5126. Benefits not to be denied based on lack of mailing address

Benefits under laws administered by the Secretary may not be denied a claimant on the basis that the claimant does not have a mailing address.

(Added Pub. L. 106-475, §3(b), Nov. 9, 2000, 114 Stat. 2098.)

### CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec. 5301.	Nonassignability and exempt status of benefits.
5302.	Waiver of recovery of claims by the United States.
5303.	Certain bars to benefits.
5303A.	Minimum active-duty service requirement.
5304.	Prohibition against duplication of benefits.
5305.	Waiver of retired pay.

Sec.	
5306.	Renouncement of right to benefits.
5307.	Apportionment of benefits.
5308.	Withholding benefits of persons in territory of the enemy.
5309.	Payment of certain withheld benefits.
5310.	Payment of benefits for month of death.
5311.	Prohibition of certain benefit payments.
5312.	Annual adjustment of certain benefit rates.
5313.	Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony.
5313A.	Limitation on payment of clothing allowance to incarcerated veterans.
5313B.	Prohibition on providing certain benefits with respect to persons who are fugitive felons.
5314.	Indebtedness offsets.
5315.	Interest and administrative cost charges on delinquent payments of certain amounts due the United States.
5316.	Authority to sue to collect certain debts.
5317.	Use of income information from other agencies: notice and verification.
5318.	Review of Social Security Administration death information.
5319.	Limitations on access to financial records.

## AMENDMENTS

2003—Pub. L. 108-183, title VII, §708(c)(4)(B)(ii), Dec. 16, 2003, 117 Stat. 2675, substituted "Social Security Administration" for "Department of Health and Human Services" in item 5318.

2001—Pub. L. 107-103, title V, §505(a)(2), Dec. 27, 2001, 115 Stat. 996, added item 5313B.

1996—Pub. L. 104-275, title V, §502(b), Oct. 9, 1996, 110 Stat. 3341, added item 5313A.

1992—Pub. L. 102-568, title VI, §603(b)(2), Oct. 29, 1992, 106 Stat. 4343, added item 5319.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3101 to 3118 as 5301 to 5318, respectively.

1990—Pub. L. 101-508, title VIII, §§8051(b)(2), 8053(b)(2), Nov. 5, 1990, 104 Stat. 1388-351, 1388-353, added items 3117 and 3118.

1981—Pub. L. 97-66, title VI, §604(a)(2), Oct. 17, 1981, 95 Stat. 1036, added item 3103A.

1980—Pub. L. 96-466, title VI, §605(a)(2), Oct. 17, 1980, 94 Stat. 2211, added items 3114, 3115, and 3116.

Pub. L. 96-385, title V, §504(b), Oct. 7, 1980, 94 Stat. 1535, added item 3113.

1978—Pub. L. 95-588, title III, §305(b), Nov. 4, 1978, 92 Stat. 2508, added item 3112.

1972—Pub. L. 92-328, title II, §203, June 30, 1972, 86 Stat. 397, substituted "claims by the United States" for "overpayments" in item 3102.

1970—Pub. L. 91-376, §8(c), Aug. 12, 1970, 84 Stat. 790, added item 3111.

1962—Pub. L. 87-825, §4(b), Oct. 15, 1962, 76 Stat. 950, added item 3110.

### § 5301. Nonassignability and exempt status of benefits

(a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein con-

tained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

(2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 or to the Retired Pay Account of the Coast Guard, as appropriate.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.).

(e) In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation,

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1229, §3101; Pub. L. 94-502, title VII, §701, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-479, title III, §301, Oct. 18, 1978, 92 Stat. 1564; Pub. L. 97-295, §4(74), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-576, title V, §504, title VII, §701(68), Oct. 28, 1986, 100 Stat. 3286, 3296; Pub. L. 101-189, div. A, title XIV, §1404(b)(2), Nov. 29, 1989, 103 Stat. 1586; Pub. L. 102-25, title VII, §705(c)(2), Apr. 6, 1991, 105 Stat. 120; renumbered §5301 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(d)(2), June 13, 1991, 105 Stat. 285; Pub. L. 102-83, §4(a)(1), (2)(A)(vii), (b)(1), (2)(E), (4)(C), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 102-86, title V, §505(a), Aug. 14, 1991, 105 Stat. 426; Pub. L. 108-183, title VII, §702, Dec. 16, 2003, 117 Stat. 2671.)

#### REFERENCES IN TEXT

The Electronic Funds Transfers Act, referred to in subsec. (a)(3)(B), probably means the Electronic Funds Transfer Act, title IX of Pub. L. 90-321, as added by Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, as amended, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

#### AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183 inserted "(1)" after "(a)", designated last sentence as par. (2), and added par. (3).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3101 of this title as this section.

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

Subsec. (c)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

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

Pub. L. 102-25 made a technical correction to Pub. L. 101-189. See 1989 Amendment note below.

Subsec. (c)(2). Pub. L. 102-83, §4(b)(4)(C), substituted "that Secretary" for second, third, and fourth references to "the Secretary".

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" before "to make".

Subsec. (c)(4). Pub. L. 102-86 inserted before period at end "or to the Retired Pay Account of the Coast Guard, as appropriate".

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

Pub. L. 102-54 amended subsec. (d) as in effect immediately before enactment of Pub. L. 102-40 by substituting "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

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

Subsec. (e)(2). Pub. L. 102-83, §4(a)(2)(A)(vii), substituted "Secretary" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "5305" for "3105".

1989—Subsec. (c)(1). Pub. L. 101-189, as amended by Pub. L. 102-25, struck out "subchapter I or II of" after "plan prescribed in".

1986—Subsec. (a). Pub. L. 99-576, §701(68)(A), substituted "a" for "his or her" before "benefit check".

Subsec. (b). Pub. L. 99-576, §701(68)(B), substituted "the beneficiary's" for "his" in four places in first sentence.

Subsec. (c). Pub. L. 99-576, §504(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 99-576, §504(1), redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1982—Subsec. (c). Pub. L. 97-295 inserted “of this section” after “subsection (a)”, and substituted “(26 U.S.C. 6331 et seq.)” for “(relating to seizure of property for collection of taxes)”.

1978—Subsec. (d). Pub. L. 95-479 added subsec. (d).

1976—Subsec. (a). Pub. L. 94-502 inserted provision which prohibits, as an assignment, a payee of an educational assistance allowance from designating an attorney-in-fact's address as the payee's address for the purpose of receiving checks and benefits where the attorney-in-fact has also been given authority to negotiate the checks and benefits.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 505(b) of Pub. L. 102-86 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to funds collected after September 30, 1991.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-189 effective Apr. 1, 1992, see section 1404(b)(3) of Pub. L. 101-189, as amended, set out as a note under section 12731 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-479 effective Oct. 1, 1978, see section 401 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. 94-502 effective Dec. 1, 1976, see section 703(c) of Pub. L. 94-502, set out as an Effective Date note under section 3693 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### UNDUE HARDSHIP CASES

Pub. L. 95-202, title III, §305(c), Nov. 23, 1977, 91 Stat. 1444, provided that Administrator could provide equitable relief to educational institutions and accredited correspondence schools which were in possession of a veteran's or eligible person's benefit check payable to the veteran or person and mailed to the institution or school for certain courses or lessons completed by the veteran or person at the institution or school before certain dates in 1977 and which were holding a power of attorney executed by the veteran or person before Dec. 1, 1976, authorizing negotiation of the check.

### § 5302. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Secretary whenever the Secretary determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Secretary to the payee, or within such longer period as the Secretary determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Secretary that such notification was not actually received by such payee within a

reasonable period after such date. The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Secretary shall, except as provided in subsection (c) of this section, waive payment of an indebtedness to the Department by the veteran (as defined in sections 101, 3701, and 3702(a)(2)(C)(ii) of this title), or the veteran's spouse, following default and loss of the property, where the Secretary determines that collection of such indebtedness would be against equity and good conscience. An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail with return receipt requested from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(c) The recovery of any payment or the collection of any indebtedness (or any interest thereon) may not be waived under this section if, in the Secretary's opinion, there exists in connection with the claim for such waiver an indication of fraud, misrepresentation or bad faith on the part of the person or persons having an interest in obtaining a waiver of such recovery or the collection of such indebtedness (or any interest thereon).

(d) No certifying or disbursing officer shall be liable for any amount paid to any person where the recovery of such amount is waived under subsection (a) or (b).

(e) Where the recovery of a payment or overpayment made from the National Service Life Insurance Fund or United States Government Life Insurance Fund is waived under this section, the fund from which the payment was made shall be reimbursed from the National Service Life Insurance appropriation or the military and naval insurance appropriation, as applicable.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, §3102; Pub. L. 92-328, title II, §202(a), June 30, 1972, 86 Stat. 396; Pub. L. 96-466, title VI, §605(c)(3), Oct. 17, 1980, 94 Stat. 2211; Pub. L. 97-306, title IV, §407(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99-576, title VII, §701(69), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101-237, title III, §311, Dec. 18, 1989, 103 Stat. 2075; renumbered §5302, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §5, June 13, 1991, 105 Stat. 268; Pub. L. 102-83, §§4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 102-547, §12, Oct. 28, 1992, 106 Stat. 3645; Pub. L. 105-33, title VIII, §8033(b), Aug. 5, 1997, 111 Stat. 669.)

#### AMENDMENTS

1997—Subsec. (b). Pub. L. 105-33 inserted “with return receipt requested” after “certified mail”.

1992—Subsecs. (a), (b). Pub. L. 102-547 made technical correction to directory language of Pub. L. 102-54, §5. See 1991 Amendment note below.

1991—Pub. L. 102-40 renumbered section 3102 of this title as this section.

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

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

Pub. L. 102-54, §5(1), as amended by Pub. L. 102-547, inserted at end "The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application."

Subsec. (b). Pub. L. 102-83, §5(c)(1), substituted "3701" and "3702(a)(2)(C)(ii)" for "1801" and "1802(a)(2)(C)(ii)", respectively.

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

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-54, §5(2), as amended by Pub. L. 102-547, substituted "101, 1801, and 1802(a)(2)(C)(ii) of this title" for "101 and 1801" and inserted at end "An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application."

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary's" for "Administrator's".

1989—Subsec. (b). Pub. L. 101-237, §311(1), substituted "shall, except as provided in subsection (c) of this section," for "may".

Subsec. (c). Pub. L. 101-237, §311(2), substituted "The recovery of any payment or the collection of any indebtedness (or any interest thereon) may not be waived under this section" for "The Administrator may not exercise the Administrator's authority under subsection (a) or (b) of this section to waive recovery of any payment or the collection of any indebtedness (or any interest thereon)" and substituted "or bad faith" for "material fault, or lack of good faith".

1986—Subsec. (b). Pub. L. 99-576, §701(69)(A), substituted "the veterans'" for "his" before "spouse".

Subsec. (c). Pub. L. 99-576, §701(69)(B), substituted "the Administrator's" for "his" in two places.

1982—Subsec. (a). Pub. L. 97-306 substituted "180 days" for "two years", and inserted condition relating to such longer period as the Administrator determines is reasonable in cases demonstrated to involve actual failure of notification to payee.

1980—Subsec. (a). Pub. L. 96-466, §605(c)(3)(A), inserted "(or any interest thereon)" after "overpayments".

Subsec. (c). Pub. L. 96-466, §605(c)(3)(B), inserted "(or any interest thereon)" after "indebtedness" in two places.

1972—Pub. L. 92-328 substituted "claims by the United States" for "overpayments" in section catchline, struck out "(except servicemen's indemnity)" after "any benefits" in subsec. (a), struck out provisions relating to recovery of benefits from any person without fault on his part, and inserted provisions relating to an application for relief made within two years from the date of notification of the indebtedness by the Administrator to the payee, added subsecs. (b) and (c), redesignated former subsec. (b) as (d), and inserted reference to subsec. (b), and redesignated former subsec. (c) as (e).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable with respect to any indebtedness to the United States arising pursuant to chapter 37 of this title before, on, or after Aug. 5, 1997, see section 8033(c) of Pub. L. 105-33, set out as a note under section 3726 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 407(b) of Pub. L. 97-306 provided that: "The amendments made by subsection (a) [amending this

section] shall apply only with respect to notifications of indebtedness that are made by the Administrator of Veterans' Affairs after March 31, 1983."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, except as otherwise specifically provided, see section 802(f) of Pub. L. 96-466, set out as an Effective Date note under section 5314 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective June 30, 1972, see section 301(c) of Pub. L. 92-328, set out as a note under section 3713 of this title.

#### APPLICABILITY OF WAIVER AUTHORITY TO IMPROPER PAYMENTS, OVERPAYMENTS, AND INDEBTEDNESS ESTABLISHED BY THE ADMINISTRATOR PRIOR TO EFFECTIVE DATE OF PUB. L. 92-328

Section 202(b) of Pub. L. 92-328 provided that the waiver authority under subsec. (a) of this section is applicable to improper payments, overpayments, and indebtedness established by the Administrator prior to the effective date of Pub. L. 92-328 if application for relief was pending on June 30, 1972, or such an application was made within two years from June 30, 1972.

For effective date of Pub. L. 92-328, see Effective Date of 1972 Amendment notes set out under sections 1114, 1134, and 3713 of this title.

#### § 5303. Certain bars to benefits

(a) The discharge or dismissal by reason of the sentence of a general court-martial of any person from the Armed Forces, or the discharge of any such person on the ground that such person was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Secretary that there are compelling circumstances to warrant such prolonged unauthorized absence, or of an officer by the acceptance of such officer's resignation for the good of the service, or (except as provided in subsection (c)) the discharge of any individual during a period of hostilities as an alien, shall bar all rights of such person under laws administered by the Secretary based upon the period of service from which discharged or dismissed, notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10.

(b) Notwithstanding subsection (a), if it is established to the satisfaction of the Secretary that, at the time of the commission of an offense leading to a person's court-martial, discharge, or resignation, that person was insane, such person shall not be precluded from benefits under laws administered by the Secretary based upon the period of service from which such person was separated.

(c) Subsection (a) shall not apply to any alien whose service was honest and faithful, and who was not discharged on the individual's own application or solicitation as an alien. No individual shall be considered as having been discharged on the individual's own application or solicitation as an alien in the absence of affirm-

ative evidence establishing that the individual was so discharged.

(d) This section shall not apply to any war-risk insurance, Government (converted) or National Service Life Insurance policy.

(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Secretary shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standards (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions; and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

(2) Notwithstanding any other provision of law—

(A) no person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Secretary except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharge under such standards; and

(B) such determination shall be made by such board (i) on an expedited basis after notification by the Department to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative before October 9, 1978, in any case where a general or honorable discharge has been awarded before October 9, 1977, under revised standards referred to in clause (A)(i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after October 8, 1977.

If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such person shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of the right to such appearance. The Secretary shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Secretary, or of the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A)(i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, § 3103; Pub. L. 86-113, July 28, 1959, 73 Stat. 262; Pub. L. 95-126, § 1(a), Oct. 8, 1977, 91 Stat. 1106; Pub. L. 97-295, § 4(75), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-576, title VII, § 701(70), Oct. 28, 1986, 100 Stat. 3296; renumbered § 5303, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

#### REFERENCES IN TEXT

President's Proclamation 4313 of September 16, 1974, referred to in subsec. (e)(2)(A), is set out as a note under section 462 of Title 50, Appendix, War and National Defense.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3103 of this title as this section.

Subsecs. (a), (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

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

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

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

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in subpar. (B).

Pub. L. 102-83, § 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in subpar. (A) and last sentence.

1986—Subsec. (a). Pub. L. 99-576, § 701(70)(A), substituted "such person" for "he" after "on the ground that" and "such officer's" for "his" before "resignation".

Subsec. (b). Pub. L. 99-576, § 701(70)(B), substituted "a person's" for "his", "that person" for "any person", and "such person" for "he" before "was separated".

Subsec. (c). Pub. L. 99-576, § 701(70)(C), substituted "the individual's" for "his" in two places, and "the individual" for "he".

Subsec. (e)(2). Pub. L. 99-576, § 701(70)(D), substituted "the" for "his or her" before "right to such appearance" at end of second sentence.

1982—Subsec. (e)(2)(B). Pub. L. 97-295 substituted "before October 9, 1978," for "within one year after the date of enactment of this paragraph", "before October 9, 1977," for "on or prior to the date of enactment of this paragraph", and "October 8, 1977" for "such enactment date".

1977—Subsec. (a). Pub. L. 95-126, § 1(a)(1), inserted provisions barring a person in the Armed Forces from

being a recipient of benefits when discharged on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence and barred benefits notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of Title 10.

Subsec. (e). Pub. L. 95-126, §1(a)(2), added subsec. (e). 1959—Subsec. (c). Pub. L. 86-113 required affirmative evidence to establish that alien was discharged on his own application or solicitation.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95-126 provided that: "This Act [amending this section and section 101 of this title and enacting provisions set out below] shall become effective on the date of its enactment [Oct. 8, 1977], except that—

"(1) section 2 [set out below] shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

"(2) the amendments made by section 1(a) [amending this section] shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law—

"(A) with respect to any person who, on such enactment date [Oct. 8, 1977] is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) [now 5303(e)] of title 38, United States Code, as added by section 1(a)(2) of this Act, until (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e) [now 5303(e)], (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

"(B) with respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A) (i), (ii), or (iii) of such paragraph who has been provided any such benefits prior to such enactment date [Oct. 8, 1977], the United States shall not make any claim to recover the value of any benefits so provided; and

"(C) the amendments made by clause (1) of section 1(a) [amending this section] shall apply (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act [Oct. 8, 1977], had not attained general eligibility for such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons."

#### EXPEDITED DETERMINATIONS AFTER INFORMATION AND NOTIFICATION TO PERSONS AWARDED GENERAL OR HONORABLE DISCHARGES; PROCEDURES FOR APPLICATION TO TITLE 10 §1552 BOARD AND TO SECRETARY OF VETERANS AFFAIRS

Pub. L. 95-126, §1(b), Oct. 8, 1977, 91 Stat. 1107, as amended by Pub. L. 100-527, §10(1), (2), Oct. 25, 1988, 102 Stat. 2640, 2641; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239, provided that:

"(1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under

revised standards for the review of discharges referred to in section 5303(e)(2)(A)(i), (ii), or (iii) [formerly 3103(e)(2)(A)(i), (ii), or (iii)] of title 38, United States Code, as added by subsection (a)(2) of this section, of his or her right to obtain an expedited determination under section 5303(e)(2)(B)(i) [formerly 3103(e)(2)(B)(i)] of such title and of the implications of the provisions of this Act [amending this section and section 101(18) of this title and enacting provisions set out as notes under this section] for each such person.

"(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who applies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 5303(a) [formerly 3103(a)] of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Department of Veterans Affairs only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Secretary of Veterans Affairs under section 5303 [formerly 3103] of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Secretary of Veterans Affairs for such purpose (including the right to proceed concurrently under such sections 5303 [formerly 3103], 1552, and 1553)."

#### HEALTH CARE AND BENEFITS FOR DISABILITY DURING ACTIVE SERVICE IN LINE OF DUTY, EXCEPT WHEN BARRED UNDER SUBSEC. (a) OR BY BAD CONDUCT DISCHARGE

Pub. L. 95-126, §2, Oct. 8, 1977, 91 Stat. 1107, as amended by Pub. L. 100-527, §10(1), Oct. 25, 1988, 102 Stat. 2640; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239, provided that: "Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall provide the type of health care and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 5303(a) [formerly 3103(a)] of such title, but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge."

#### REGULATIONS RESPECTING STANDARDS AND PROCEDURES FOR DETERMINATION OF SEPARATION FROM ACTIVE SERVICE UNDER CONDITIONS OTHER THAN DISHONORABLE FREE OF UNIQUE OR SPECIAL ADVANTAGES OR SPECIAL DISTINCTIONS BETWEEN VETERANS

Pub. L. 95-126, §4, Oct. 8, 1977, 91 Stat. 1108, as amended by Pub. L. 100-527, §10(1), (2), Oct. 25, 1988, 102 Stat. 2640; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239, provided that: "In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Department of Veterans Affairs determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Secretary of Veterans Affairs shall, in keeping with the spirit and intent of this Act [amending this section and section 101(18) of this title and enacting provisions set out as notes under this section], not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 5303(e)(2)(A)(i), (ii), or (iii) [formerly 3103(e)(2)(A)(i), (ii), or (iii)] of title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans."

**§ 5303A. Minimum active-duty service requirement**

(a) Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Secretary that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.

(b)(1) Except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

- (A) 24 months of continuous active duty, or
- (B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Secretary.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to a person who is discharged or released from active duty under section 1171 or 1173 of title 10;

(B) to a person who is discharged or released from active duty for a disability incurred or aggravated in line of duty;

(C) to a person who has a disability that the Secretary has determined to be compensable under chapter 11 of this title;

(D) to the provision of a benefit for or in connection with a service-connected disability, condition, or death;

(E) to benefits under chapter 19 of this title;

(F) to benefits under chapter 30 or chapter 37 of this title by reason of—

(i) a discharge or release from active duty for the convenience of the Government, as described in sections 3011(a)(1)(A)(ii)(II) and 3012(b)(1)(A)(iv) of this title;

(ii) a discharge or release from active duty for a medical condition which preexisted service on active duty and which the Secretary determines is not service connected, as described in clauses (A)(ii)(I) and (B)(ii)(I) of section 3011(a)(1) of this title and in section 3012(b)(1)(A)(ii) of this title;

(iii) an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force, as described in clauses (A)(ii)(III) and (B)(ii)(III) of section 3011(a)(1) of this title and in section 3012(b)(1)(A)(v) of this title; or

(iv) a discharge or release from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individ-

ual's performance of duty, as described in section 3011(a)(1)(A)(ii)(I) of this title; or

(G) to benefits under chapter 43 of this title.

(c)(1) Except as provided in paragraph (2) of this subsection, no dependent or survivor of a person as to whom subsection (b) of this section requires the denial of benefits shall, by reason of such person's period of active duty, be provided with any benefit under this title or any other law administered by the Secretary.

(2) Paragraph (1) of this subsection does not apply to benefits under chapters 19 and 37 of this title.

(d)(1) Notwithstanding any other provision of law and except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

- (A) 24 months of continuous active duty, or
- (B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under Federal law (other than this title or any other law administered by the Secretary), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 13, 1982, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to any person described in clause (A), (B), or (C) of subsection (b)(3) of this section; or

(B) with respect to a benefit under (i) the Social Security Act other than additional wages deemed to have been paid, under section 229(a)<sup>1</sup> of the Social Security Act (42 U.S.C. 429(a)), for any calendar quarter beginning after October 13, 1982, or (ii) title 5 other than a benefit based on meeting the definition of preference eligible in section 2108(3) of such title.

(e) For the purposes of this section, the term "benefit" includes a right or privilege, but does not include a refund of a participant's contributions to the educational benefits program provided by chapter 32 of this title.

(f) Nothing in this section shall be construed to deprive any person of any procedural rights, including any rights to assistance in applying for or claiming a benefit.

(Added Pub. L. 97-66, title VI, §604(a)(1), Oct. 17, 1981, 95 Stat. 1035, §3103A; amended Pub. L. 97-306, title IV, §408(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99-576, title III, §321(11), Oct. 28,

<sup>1</sup> See References in Text note below.

1986, 100 Stat. 3278; Pub. L. 100-689, title I, §102(b)(3), Nov. 18, 1988, 102 Stat. 4163; Pub. L. 101-510, div. A, title V, §562(a)(4), Nov. 5, 1990, 104 Stat. 1574; renumbered §5303A, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 103-353, §3, Oct. 13, 1994, 108 Stat. 3169; Pub. L. 103-446, title IX, §908, Nov. 2, 1994, 108 Stat. 4678; Pub. L. 105-368, title X, §1005(b)(15), Nov. 11, 1998, 112 Stat. 3365.)

## REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Section 229(a) of the Act was redesignated section 229 by Pub. L. 108-203, title IV, §420(b)(1)(A), Mar. 2, 2004, 118 Stat. 535. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

## AMENDMENTS

1998—Subsec. (d)(2)(B). Pub. L. 105-368, §1005(b)(15)(A), substituted “after October 13, 1982,” for “on or after the date of the enactment of this subsection”.

Subsec. (d)(3)(B)(i). Pub. L. 105-368, §1005(b)(15)(B), substituted “after October 13, 1982,” for “on or after the date of the enactment of this subsection.”

1994—Subsec. (b)(3)(F). Pub. L. 103-446 inserted “or chapter 37” after “chapter 30” in introductory provisions.

Subsec. (b)(3)(G). Pub. L. 103-353 added subpar. (G).

1991—Pub. L. 102-40 renumbered section 3103A of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

Subsec. (b)(1). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in concluding provisions.

Subsec. (b)(3)(C). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(3)(F)(i). Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)(A)(ii)(II)” and “3012(b)(1)(A)(iv)” for “1411(a)(1)(A)(ii)(II)” and “1412(b)(1)(A)(iv)”, respectively.

Subsec. (b)(3)(F)(ii). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)” for “1411(a)(1)” and “3012(b)(1)(A)(ii)” for “1412(b)(1)(A)(ii)”.

Subsec. (b)(3)(F)(iii). Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)” for “1411(a)(1)” and “3012(b)(1)(A)(v)” for “1412(b)(1)(A)(v)”.

Subsec. (b)(3)(F)(iv). Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)(A)(ii)(I)” for “1411(a)(1)(A)(ii)(I)”.

Subsecs. (c)(1), (d)(1). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

1990—Subsec. (b)(3)(F)(iv). Pub. L. 101-510 added cl. (iv).

1988—Subsec. (b)(3)(F). Pub. L. 100-689 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “to benefits under chapter 30 of this title in the case of a person entitled to benefits under such chapter by reason of section 1411(a)(1)(A)(ii)(II) of this title.”

1986—Subsec. (b)(3)(F). Pub. L. 99-576 added subpar. (F).

1982—Subsec. (b)(2)(B). Pub. L. 97-306, §408(a)(1), substituted “after October 16, 1981,” for “on or after the date of the enactment of the Veterans’ Disability Compensation, Housing, and Memorial Benefits Amendments of 1981”.

Subsecs. (d), (e). Pub. L. 97-306, §408(a)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 97-306, §408(a)(3), added subsec. (f).

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-510 effective Oct. 19, 1984, see section 562(c) of Pub. L. 101-510 set out as a note under section 3011 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-689 effective July 1, 1985, with respect to individuals discharged or released for medical condition which preexisted service on active duty or in Selected Reserve and which Administrator determines is not service connected, and effective Oct. 1, 1987, with respect to individuals involuntarily discharged or released for convenience of Government as a result of reduction in force, see section 102(c) of Pub. L. 100-689, set out as a note under section 3011 of this title.

## EFFECTIVE DATE

Section effective Oct. 17, 1981, see section 701(b)(1) of Pub. L. 97-66, set out as an Effective Date of 1981 Amendment note under section 1114 of this title.

## DELAYED APPLICATION OF EXCLUSION; ADDITIONAL WAGES CONSIDERED BENEFIT

Section 408(b) of Pub. L. 97-306 provided that:

“(1) Subsection (d) of section 3103A [now 5303A] of title 38, United States Code, as added by subsection (a)(2), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 14, 1982].

“(2) For the purposes of paragraph (1) of this subsection, additional wages deemed to have been paid under section 229(a) of the Social Security Act (42 U.S.C. 429(a)) shall be considered to be a benefit that was received by a person on the date that such person was discharged or released from active duty (as defined in section 101(21) of title 38, United States Code).”

## SCOPE OF EXCLUSION

Section 408(d) of Pub. L. 97-306 provided that: “Section 3103A [now 5303A] of title 38, United States Code, as amended by subsection (a), is the law with respect to the matters stated in such section and applies, in accordance with its terms, with respect to benefits under Federal law, regardless of the particular title of the United States Code or other law under which any such benefit is provided or the department, agency, or instrumentality which administers any such benefit.”

## APPLICABILITY

Section 604(b) of Pub. L. 97-66 provided that: “Section 5303A [formerly 3103A] of title 38, United States Code, as added by subsection (a), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 17, 1981]. Notwithstanding such section, a person who before such date has received a certificate of eligibility from the Administrator of Veterans’ Affairs [now Secretary of Veterans Affairs] for benefits under chapter 37 of title 38, United States Code, is eligible for such benefits after such date.”

**§ 5304. Prohibition against duplication of benefits**

(a)(1) Except as provided in section 1414 of title 10 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency offi-

cers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.

(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and in section 1521(i) of this title, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of such person's own service, shall not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other person.

(2) Benefits other than insurance under laws administered by the Secretary may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

(3) Benefits other than insurance under laws administered by the Secretary may not be paid to any person by reason of the death of more than one person to whom such person was married; however, the person may elect one or more times to receive benefits by reason of the death of any one spouse.

(c) Pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, §3104; Pub. L. 86-495, §1, June 8, 1960, 74 Stat. 163; Pub. L. 88-664, §9, Oct. 13, 1964, 78 Stat. 1096; Pub. L. 91-376, §6, Aug. 12, 1970, 84 Stat. 790; Pub. L. 95-588, title III, §304, Nov. 4, 1978, 92 Stat. 2507; Pub. L. 96-385, title V, §503(a), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 99-576, title VII, §701(71), Oct. 28, 1986, 100 Stat. 3297; renumbered §5304 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(a)(1), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 108-454, title III, §308(a), Dec. 10, 2004, 118 Stat. 3614.)

#### AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454 inserted "as provided in section 1414 of title 10 or" after "Except".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3104 of this title as this section.

Subsec. (a)(2). Pub. L. 102-83, §5(c)(1), substituted "1521" and "1541" for "521" and "541", respectively.

Pub. L. 102-40, §402(d)(1), substituted "5305" for "3105" in two places.

Subsec. (b)(1). Pub. L. 102-83, §5(c)(1), substituted "1521(i)" for "521(i)".

Subsec. (b)(2), (3). Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1986—Subsec. (a)(1). Pub. L. 99-576, §701(71)(A), substituted "such person's" for "his".

Subsec. (b)(1). Pub. L. 99-576, §701(71)(B)(i), (ii), substituted "surviving spouse" for "widow" and "such person's" for "his".

Subsec. (b)(3). Pub. L. 99-576, §701(71)(B)(iii), substituted "such person" for "he or she".

Subsec. (c). Pub. L. 99-576, §701(71)(C), substituted "any person's" for "his", "to such person" for "to any person", and "such person" for "he".

1980—Subsec. (a). Pub. L. 96-385 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95-588 inserted "of this subsection and in section 521(i) of this title" after "(2) and (3)".

1970—Subsec. (b)(1), (3). Pub. L. 91-376 inserted reference to par. (3) in par. (1) and added par. (3).

1964—Subsec. (a). Pub. L. 88-664 inserted "or concurrently to any person based on the service of any other person" after "own service".

1960—Subsec. (b)(2). Pub. L. 86-495 substituted provisions prohibiting the payment or furnishing of benefits other than insurance to or on account of any child by reason of the death of more than one parent in the same parental line, and permitting the child to elect one or more times to receive benefits by reason of the death of any one of such parents, for provisions which prohibited the payment of dependency and indemnity compensation to or on account of a child by reason of the death of another parent where the child receives or there is paid by the Veterans' Administration on account of a child dependency and indemnity compensation, or death compensation, by reason of the death of a parent.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-385 effective Oct. 1, 1980, see section 601(b) of Pub. L. 96-385, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-588 effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-376 effective Jan. 1, 1971, see section 9 of Pub. L. 91-376, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-664 effective Jan. 1, 1965, see section 11 of Pub. L. 88-664, set out as a note under section 1503 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86-495 provided that: "The amendment made by this Act [amending this section] shall apply only to cases where the death of a parent occurs after the date of enactment of this Act [June 8, 1960]."

### § 5305. Waiver of retired pay

Except as provided in section 1414 of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or

retirement pay is paid of a waiver of so much of such person's retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, §3105; Pub. L. 91-621, §6(a)(3), Dec. 31, 1970, 84 Stat. 1864; Pub. L. 99-576, title VII, §701(72), Oct. 28, 1986, 100 Stat. 3297; renumbered §5305, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (2)(A)(viii), Aug. 6, 1991, 105 Stat. 403; Pub. L. 108-454, title III, §308(b), Dec. 10, 2004, 118 Stat. 3614.)

#### AMENDMENTS

2004—Pub. L. 108-454 substituted "Except as provided in section 1414 of title 10, any" for "Any" in first sentence.

1991—Pub. L. 102-40 renumbered section 3105 of this title as this section.

Pub. L. 102-83, §4(a)(2)(A)(viii), substituted "Secretary" for "Veterans' Administration".

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

1986—Pub. L. 99-576 substituted "such person" for "he" and "such person's" for "his".

1970—Pub. L. 91-621 substituted "National Oceanic and Atmospheric Administration" for "Coast and Geodetic Survey".

#### § 5306. Renunciation of right to benefits

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Secretary may renounce the right thereto. The application renouncing the right shall be in writing over the person's signature. Upon the filing of such an application, payment of such benefits and the right thereto shall be terminated, and such person shall be denied any and all rights thereto from such filing.

(b) Renunciation of rights shall not preclude any person from filing a new application for pension, compensation, or dependency and indemnity compensation at a later date, but such new application shall be treated as an original application, and no payments shall be made for any period before the date such new application is filed.

(c) Notwithstanding subsection (b), if a new application for pension under chapter 15 of this title or for dependency and indemnity compensation for parents under section 1315 of this title is filed within one year after renunciation of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renunciation had not occurred.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, §3106; Pub. L. 99-576, title VII, §701(73), Oct. 28, 1986, 100 Stat. 3297; renumbered §5306, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103-446, title V, §503, Nov. 2, 1994, 108 Stat. 4663.)

#### AMENDMENTS

1994—Subsec. (c). Pub. L. 103-446 added subsec. (c).

1991—Pub. L. 102-40 renumbered section 3106 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1986—Subsec. (a). Pub. L. 99-576 substituted "the" for "his" before "right" in first sentence.

#### § 5307. Apportionment of benefits

(a) All or any part of the compensation, pension, or emergency officers' retirement pay payable on account of any veteran may—

(1) if the veteran is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof, be apportioned on behalf of the veteran's spouse, children, or dependent parents; and

(2) if the veteran is not living with the veteran's spouse, or if the veteran's children are not in the custody of the veteran, be apportioned as may be prescribed by the Secretary.

(b) Where any of the children of a deceased veteran are not in the custody of the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned as prescribed by the Secretary.

(c) If a veteran is not living with the veteran's spouse, or if any of the veteran's children are not in the custody of the veteran, any subsistence allowance payable to the veteran under chapter 31 of this title or that portion of the educational assistance allowance payable on account of dependents under chapter 34 of this title may be apportioned as may be prescribed by the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, §3107; Pub. L. 92-540, title V, §505, Oct. 24, 1972, 86 Stat. 1099; Pub. L. 98-160, title VII, §703(2), Nov. 21, 1983, 97 Stat. 1010; renumbered §5307, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3107 of this title as this section.

Subsecs. (a)(2), (b), (c). Pub. L. 102-83 substituted "Secretary" for "Administrator".

1983—Subsec. (a)(1). Pub. L. 98-160, §703(2)(A), substituted "the veteran's spouse" for "his wife".

Subsec. (a)(2). Pub. L. 98-160, §703(2)(A)-(C), substituted "the veteran's spouse" for "his wife", "the veteran's children" for "his children", and "the custody of the veteran" for "his custody".

Subsec. (b). Pub. L. 98-160, §703(2)(D), substituted "surviving spouse" for "widow" in two places.

Subsec. (c). Pub. L. 98-160, §703(2)(A)-(C), (E), substituted "the veteran's spouse" for "his wife", "the veteran's children" for "his children", "the custody of the veteran" for "his custody", and "payable to the veteran" for "payable to him".

1972—Subsec. (c). Pub. L. 92-540 inserted provisions relating to that portion of the educational assistance allowance payable on account of dependents under chapter 34 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-540 effective 90 days after Oct. 24, 1972, see section 601(b) of Pub. L. 92-540, set out as a note under section 4101 of this title.

**§ 5308. Withholding benefits of persons in territory of the enemy**

(a) When any alien entitled to gratuitous benefits under laws administered by the Secretary is located in territory of, or under military control of, an enemy of the United States or of any of its allies, any award of such benefits in favor of such alien shall be terminated forthwith.

(b) Any alien whose award is terminated under subsection (a) shall not thereafter be entitled to any such gratuitous benefits except upon the filing of a new claim, accompanied by evidence satisfactory to the Secretary showing that such alien was not guilty of mutiny, treason, sabotage, or rendering assistance to such enemy. Except as provided in section 5309 of this title, such gratuitous benefits shall not be paid for any period before the date the new claim is filed.

(c) While such alien is located in territory of, or under military control of, an enemy of the United States or of any of its allies, the Secretary, in the Secretary's discretion, may apportion and pay any part of such benefits to the dependents of such alien. No dependent of such alien shall receive benefits by reason of this subsection in excess of the amount to which the dependent would be entitled if such alien were dead.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, §3108; Pub. L. 99-576, title VII, §701(74), Oct. 28, 1986, 100 Stat. 3297; renumbered §5308 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3108 of this title as this section.

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

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

Pub. L. 102-40, §402(d)(1), substituted "5309" for "3109".

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's".

1986—Subsec. (c). Pub. L. 99-576 substituted "the Administrator's" for "his" in first sentence, and "the dependent" for "he" in second sentence.

**§ 5309. Payment of certain withheld benefits**

(a) Any person who, but for section 5308 of this title, was entitled to benefits under any of the laws administered by the Secretary, whose award of benefits was terminated under such section, or whose benefits were not paid pursuant to sections 3329 and 3330 of title 31, and who was not guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies, shall be paid the full amount of any benefits not paid because of such section 5308, or withheld (including the amount of any checks covered on such person's account into the Treasury as miscellaneous receipts together with any amount to such person's credit in the special-deposit account) pursuant to sections 3329 and 3330 of title 31. The Secretary shall certify to the Secretary of the Treasury the amounts of payments which, but for this sec-

tion, would have been made from the special deposit account, and the Secretary of the Treasury, as directed by the Secretary, shall reimburse the appropriations of the Department from such special deposit account, or cover into the Treasury as miscellaneous receipts the amounts so certified.

(b) No payments shall be made for any period before the date claim therefor is filed under this section to any person whose award was terminated, or whose benefits were not paid, before July 1, 1954, because such person was a citizen or subject of Germany or Japan residing in Germany or Japan.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, §3109; Pub. L. 97-258, §3(k)(4), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 99-576, title VII, §701(75), Oct. 28, 1986, 100 Stat. 3297; renumbered §5309 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3109 of this title as this section.

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

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in last sentence.

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

Pub. L. 102-40, §402(d)(1), substituted "5308" for "3108" in two places in first sentence.

1986—Subsec. (a). Pub. L. 99-576, §701(75)(A), substituted "such person's" for "his" in two places.

Subsec. (b). Pub. L. 99-576, §701(75)(B), substituted "such person" for "he".

1982—Subsec. (a). Pub. L. 97-258 substituted "sections 3329 and 3330 of title 31" for "sections 123-128 of title 31" wherever appearing.

**§ 5310. Payment of benefits for month of death**

(a) If, in accordance with the provisions of section 5110(d) of this title, a surviving spouse is entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which a veteran's death occurs, the amount of such death benefits for that month shall be not less than the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

(b)(1) If the surviving spouse of a veteran who was in receipt of compensation or pension at the time of death is not entitled to death benefits under chapter 11, 13, or 15 of this title for the month in which the veteran's death occurs, that surviving spouse shall be entitled to a benefit for that month in the amount of benefits the veteran would have received under chapter 11 or 15 of this title for that month but for the death of the veteran.

(2) If (notwithstanding section 5112(b)(1) of this title) a check or other payment is issued to, and in the name of, the deceased veteran as a benefit payment under chapter 11 or 15 of this title for the month in which death occurs, that check or other payment (A) shall be treated for all purposes as being payable to the surviving spouse, and (B) if that check or other payment is nego-

tiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (1). However, if such check or other payment is in an amount less than the amount of the benefit under paragraph (1), the unpaid amount shall be treated in the same manner as an accrued benefit under section 5121 of this title.

(Added Pub. L. 87-825, §4(a), Oct. 15, 1962, 76 Stat. 950, §3110; amended Pub. L. 98-160, title VII, §703(3), Nov. 21, 1983, 97 Stat. 1010; renumbered §5310 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 104-275, title V, §506(a), Oct. 9, 1996, 110 Stat. 3343; Pub. L. 105-114, title IV, §401(f), Nov. 21, 1997, 111 Stat. 2294.)

#### AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105-114 substituted “under paragraph (1)” for “under this paragraph” before period at end of first sentence.

1996—Pub. L. 104-275 designated existing provisions as subsec. (a) and added subsec. (b).

1991—Pub. L. 102-40 renumbered section 3110 of this title as this section and substituted “5110(d)” for “3010(d)”.

1983—Pub. L. 98-160 substituted “surviving spouse” for “widow”, and “the death of the veteran” for “his death”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 506(b) of Pub. L. 104-275 provided that: “The amendments made by this section [amending this section] shall apply with respect to the death of compensation and pension recipients occurring after December 31, 1996.”

#### EFFECTIVE DATE

Section effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87-825, set out as an Effective Date of 1962 Amendment note under section 110 of this title.

### § 5311. Prohibition of certain benefit payments

There shall be no payment of dependency and indemnity compensation, death compensation, or death pension which, because of a widow's relationship with another man before enactment of Public Law 87-674, would not have been payable by the Veterans' Administration under the standard for determining remarriage applied by that agency before said enactment.

(Added Pub. L. 91-376, §8(b), Aug. 12, 1970, 84 Stat. 790, §3111; renumbered §5311, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

#### REFERENCES IN TEXT

Public Law 87-674, referred to in text, is Pub. L. 87-674, Sept. 19, 1962, 76 Stat. 558, which was enacted Sept. 19, 1962, and amended sections 101, 103, and 3010 [now 5110] of this title to provide for the restoration of certain widows and children to the benefit rolls upon annulment of their marriages or remarriages.

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3111 of this title as this section.

### § 5312. Annual adjustment of certain benefit rates

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a

determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 1521, 1541, and 1542 of this title, the rate of increased pension paid under such sections 1521 and 1541 on account of children, and each rate of monthly allowance paid under section 1805 of this title, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 1315 of this title and the annual income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title, as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2)(A) Whenever there is an increase under paragraph (1) of this subsection in such rates and annual income limitations, the Secretary shall, effective on the date of such increase in such rates and limitations, adjust (as provided in subparagraph (B) of this paragraph) the rates of dependency and indemnity compensation payable under subsection (b)(1) or (c)(1) of section 1315 of this title to any parent whose annual income is more than \$800 but not more than the annual income limitation in effect under subsection (b)(3) or (c)(3) of such section, as appropriate, and adjust the rates of such compensation payable under subsection (d)(1) of such section to any parent whose annual income is more than \$1,000 but not more than the annual income limitation in effect under subsection (d)(3) of such section.

(B) The adjustment in rates of dependency and indemnity compensation referred to in subparagraph (A) of this paragraph shall be made by the Secretary in accordance with regulations which the Secretary shall prescribe.

(c)(1) Whenever there is an increase under subsection (a) in benefit rates payable under sections 1521, 1541, 1542, and 1805 of this title and an increase under subsection (b) in benefit rates and annual income limitations under section 1315 of this title, the Secretary shall publish such rates and limitations (including those rates adjusted by the Secretary under subsection (b)(2) of this section), as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a deter-

mination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) Whenever such rates and income limitations are so increased, the Secretary may round such rates and income limitations in such manner as the Secretary considers equitable and appropriate for ease of administration.

(Added Pub. L. 95-588, title III, §305(a), Nov. 4, 1978, 92 Stat. 2507, §3112; amended Pub. L. 97-295, §4(76), Oct. 12, 1982, 96 Stat. 1311; renumbered §5312, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 104-204, title IV, §421(c), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 108-454, title V, §506, Dec. 10, 2004, 118 Stat. 3622.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 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

2004—Subsec. (b)(1). Pub. L. 108-454 inserted “and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title,” after “(d)(3) of such section.”.

1996—Subsec. (a). Pub. L. 104-204, §421(c)(1), substituted “, the rate of increased pension” for “and the rate of increased pension” and inserted “and each rate of monthly allowance paid under section 1805 of this title,” after “on account of children.”.

Subsec. (c)(1). Pub. L. 104-204, §421(c)(2), substituted “1542, and 1805” for “and 1542”.

1991—Pub. L. 102-40 renumbered section 3112 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1521”, “1541”, and “1542” for “521”, “541”, and “542”, respectively, wherever appearing.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(1), (2)(A). Pub. L. 102-83, §5(c)(1), substituted “1315” for “415”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(2)(B). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Subsec. (c)(1). Pub. L. 102-83, §5(c)(1), substituted “1521”, “1541”, and “1542” for “521”, “541”, and “542”, respectively, and “1315” for “415”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Subsec. (c)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

1982—Subsec. (a). Pub. L. 97-295, §4(76)(A), (B), inserted “(42 U.S.C. 401 et seq.)” after first reference to “title II of the Social Security Act”, and inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”.

Subsec. (b)(1). Pub. L. 97-295, §4(76)(A)-(C), inserted “(42 U.S.C. 401 et seq.)” after first reference to “title II of the Social Security Act”, inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”, and substituted “subsection (g), of section 415 of this title” for “subsection (h), of section 415 of such title”.

Subsec. (c)(1). Pub. L. 97-295, §4(76)(B), (D), inserted “(42 U.S.C. 415(i)(2)(D))” after “section 215(i)(2)(D) of the Social Security Act”, and inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-454, title V, §507, Dec. 10, 2004, 118 Stat. 3622, provided that:

“(a) IN GENERAL.—Except as otherwise provided, this title [enacting sections 5506 to 5510 and 6106 to 6108 of this title and amending this section and sections 5502 and 6101 of this title] and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act [Dec. 10, 2004].

“(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section 505(a), shall take effect on the date of the enactment of this Act [Dec. 10, 2004].

“(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 503(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-204 effective Oct. 1, 1997, notwithstanding section 421(d) of Pub. L. 104-204, set out as an Effective Date note under section 1801 of this title, unless legislation other than Pub. L. 104-204 is enacted providing for an earlier effective date, see section 422(c) of Pub. L. 104-204, set out as a note under section 1151 of this title.

Amendment by Pub. L. 104-204 effective Jan. 1, 1997, see section 421(d) of Pub. L. 104-204, set out as an Effective Date note under section 1801 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as an Effective Date of 1978 Amendment note under section 101 of this title.

### §5313. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 1114(a) of this title; or

(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 1114(a) of this title.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 5307 of this title.

(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.

(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

(c) The Secretary shall not assign to any veteran a rating of total disability based on the individual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after October 7, 1980, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

(e) For purposes of this section—

(1) The term "compensation" includes disability compensation payable under section 1151 of this title.

(2) The term "dependency and indemnity compensation" means death compensation payable under section 1121 or 1141 of this title, death compensation and dependency and indemnity compensation payable under section 1151 of this title, and any benefit payable under chapter 13 of this title.

(Added Pub. L. 96-385, title V, §504(a), Oct. 7, 1980, 94 Stat. 1534, §3113; amended Pub. L. 98-160, title VII, §702(17), Nov. 21, 1983, 97 Stat. 1010; renumbered §5313 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title X, §1005(b)(16), Nov. 11, 1998, 112 Stat. 3365.)

#### AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105-368 substituted "October 7, 1980," for "the date of the enactment of this section,".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3113 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §5(c)(1), substituted "1114(a)" for "314(a)" in subpars. (A) and (B).

Subsec. (b)(1). Pub. L. 102-40, §402(d)(1), substituted "5307" for "3107".

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (e). Pub. L. 102-83, §5(c)(1), substituted "1151" for "351" in par. (1) and "1121", "1141", and "1151" for "321", "341", and "351", respectively, in par. (2).

1983—Subsec. (a)(2). Pub. L. 98-160 substituted "paragraph (1) of this subsection" for "paragraph (1) of this section".

#### EFFECTIVE DATE

Section effective Oct. 7, 1980, see section 601(d) of Pub. L. 96-385, set out as an Effective Date of 1980 Amendment note under section 1114 of this title.

#### LIMITATION ON PAYMENT OF COMPENSATION FOR VETERANS REMAINING INCARCERATED SINCE OCTOBER 7, 1980

Pub. L. 107-103, title V, §506, Dec. 27, 2001, 115 Stat. 996, provided that:

"(a) LIMITATION.—Section 5313 of title 38, United States Code, other than subsection (d) of that section, shall apply with respect to the payment of compensation to or with respect to any veteran described in subsection (b).

"(b) COVERED VETERANS.—A veteran described in this subsection is a veteran who is entitled to compensation and who—

"(1) on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date; and

"(2) remains so incarcerated for conviction of that felony as of the date of the enactment of this Act [Dec. 27, 2001].

"(c) EFFECTIVE DATE.—This section shall apply with respect to the payment of compensation for months beginning on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 27, 2001].

"(d) COMPENSATION DEFINED.—For purposes of this section, the term 'compensation' has the meaning given that term in section 5313 of title 38, United States Code."

#### §5313A. Limitation on payment of clothing allowance to incarcerated veterans

In the case of a veteran who is incarcerated in a Federal, State, or local penal institution for a period in excess of 60 days and who is furnished clothing without charge by the institution, the amount of any annual clothing allowance payable to the veteran under section 1162 of this title shall be reduced by an amount equal to  $\frac{1}{365}$  of the amount of the allowance otherwise payable under that section for each day on which the veteran was so incarcerated during the 12-month period preceding the date on which payment of the allowance would be due. This section shall be carried out under regulations prescribed by the Secretary.

(Added Pub. L. 104-275, title V, §502(a), Oct. 9, 1996, 110 Stat. 3341.)

#### §5313B. Prohibition on providing certain benefits with respect to persons who are fugitive felons

(a) A veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran is a fugitive felon. A dependent of a veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran or such dependent is a fugitive felon.

(b) For purposes of this section:

(1) The term "fugitive felon" means a person who is a fugitive by reason of—

(A) fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(B) violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(2) The term "felony" includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(3) The term "dependent" means a spouse, surviving spouse, child, or dependent parent of a veteran.

(c) A benefit specified in this subsection is a benefit under any of the following:

- (1) Chapter 11 of this title.
- (2) Chapter 13 of this title.
- (3) Chapter 15 of this title.
- (4) Chapter 17 of this title.
- (5) Chapter 19 of this title.
- (6) Chapter 30, 31, 32, 34, or 35 of this title.
- (7) Chapter 37 of this title.

(d)(1) The Secretary shall furnish to any Federal, State, or local law enforcement official, upon the written request of such official, the most current address maintained by the Secretary of a person who is eligible for a benefit specified in subsection (c) if such official—

(A) provides to the Secretary such information as the Secretary may require to fully identify the person;

(B) identifies the person as being a fugitive felon; and

(C) certifies to the Secretary that apprehending such person is within the official duties of such official.

(2) The Secretary shall enter into memoranda of understanding with Federal law enforcement agencies, and may enter into agreements with State and local law enforcement agencies, for purposes of furnishing information to such agencies under paragraph (1).

(Added Pub. L. 107-103, title V, §505(a)(1), Dec. 27, 2001, 115 Stat. 995.)

#### § 5314. Indebtedness offsets

(a) Subject to subsections (b) and (d) of this section and section 3485(e) of this title, the Secretary shall (unless the Secretary waives recovery under section 5302 of this title) deduct the amount of the indebtedness of any person who has been determined to be indebted to the United States by virtue of such person's participation in a benefits program administered by the Secretary from future payments made to such person under any law administered by the Secretary.

(b) Deductions may not be made under subsection (a) of this section with respect to the indebtedness of a person described in such subsection unless the Secretary—

(1) has made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 5302 of this title;

(2) has made a determination with respect to any such dispute or request or has determined that the time required to make such a determination before making deductions would jeopardize the Secretary's ability to recover the full amount of such indebtedness through deductions from such payments; and

(3) has made reasonable efforts to notify such person about the proposed deductions from such payments.

(c) Notwithstanding any other provision of this title or of any other law, the authority of the Secretary to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for the purpose of determining the creditworthiness of a person who owes such an indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

(d) The Secretary shall prescribe regulations for the administration of this section.

(Added Pub. L. 96-466, title VI, §605(a)(1), Oct. 17, 1980, 94 Stat. 2209, §3114; amended Pub. L. 102-16, §6(b)(3), Mar. 22, 1991, 105 Stat. 51; renumbered §5314 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406.)

#### AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3114 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted "3485(e)" for "1685(e)".

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

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

Pub. L. 102-40, §402(d)(1), substituted "5302" for "3102".

Pub. L. 102-16 inserted "and section 1685(e) of this title" after "Subject to subsections (b) and (d) of this section".

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and "Secretary's" for "Administrator's" in par. (2).

Pub. L. 102-40, §402(d)(1), substituted "5302" for "3102" in par. (1).

Subsecs. (c), (d). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

#### EFFECTIVE DATE

Section 802(f) of Pub. L. 96-466 provided that:

"(1) Except as provided in paragraph (2), the amendments made by title VI [see Tables for classification] shall become effective on October 1, 1980.

"(2) The amendments made by sections 603 [amending sections 1677 and 1798 [now 3698] of this title] and 604 [amending section 1786 [now 3686] of this title] shall not apply to any person receiving educational assistance under chapter 34 or 35 of title 38, United States Code, on September 1, 1980, for the pursuit of a program of education, as defined in section 1652(b) [now 3452(b)] of such title, in which such person is enrolled on that date, for as long as such person continuously thereafter is so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under the provisions of such chapter and chapter 36 of such title as in effect on that date."

#### RULES AND REGULATIONS

Section 605(b) of Pub. L. 96-466 provided that: "The Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] shall, not later than January 1, 1981, prescribe the regulations required to be prescribed under sections 3114 and 3115 [now 5314 and 5315] of title 38, United States Code, as added by subsection (a)."

**§ 5315. Interest and administrative cost charges on delinquent payments of certain amounts due the United States**

(a) Notwithstanding any other provision of this title or of any other law and subject to sections 3485(e) and 5302 of this title, interest and administrative costs (as described in subsections (b) and (c) of this section) shall be charged, under regulations which the Secretary shall prescribe, on any amount owed to the United States—

(1) for an indebtedness resulting from a person's participation in a benefits program administered by the Secretary other than a loan, loan-guaranty, or loan-insurance program;

(2) for an indebtedness resulting from the provision of care or services under chapter 17 of this title; or

(3) to the extent not precluded by the terms of the loan instruments concerned, for an indebtedness resulting from a person's participation in a program of loans, loan guaranties, or loan insurance administered by the Secretary under this title.

(b)(1) Interest on the amount of any indebtedness described in subsection (a) of this section shall accrue from the day on which the initial notification of the amount due is mailed to the person who owes such amount (using the most current address of such person that is available to the Secretary), but interest under this section shall not be charged (A) for any period before October 17, 1980, or (B) if the amount due is paid within a reasonable period of time. The Secretary shall, in the regulations prescribed pursuant to subsection (a) of this section, prescribe what constitutes a reasonable period of time for payment of an indebtedness after the initial notification of indebtedness has been mailed.

(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Secretary under such regulations.

(c) The administrative costs to be charged under this section with respect to an amount owed to the United States shall be so much of the costs incurred by the United States in collecting such amount as the Secretary determines, under such regulations, to be reasonable and appropriate.

(Added Pub. L. 96-466, title VI, § 605(a)(1), Oct. 17, 1980, 94 Stat. 2210, § 3115; amended Pub. L. 102-16, § 6(b)(4), Mar. 22, 1991, 105 Stat. 51; renumbered § 5315 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§ 4(a)(1), (b)(1), (2)(E), 5(C)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 105-368, title X, § 1005(b)(17), Nov. 11, 1998, 112 Stat. 3365.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-368 substituted “October 17, 1980,” for “the date of the enactment of this section.”

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3115 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 5(c)(1), substituted “3485(e)” for “1685(e)” in introductory provisions.

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in introductory provisions.

Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans' Administration” in pars. (1) and (3).

Pub. L. 102-40, § 402(d)(1), substituted “5302” for “3102” in introductory provisions.

Pub. L. 102-16 substituted “sections 1685(e) and 3102” for “section 3102” in introductory provisions.

Subsecs. (b), (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

EFFECTIVE DATE

Section effective Oct. 1, 1980, except as otherwise specifically provided, see section 802(f) of Pub. L. 96-466, set out as a note under section 5314 of this title.

**§ 5316. Authority to sue to collect certain debts**

(a)(1) The Secretary shall take appropriate steps to authorize attorneys employed by the Department to exercise, subject to paragraphs (2) and (3) of this subsection, the right of the United States to bring suit in any court of competent jurisdiction to recover any indebtedness owed to the United States by a person by virtue of such person's participation in a benefits program administered by the Secretary.

(2) No suit may be filed under this section to recover any indebtedness owed by any person to the United States unless the Secretary has determined, under regulations which the Secretary shall prescribe, that such person has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

(3) The activities of attorneys employed by the Department in bringing suit under this section shall be subject to the direction and supervision of the Attorney General of the United States and to such terms and conditions as the Attorney General may prescribe.

(b) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party.

(Added Pub. L. 96-466, title VI, § 605(a)(1), Oct. 17, 1980, 94 Stat. 2211, § 3116; renumbered § 5316, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, § 14(d)(3), June 13, 1991, 105 Stat. 285; Pub. L. 102-83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3116 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

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

Pub. L. 102-54, § 14(d)(3)(A), amended subsec. (a)(1) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “The” for “Within ninety days after the date of the enactment of this section, the”.

Subsec. (a)(2). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Subsec. (a)(3). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

Subsecs. (b), (c). Pub. L. 102-54, § 14(d)(3)(B), amended section as in effect immediately before the enactment

of Pub. L. 102-40 by redesignating subsec. (c) as (b) and striking out former subsec. (b) which read as follows: "Not later than ninety days after the date of the enactment of this section, the Administrator and the Attorney General of the United States shall submit to the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section."

EFFECTIVE DATE

Section effective Oct. 1, 1980, except as otherwise specifically provided, see section 802(f) of Pub. L. 96-466, set out as a note under section 5314 of this title.

**§ 5317. Use of income information from other agencies: notice and verification**

(a) The Secretary shall notify each applicant for a benefit or service described in subsection (c) of this section that income information furnished by the applicant to the Secretary may be compared with information obtained by the Secretary from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. The Secretary shall periodically transmit to recipients of such benefits and services additional notifications of such matters.

(b) The Secretary may not, by reason of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, terminate, deny, suspend, or reduce any benefit or service described in subsection (c) of this section until the Secretary takes appropriate steps to verify independently information relating to the following:

(1) The amount of the asset or income involved.

(2) Whether such individual actually has (or had) access to such asset or income for the individual's own use.

(3) The period or periods when the individual actually had such asset or income.

(c) The benefits and services described in this subsection are the following:

(1) Needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Secretary.

(2) Parents' dependency and indemnity compensation provided under section 1315 of this title.

(3) Health-care services furnished under subsections (a)(2)(G), (a)(3), and (b) of section 1710 of this title.

(4) Compensation paid under chapter 11 of this title at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

(d) In the case of compensation described in subsection (c)(4) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment information referred to in subsection (b) of this section only if the Secretary finds that the amount and duration of the earnings reported in that information clearly indicate that the individual may no longer be qualified for a rating of total disability.

(e) The Secretary shall inform the individual of the findings made by the Secretary on the

basis of verified information under subsection (b) of this section, and shall give the individual an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

(f) The Secretary shall pay the expenses of carrying out this section from amounts available to the Department for the payment of compensation and pension.

(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Commissioner of Social Security under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, 2008.

(Added Pub. L. 101-508, title VIII, §8051(b)(1), Nov. 5, 1990, 104 Stat. 1388-350, §3117; renumbered §5317, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-568, title VI, §602(a), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 103-66, title XII, §12004, Aug. 10, 1993, 107 Stat. 414; Pub. L. 104-262, title I, §101(e)(3), Oct. 9, 1996, 110 Stat. 3181; Pub. L. 105-33, title VIII, §8014, Aug. 5, 1997, 111 Stat. 664; Pub. L. 106-419, title IV, §402(d), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108-183, title VII, §708(c)(3), Dec. 16, 2003, 117 Stat. 2674.)

REFERENCES IN TEXT

Section 6103(l)(7)(D)(viii) of the Internal Revenue Code, referred to in subsecs. (a), (b), and (g), is classified to section 6103(l)(7)(D)(viii) of Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsecs. (a), (b), (g). Pub. L. 108-183 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

2000—Subsec. (g). Pub. L. 106-419 substituted "September 30, 2008" for "September 30, 2002".

1997—Subsec. (g). Pub. L. 105-33 substituted "September 30, 2002" for "September 30, 1998".

1996—Subsec. (c)(3). Pub. L. 104-262 substituted "subsections (a)(2)(G), (a)(3), and (b) of section 1710" for "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)".

1993—Subsec. (g). Pub. L. 103-66 substituted "1998" for "1997".

1992—Subsec. (g). Pub. L. 102-568 substituted "1997" for "1992".

1991—Pub. L. 102-40 renumbered section 3117 of this title as this section.

Subsec. (c)(2). Pub. L. 102-83 substituted "1315" for "415".

Subsec. (c)(3). Pub. L. 102-83 substituted "1710(a)(1)(I)", "1710(a)(2)", "1710(b)", and "1712(a)(2)(B)" for "610(a)(1)(I)", "610(a)(2)", "610(b)", and "612(a)(2)(B)", respectively.

NOTIFICATION PRIOR TO USE OF INCOME INFORMATION FROM OTHER FEDERAL AGENCIES

Section 8051(c) of Pub. L. 101-508 provided that:

"(1) The Secretary of Veterans Affairs shall notify individuals who (as of the date of the enactment of this Act [Nov. 5, 1990]) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 [now 5317] of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(l)(7)(D) of the Internal Revenue Code of 1986 [26 U.S.C. 6103(l)(7)(D)] (as added by subsection (a))."

“(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

“(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made.”

STUDY BY COMPTROLLER GENERAL ON EFFECTIVENESS OF AMENDMENTS BY PUB. L. 101-508

Section 8051(d) of Pub. L. 101-508 provided that: “The Comptroller General of the United States shall conduct a study of the effectiveness of the amendments made by this section [enacting this section] and shall submit a report on such study to the Committees on Veterans' Affairs and Ways and Means of the House of Representatives and the Committees on Veterans' Affairs and Finance of the Senate not later than January 1, 1992.”

**§ 5318. Review of Social Security Administration death information**

(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Social Security Administration relating to persons who have died for the purposes of—

(1) determining whether any such persons to whom compensation and pension is being paid are deceased;

(2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and

(3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

(b) The Social Security Administration death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Commissioner of Social Security, including death information available to the Commissioner from a State, pursuant to a memorandum of understanding entered into by the Secretary and the Commissioner. Any such memorandum of understanding shall include safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.

(Added Pub. L. 101-508, title VIII, §8053(b)(1), Nov. 5, 1990, 104 Stat. 1388-352, §3118; renumbered §5318, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 108-183, title VII, §708(c)(4)(A), (B)(i), Dec. 16, 2003, 117 Stat. 2674.)

AMENDMENTS

2003—Pub. L. 108-183, §708(c)(4)(B)(i), substituted “Social Security Administration” for “Department of Health and Human Services” in section catchline.

Subsec. (a). Pub. L. 108-183, §708(c)(4)(A)(i), substituted “Social Security Administration” for “Department of Health and Human Services” in introductory provisions.

Subsec. (b). Pub. L. 108-183, §708(c)(4)(A)(ii), substituted “Social Security Administration” for “Department of Health and Human Services”, “Commissioner of Social Security” for “Secretary of Health and Human Services” after “through the”, “Commissioner” for “Secretary of Health and Human Services” after “available to the”, and “the Secretary and the Commissioner” for “such Secretaries”.

1991—Pub. L. 102-40 renumbered section 3118 of this title as this section.

**§ 5319. Limitations on access to financial records**

(a) The Secretary may make a request referred to in section 1113(p) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(p)) only if the Secretary determines that the requested information—

(1) is necessary in order for the Secretary to administer the provisions of law referred to in that section; and

(2) cannot be secured by a reasonable search of records and information of the Department.

(b) The Secretary shall include a certification of the determinations referred to in subsection (a) in each request presented to a financial institution.

(c) Information disclosed pursuant to a request referred to in subsection (a) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary if, except for the exemption in subsection (a), the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978.

(Added Pub. L. 102-568, title VI, §603(b)(1), Oct. 29, 1992, 106 Stat. 4342.)

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in subsec. (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

**CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS**

Sec. 5501.	Commitment actions.
5502.	Payments to and supervision of fiduciaries.
5503.	Hospitalized veterans and estates of incompetent institutionalized veterans.
5504.	Administration of trust funds.
[5505.]	Repealed.]
5506.	Definition of “fiduciary”.
5507.	Inquiry, investigations, and qualification of fiduciaries.
5508.	Periodic onsite reviews of institutional fiduciaries.
5509.	Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.
5510.	Annual report.

AMENDMENTS

2004—Pub. L. 108-454, title V, §§501(a)(2), 502(b), 504(a)(2), 505(b), Dec. 10, 2004, 118 Stat. 3617, 3619, 3621, 3622, added items 5506 to 5510.

1994—Pub. L. 103-446, title XII, §1201(g)(4)(B), Nov. 2, 1994, 108 Stat. 4687, struck out item 5505 “Limitation on compensation payments for certain incompetent veterans”.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3201 to 3205 as 5501 to 5505, respectively.

1990—Pub. L. 101-508, title VIII, §8001(a)(2), Nov. 5, 1990, 104 Stat. 1388-342, added item 3205.

1984—Pub. L. 98-223, title II, §207(b)(2), Mar. 2, 1984, 98 Stat. 43, substituted “fiduciaries” for “guardians” in item 3202.

**§ 5501. Commitment actions**

The Secretary may incur necessary court costs and other expenses incident to proceedings for the commitment of mentally incompetent veterans to a Department hospital or domiciliary when necessary for treatment or domiciliary purposes.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, §3201; renumbered §5501, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3201 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

**§ 5502. Payments to and supervision of fiduciaries**

(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

(b) Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make

proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital

status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, §3202; Pub. L. 86-146, §1(a), Aug. 7, 1959, 73 Stat. 297; Pub. L. 92-328, title I, §105(a), June 30, 1972, 86 Stat. 395; Pub. L. 93-295, title III, §301, May 31, 1974, 88 Stat. 183; Pub. L. 97-295, §4(77), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 98-223, title II, §207(a), (b)(1), Mar. 2, 1984, 98 Stat. 43; Pub. L. 99-576, title V, §505, title VII, §701(76), Oct. 28, 1986, 100 Stat. 3287, 3297; renumbered §5502 and amended Pub. L. 102-40, title III, §305(a), title IV, §402(b)(1), May 7, 1991, 105 Stat. 210, 238; Pub. L. 102-83, §4(a)(1), (2)(A)(ix), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 108-454, title V, §501(b), Dec. 10, 2004, 118 Stat. 3617.)

#### AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454, §501(b)(1)(A), substituted "other fiduciary" for "other person".

Subsec. (a)(2). Pub. L. 108-454, §501(b)(1)(B), inserted "for benefits under this title" after "in connection with rendering fiduciary services" in second sentence.

Subsec. (b). Pub. L. 108-454, §501(b)(2), substituted "appears that any fiduciary" for "appears that any guardian, curator, conservator, or other person", "trust of such fiduciary" for "trust of such guardian, curator, conservator, or other person", and "payments to any such fiduciary" for "payments to any such guardian, curator, conservator, or other person".

Subsec. (d). Pub. L. 108-454, §501(b)(3), substituted "fiduciary" for "guardian, curator, or conservator".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3202 of this title as this section.

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

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

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

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

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" before "to obtain".

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

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's" wherever appearing.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

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

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

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" before "within".

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

Pub. L. 102-40, §305(a), substituted "a patient" for "an inmate" before "such veteran is".

Subsec. (e). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" after "to the".

Pub. L. 102-83, §4(a)(2)(A)(ix), substituted "Secretary" for "Veterans' Administration" after "or the".

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

1986—Subsec. (a)(1). Pub. L. 99-576, §701(76)(A), substituted "the Administrator" for "he" before "may deem proper".

Subsec. (b). Pub. L. 99-576, §§505, 701(76)(B), substituted "the trust of such guardian, curator, conservator, or other person" for "his trust" in first sentence, substituted "the Administrator's" for "his duly" in first sentence, substituted "the Administrator's" for "his" in second and third sentences, substituted "the Administrator" for "himself" in third sentence, and inserted after second sentence "The Administrator may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary)."

Subsec. (d). Pub. L. 99-576, §701(76)(C), substituted "the veteran's" for "his" in second sentence, substituted "the beneficiary's" for "his" in third sentence, and in fourth sentence substituted "the beneficiary" for "him", "the beneficiary" for "he", and "the beneficiary's" for "his" in six places.

Subsec. (e). Pub. L. 99-576, §701(76)(D), struck out "his" before "last legal residence".

1984—Pub. L. 98-223, §207(b)(1), substituted "fiduciaries" for "guardians" in section catchline.

Subsec. (a). Pub. L. 98-223, §207(a), designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (d). Pub. L. 97-295 substituted "August 7, 1959," for "the date of enactment of this sentence".

1974—Subsec. (a). Pub. L. 93-295, §301(a), among other changes, substituted provisions authorizing the Administrator, where it appears to him that the interests of the beneficiary would be served thereby, to pay benefits directly to the beneficiary or to a relative or some other person for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary, for provisions which authorized payments to the guardians, curators, conservators, or persons otherwise legally vested with the care or estate of the minor or of a person mentally incompetent or under other legal disability, and eliminated provisions which permitted payment of benefits direct to the person entitled thereto prior to receipt of notice that such person is under a legal disability adjudged by a court, and which permitted the Administrator to determine the person legally vested with the care of the claimant or his estate where no guardian, curator or conservator has been appointed.

Subsec. (c). Pub. L. 93-295, §301(b), substituted "fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Veterans' Administration" for "guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate", and "such benefits" for "such estates".

Subsec. (e). Pub. L. 93-295, §301(c), substituted "hands of a fiduciary appointed by a State court or the Veterans' Administration derived from" for "hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from", and "such fiduciary" for "such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate".

Subsecs. (f), (g). Pub. L. 93-295, §301(d), repealed subsec. (f) which permitted the Administrator, in the case of any incompetent veteran having no guardian, to pay compensation, pension or retirement pay to the wife of such veteran for the use of the veteran and his dependents, and subsec. (g) which permitted payment of death benefits to a widow for herself and child or children, if any, notwithstanding that she may be a minor.

1972—Subsec. (d). Pub. L. 92-328 inserted provisions relating to filing for death benefit payments.

1959—Subsec. (d). Pub. L. 86-146 provided for payment, upon death of an incompetent veteran, of gratuitous benefits deposited in the personal funds of patients trust fund to surviving spouse, children or parents, for deposit of balance to credit of applicable current appropriation and for reimbursement of expenses of last sickness and burial.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-454 effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as a note under section 5312 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-295 effective first day of second calendar month following May 31, 1974, see section 401 of Pub. L. 93-295, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective first day of second calendar month which begins after June 30, 1972, see section 301(a) of Pub. L. 92-328, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of Pub. L. 86-146 provided that: "The amendments made by this Act [amending this section and section 3203 [now 5503] of this title] shall take effect as of the first day of the first calendar month which begins more than ninety days after the date of enactment of this Act [Aug. 7, 1959]."

### § 5503. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(B) Except as provided in subparagraph (D) of this paragraph, where any veteran having neither spouse nor child is being furnished nursing home care by the Department, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. Any amount in excess of

\$90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.

(C) No pension in excess of \$90 per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care described in subparagraph (A) or (B) of this paragraph and furnished by the Department if such veteran is readmitted within six months of a period of care in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph.

(D) In the case of a veteran being furnished nursing home care by the Department and with respect to whom subparagraph (B) of this paragraph requires a reduction in pension, such reduction shall not be made for a period of up to three additional calendar months after the last day of the third month referred to in such subparagraph if the Secretary determines that the primary purpose for the furnishing of such care during such additional period is for the Department to provide such veteran with a prescribed program of rehabilitation services, under chapter 17 of this title, designed to restore such veteran's ability to function within such veteran's family and community. If the Secretary determines that it is necessary, after such period, for the veteran to continue such program of rehabilitation services in order to achieve the purposes of such program and that the primary purpose of furnishing nursing home care to the veteran continues to be the provision of such program to the veteran, the reduction in pension required by subparagraph (B) of this paragraph shall not be made for the number of calendar months that the Secretary determines is necessary for the veteran to achieve the purposes of such program.

(2) The provisions of paragraph (1) shall also apply to a veteran being furnished such care who has a spouse but whose pension is payable under section 1521(b) of this title. In such a case, the Secretary may apportion and pay to the spouse, upon an affirmative showing of hardship, all or any part of the amounts in excess of the amount payable to the veteran while being furnished such care which would be payable to the veteran if pension were payable under section 1521(c) of this title.

(b) Notwithstanding any other provision of this section or any other provision of law, no reduction shall be made in the pension of any veteran for any part of the period during which the veteran is furnished hospital treatment, or institutional or domiciliary care, for Hansen's disease, by the United States or any political subdivision thereof.

(c) Where any veteran in receipt of an aid and attendance allowance described in section 1114(r) of this title is hospitalized at Government expense, such allowance shall be discontinued from the first day of the second calendar month which begins after the date of the veteran's admission for such hospitalization for so long as

such hospitalization continues. Any discontinuance required by administrative regulation, during hospitalization of a veteran by the Department, of increased pension based on need of regular aid and attendance or additional compensation based on need of regular aid and attendance as described in subsection (l) or (m) of section 1114 of this title, shall not be effective earlier than the first day of the second calendar month which begins after the date of the veterans' admission for hospitalization. In case a veteran affected by this subsection leaves a hospital against medical advice and is thereafter admitted to hospitalization within six months from the date of such departure, such allowance, increased pension, or additional compensation, as the case may be, shall be discontinued from the date of such readmission for so long as such hospitalization continues.

(d)(1) For the purposes of this subsection—

(A) the term "Medicaid plan" means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

(B) the term "nursing facility" means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r), other than a facility that is a State home with respect to which the Secretary makes per diem payments for nursing home care pursuant to section 1741(a) of this title.

(2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility.

(3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

(4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

(5) The provisions of this subsection shall apply with respect to a surviving spouse having no child in the same manner as they apply to a veteran having neither spouse nor child.

(6) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(7) This subsection expires on September 30, 2011.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1234, §3203; Pub. L. 86-146, §§1(b), 2, Aug. 7, 1959, 73 Stat. 298; Pub. L. 86-211, §6, Aug. 29, 1959, 73 Stat. 435; Pub. L. 87-544, §1, July 25, 1962, 76 Stat. 208; Pub. L. 87-556, §1, July 27, 1962, 76 Stat. 245; Pub. L. 87-645, §2(b), Sept. 7, 1962, 76 Stat. 441; Pub. L.

88-450, §5(a), Aug. 19, 1964, 78 Stat. 504; Pub. L. 89-362, §§1, 2, Mar. 7, 1966, 80 Stat. 30; Pub. L. 91-24, §10, June 11, 1969, 83 Stat. 34; Pub. L. 92-328, title I, §104, June 30, 1972, 86 Stat. 394; Pub. L. 93-177, §5, Dec. 6, 1973, 87 Stat. 696; Pub. L. 95-588, title III, §307, Nov. 4, 1978, 92 Stat. 2510; Pub. L. 96-385, title V, §503(b), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 97-66, title VI, §602, Oct. 17, 1981, 95 Stat. 1034; Pub. L. 98-160, title VII, §703(4), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-543, title IV, §402(a), Oct. 24, 1984, 98 Stat. 2749; Pub. L. 99-576, title VII, §701(77), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 101-237, title I, §111(a), Dec. 18, 1989, 103 Stat. 2064; Pub. L. 101-508, title VIII, §8003(a), Nov. 5, 1990, 104 Stat. 1388-342; renumbered §5503 and amended Pub. L. 102-40, title III, §304(a), title IV, §402(b)(1), May 7, 1991, 105 Stat. 209, 238; Pub. L. 102-83, §§4(a)(2)(A)(x), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 102-86, title I, §101(a), Aug. 14, 1991, 105 Stat. 414; Pub. L. 102-568, title VI, §601(a)-(c), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103-66, title XII, §12005, Aug. 10, 1993, 107 Stat. 414; Pub. L. 105-33, title VIII, §8015, Aug. 5, 1997, 111 Stat. 664; Pub. L. 105-368, title IX, §904(a), Nov. 11, 1998, 112 Stat. 3361; Pub. L. 106-419, title III, §304, title IV, §402(e), Nov. 1, 2000, 114 Stat. 1853, 1863; Pub. L. 107-103, title II, §204(a), title V, §504, Dec. 27, 2001, 115 Stat. 990, 995.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 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

2001—Subsecs. (b), (c). Pub. L. 107-103, §204(a), redesignated subsecs. (d) and (e) as (b) and (c), respectively, and struck out former subsecs. (b) and (c), which read as follows:

“(b)(1)(A) In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Secretary in accordance with regulations as being incompetent, and the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home), from any source equals or exceeds the amount equal to five times the section 1114(j) rate, further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to one-half that amount.

“(B) The amount which would be payable but for this paragraph shall be paid to the veteran in a lump sum; however, no payment of a lump sum herein authorized shall be made to the veteran until after the expiration of six months following a finding of competency and in the event of the veterans' death before payment of such lump sum no part thereof shall be payable.

“(C) The Secretary may waive the discontinuance under this paragraph of payments to a veteran with respect to not more than 60 days of care of the veteran during any calendar year if the Secretary determines that the waiver is necessary in order to avoid a hardship for the veteran. Any such waiver shall be made pursuant to regulations which the Secretary shall prescribe.

“(D) For purposes of this paragraph, the term 'section 1114(j) rate' means the monthly rate of compensation in effect under section 1114(j) of this title for a veteran with a service-connected disability rated as total.

“(2) Where any benefit is discontinued by reason of paragraph (1) of this subsection the Secretary may nevertheless apportion and pay to the dependent parents of the veteran on the basis of need all or any part of the benefit which would otherwise be payable to or for such incompetent veteran. Paragraph (1) of this subsection shall not prevent the payment, out of any remaining amounts discontinued under that paragraph, on account of any veteran of so much of the veteran's pension, compensation, or retirement pay as equals the amount charged to the veteran for the veteran's current care and maintenance in the institution in which treatment or care is furnished the veteran, but not more than the amount determined by the Secretary to be the proper charge as fixed by any applicable statute or valid administrative regulation.

“(3) All or any part of the pension, compensation, or retirement pay payable on account of any incompetent veteran who is being furnished hospital treatment, institutional or domiciliary care may, in the discretion of the Secretary, be paid to the chief officer of the institution wherein the veteran is being furnished such treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran.

“(c) Any veteran subject to the provisions of subsection (b) shall be deemed to be single and without dependents in the absence of satisfactory evidence to the contrary. In no event shall increased compensation, pension, or retirement pay of such veteran be granted for any period more than one year before receipt of satisfactory evidence showing such veteran has a spouse, child, or dependent parent.”

Subsec. (d). Pub. L. 107-103, §§204(a)(2), 504, redesignated subsec. (f) as (d) and substituted “September 30, 2011” for “September 30, 2008” in par. (7). Former subsec. (d) redesignated (b).

Subsecs. (e), (f). Pub. L. 107-103, §204(a)(2), redesignated subsecs. (e) and (f) as (c) and (d), respectively.

2000—Subsec. (b)(1)(A). Pub. L. 106-419, §304(1), substituted “the amount equal to five times the section 1114(j) rate” for “\$1,500” and “one-half that amount” for “\$500”.

Subsec. (b)(1)(D). Pub. L. 106-419, §304(2), added subpar. (D).

Subsec. (f)(7). Pub. L. 106-419, §402(e), substituted “September 30, 2008” for “September 30, 2002”.

1998—Subsec. (a)(1)(B). Pub. L. 105-368 substituted “Any” for “Effective through September 30, 1997, any” in second sentence.

1997—Subsec. (f)(7). Pub. L. 105-33 substituted “September 30, 2002” for “September 30, 1998”.

1993—Subsec. (f)(7). Pub. L. 103-66 substituted “1998” for “1997”.

1992—Subsec. (a)(1)(B). Pub. L. 102-568, §601(c), inserted at end “Effective through September 30, 1997, any amount in excess of \$90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.”

Subsec. (f)(5), (6). Pub. L. 102-568, §601(a), added par. (5) and redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (f)(7). Pub. L. 102-568, §601(b), substituted “1997” for “1992”.

Pub. L. 102-568, §601(a)(1), redesignated par. (6) as (7). 1991—Pub. L. 102-40, §402(b)(1), renumbered section 3203 of this title as this section.

Subsec. (a)(1)(A), (B). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

Subsec. (a)(1)(C). Pub. L. 102-86 substituted “\$90” for “\$60”.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

Subsec. (a)(1)(D). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans' Administration” in two places.

Subsec. (a)(2). Pub. L. 102-83, §5(c)(1), substituted “1521(b)” and “1521(c)” for “521(b)” and “521(c)”, respectively.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(1)(A). Pub. L. 102-83, §4(a)(2)(A)(x), substituted “Secretary” for “Veterans' Administration”.

Subsec. (b)(1)(C), (2), (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (e). Pub. L. 102-83, §5(c)(1), substituted “1114(r)” and “1114” for “314(r)” and “314”, respectively.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

Subsec. (f)(1)(B). Pub. L. 102-83, §5(c)(1), substituted “1741(a)” for “641(a)”.

Pub. L. 102-40, §304(a), inserted before period at end “, other than a facility that is a State home with respect to which the Secretary makes per diem payments for nursing home care pursuant to section 641(a) of this title”.

1990—Subsec. (f). Pub. L. 101-508 added subsec. (f).

1989—Subsec. (a)(1). Pub. L. 101-237, §111(a), substituted “\$90” for “\$60” in subpars. (A) and (B), substituted “third” for “second” in subpar. (A), and struck out “hospital or” before “nursing home care” wherever appearing in subpars. (B) and (D).

1986—Subsec. (e). Pub. L. 99-576 substituted “the veteran's” for “his” before “admission”.

1984—Subsec. (b)(1). Pub. L. 98-543 designated first and second sentences as subpars. (A) and (B), respectively, and in subpar. (A), as so designated, substituted “or” for the comma after “treatment”, struck out “by reason of mental illness” after “as being incompetent”, inserted “(excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home),” after “the veteran's estate”, and added subpar. (C).

1983—Subsec. (a)(2). Pub. L. 98-160, §703(4)(A), (B), substituted “spouse” for “wife”, and “the veteran” for “him”.

Subsec. (b)(1). Pub. L. 98-160, §703(4)(A), (C), substituted “spouse” for “wife” and “the veteran's” for “his”.

Subsec. (b)(2). Pub. L. 98-160, §703(4)(B), (C), substituted “the veteran” for “him”, and “the veteran's” for “his”.

Subsec. (c). Pub. L. 98-160, §703(4)(A), substituted “spouse” for “wife”.

Subsec. (d). Pub. L. 98-160, §703(4)(D), substituted “the veteran” for “he”.

1981—Subsec. (a)(1)(B). Pub. L. 97-66, §602(1), substituted “Except as provided in subparagraph (D) of this paragraph, where” for “Where”.

Subsec. (a)(1)(D). Pub. L. 97-66, §602(2), added subpar. (D).

1980—Subsec. (a)(1)(C). Pub. L. 96-385 substituted “in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph” for “of not less than two full calendar months”.

1978—Subsec. (a)(1). Pub. L. 95-588 revised and restructured par. (1) and, as so restructured, raised the maximum pension to be paid to a veteran being furnished institutional care who has neither wife nor child from \$50 per month to \$60 per month.

1973—Subsec. (a)(1). Pub. L. 93-177 substituted “\$50” for “\$30”.

1972—Subsec. (a). Pub. L. 92-328, §104(a), (b), redesignated subsec. (d) as (a). Former subsec. (a), which related to payment of compensation or retirement pay to veterans being furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration, was struck out.

Subsec. (b)(1). Pub. L. 92-328, §104(c), redesignated par. (2) as (1) and inserted provisions relating to the rating by the Veterans' Administration of a veteran as incompetent by reason of mental illness and provisions

relating to the payment of a lump sum to the veteran until after the expiration of six months following the finding of competency of the veteran. Former par. (1), which related to the payment of compensation or retirement pay pursuant to the provisions of subsec. (a) of this section to veterans rated by the Veterans' Administration as incompetent, was struck out.

Subsec. (b)(2). Pub. L. 92-328, §104(c), (d), redesignated par. (3) as (2) and substituted "(1)" for "(2)" wherever appearing. Former par. (2) redesignated (1).

Subsec. (b)(3), (4). Pub. L. 92-328, §104(d), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (c). Pub. L. 92-328, §104(e), struck out "(a) or" after "subsection".

Subsec. (d). Pub. L. 92-328, §104(b), (f), redesignated subsec. (e) as (d) and struck out ", compensation, or retirement pay" after "pension". Former subsec. (d) redesignated (a).

Subsecs. (e), (f). Pub. L. 92-328, §104(f), (g), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1969—Subsec. (d)(2). Pub. L. 91-24 substituted "the amount payable to the veteran while being furnished such care which would be payable to him if pension were payable under section 521(c) of this title" for "\$30 per month which would be payable to the veteran while being furnished such care if pension were payable to him under section 521(c) of this title".

1966—Subsec. (a)(1). Pub. L. 89-362, §1, limited the application of the rule requiring immediate reduction of withheld benefits following discharge against medical advice or as a result of disciplinary action to situations where the readmission occurs within 6 months following prior termination of the hospitalization or institutional care.

Subsec. (f). Pub. L. 89-362, §2, limited the application of the rule requiring discontinuance of aid and attendance allowance upon readmission following departure from a hospital against medical advice to situations where the readmission occurs within 6 months following prior termination of the hospitalization.

1964—Subsec. (f). Pub. L. 88-450 directed that any discontinuance required by administrative regulation, during hospitalization of a veteran by the Veterans' Administration, of increased pension based on need of regular aid and attendance as described in subsection (l) or (m) of section 314 of this title, shall not be effective earlier than the first day of the second calendar month which begins after the date of the veteran's admission for hospitalization, and authorized discontinuance of the increased pension or additional compensation of a veteran upon readmission if he left a hospital against medical advice.

1962—Subsec. (a)(2)(A). Pub. L. 87-544 removed brothers, sisters, and nondependent parents from the permitted class of beneficiaries.

Subsec. (d)(1). Pub. L. 87-556, §1(1), limited par. (1) to veterans having neither wife nor child.

Subsec. (d)(2). Pub. L. 87-556, §1(2), substituted provisions making par. (1) applicable to a veteran having a wife but whose pension is payable under section 521(b) of this title, and in such case, authorized the Administrator to pay to the wife, upon an affirmative showing of hardship, all or any part of the amounts in excess of \$30 per month payable to the veteran under section 521(c) of this title, for provisions which permitted the Administrator, to pay to the wife or children of a veteran, the balance of the pension he would receive but for par. (1) of this section.

Subsec. (f). Pub. L. 87-645 added subsec. (f).

1959—Subsec. (a)(1). Pub. L. 86-211, §6(1), struck out references to pensions.

Subsec. (a)(2)(B). Pub. L. 86-146, §1(b), inserted "under the last two sentences of section 3202(d) of this title or" before "under this paragraph" in two places.

Subsec. (b). Pub. L. 86-146, §2, inserted "to the veteran" and "and in the event of the veterans' death before payment of such lump sum no part thereof shall be payable" in par. (1); substituted "in which such an incompetent veteran having neither wife nor child is being furnished hospital treatment, institutional or

domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, and his estate from any source equals or exceeds \$1,500, further payments of pension, compensation, or emergency officers' retirement pay" and "paragraph" for "where the estate of such incompetent veteran derived from any source equals or exceeds \$1,500, further payments of such benefits (except retired pay, but including emergency officers' retirement pay" and "subsection" and inserted "before payment of such lump sum" in par. (2); added par. (3); and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 86-211, §6(1), struck out reference to pension of a veteran.

Subsecs. (d), (e). Pub. L. 86-211, §6(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-368, title IX, §904(b), Nov. 11, 1998, 112 Stat. 3361, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of October 1, 1997."

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 601(d) of Pub. L. 102-568 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1992, and shall apply with respect to months after September 1992. The amendment made by subsection (c) [amending this section] shall take effect on November 1, 1992, and shall apply with respect to months after October 1992."

#### EFFECTIVE DATE OF 1991 AMENDMENTS

Section 101(b) of Pub. L. 102-86 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if contained in section 111 of the Veterans' Benefits Amendments of 1989 (Public Law 101-237; 103 Stat. 2064)."

Section 304(b) of Pub. L. 102-40 provided that: "The amendment made by subsection (a) [amending this section] shall apply as if included in the amendment made by section 8003(a) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-874)."

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 8003(b) of Pub. L. 101-508 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on November 1, 1990, or the date of the enactment of this Act [Nov. 5, 1990], whichever is later."

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 111(b) of Pub. L. 101-237 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on February 1, 1990."

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 effective Oct. 17, 1981, and applicable with respect to veterans admitted to a Veterans' Administration hospital or nursing home on or after such date, see section 701(b)(5) of Pub. L. 97-66, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-385 effective Oct. 1, 1980, see section 601(b) of Pub. L. 96-385, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-588 effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-177 effective Jan. 1, 1974, see section 8 of Pub. L. 93-177, set out as a note under section 1521 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective first day of second calendar month which begins after June 30, 1972,

see section 301(a) of Pub. L. 92-328, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(b) of Pub. L. 88-450 provided that: "The amendment made by this section [amending this section] shall apply only with respect to compensation or pension based upon need of regular aid and attendance in the case of veterans admitted for hospitalization on or after the first day of the second calendar month which begins after the date of enactment of this Act [Aug. 19, 1964]."

#### EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87-645 effective first day of first calendar month which begins after Sept. 7, 1962, see section 4 of Pub. L. 87-645, set out as a note under section 1112 of this title.

Section 2(b) of Pub. L. 87-556 provided that: "The amendments made by this Act [amending this section] shall take effect on the first day of the first calendar month which begins more than thirty days after the date of enactment of this Act [July 27, 1962]."

#### EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86-211 effective July 1, 1960, see section 10 of Pub. L. 86-211, set out as a note under section 1521 of this title.

Amendment by Pub. L. 86-146 effective first day of first calendar month which begins more than ninety days after Aug. 7, 1959, see section 3 of Pub. L. 86-146, set out as a note under section 5502 of this title.

#### IMPROVEMENT IN PENSION PROGRAM ADMINISTRATION; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 99-166, title I, §108(d), Dec. 3, 1985, 99 Stat. 947, provided that (1) in order to improve timeliness of adjustments made pursuant to subsec. (a) of this section, in amount of pension being paid to a veteran being furnished nursing home care by Veterans' Administration, the Chief Medical Director [now Under Secretary for Health] of the Veterans' Administration was to develop improved procedures for notifying the Chief Benefits Director [now Under Secretary for Benefits] of the Veterans' Administration when a veteran is admitted to a nursing home, and (2) the Administrator was to submit to Committees on Veterans' Affairs of the Senate and House of Representatives a report, within 90 days, on development and implementation of such procedures.

#### REGULATIONS; WAIVER FOR HARDSHIP REASONS

Section 402(b) of Pub. L. 98-543 directed the Administrator to prescribe regulations under subsec. (b)(1)(C) of this section not later than 60 days after Oct. 24, 1984.

#### PAYMENT OF LUMP SUM COMPENSATION OR RETIREMENT PAY TO VETERANS WITHHELD PURSUANT TO PROVISIONS IN EFFECT ON THE DAY BEFORE THE EFFECTIVE DATE OF PUB. L. 92-328

Section 106 of Pub. L. 92-328 provided that: "All compensation or retirement pay which is being withheld pursuant to the provisions of subsections (a) and (b)(1) of section 3203 [now 5503], title 38, United States Code, in effect on the day before the effective date of this Act, shall be paid to the veteran, if competent, in a lump sum. If the veteran is incompetent, the withheld amounts shall be paid in a lump sum, or successive lump sums, subject to the \$1,500 and \$500 limitations of subsection (b)(1) of such section 3203 [now 5503] as amended by this Act. If a competent veteran dies before payment is made the withheld amounts shall be paid according to the order of precedence, and subject to the time limitation, of subsection (a)(2) of such section 3203 [now 5503] in effect the day before the effective date of this Act. In the event of the death of an incompetent veteran before payment of all withheld amounts, no part of the remainder shall be payable."

[For effective date of Pub. L. 92-328, see Effective Date of 1972 Amendment notes set out under sections 1114, 1134, and 3713 of this title.]

#### APPLICABILITY OF 1966 AMENDMENTS TO ANY PENSION ELIGIBILITY WHICH IS SUBJECT TO VETERANS' PEN- SION ACT OF 1959

Section 3 of Pub. L. 89-362 provided that: "The amendments made by this Act [amending this section] shall also apply to cases in which pension eligibility is subject to the provisions of section 9(b) of the Veterans' Pension Act of 1959 [set out as a note under section 1521 of this title]."

#### APPLICABILITY OF 1962 AMENDMENTS TO PERSONS NOT ELECTING PENSION UNDER VETERANS' ACT OF 1959

Section 2(a) of Pub. L. 87-556 provided that: "The amendments made by this Act [amending this section] shall not apply to cases in which pension is payable pursuant to sections 9(b) and (c) of the Veterans' Pension Act of 1959 [set out as notes under section 1521 of this title]."

Section 2 of Pub. L. 87-544 provided that: "The amendment made by this Act [amending this section] shall also apply to cases in which pension eligibility is subject to the provisions of section 9(b) of the Veterans' Pension Act of 1959 [set out as notes under section 1521 of this title]."

#### § 5504. Administration of trust funds

All cash balances in the personal funds of patients and the funds due incompetent beneficiaries trust funds administered by the Secretary, and all moneys received which are properly for deposit into these funds, may be deposited, respectively, into deposit fund accounts with the United States Treasury and such balances and deposits shall thereupon be available for disbursement for properly authorized purposes. When any balances have been on deposit with the Treasurer of the United States for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, they shall be transferred and disposed of as directed in section 1322(a) of title 31.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1235, § 3204; Pub. L. 97-258, §3(k)(5), Sept. 13, 1982, 96 Stat. 1065; renumbered §5504, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3204 of this title as this section.

Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1982—Pub. L. 97-258 substituted "section 1322(a) of title 31" for "the last proviso of subsection (a) of section 725s of title 31".

#### [§ 5505. Repealed. Pub. L. 103-446, title XII, § 1201(g)(4)(A), Nov. 2, 1994, 108 Stat. 4687]

Section, added Pub. L. 101-508, title VIII, §8001(a)(1), Nov. 5, 1990, 104 Stat. 1388-341, §3205; renumbered §5505, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238, related to limitation on compensation payments for certain incompetent veterans.

#### § 5506. Definition of "fiduciary"

For purposes of this chapter and chapter 61 of this title, the term "fiduciary" means—

(1) a person who is a guardian, curator, conservator, committee, or person legally vested

with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or

(2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary.

(Added Pub. L. 108-454, title V, §501(a)(1), Dec. 10, 2004, 118 Stat. 3617.)

#### EFFECTIVE DATE

Section effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 5507. Inquiry, investigations, and qualification of fiduciaries

(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

(A) to be conducted in advance of such certification;

(B) to the extent practicable, to include a face-to-face interview with such person; and

(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

(3) the furnishing of any bond that may be required by the Secretary.

(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

(A) the parent (natural, adopted, or step-parent) of a beneficiary who is a minor;

(B) the spouse or parent of an incompetent beneficiary;

(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title.

(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.

(Added Pub. L. 108-454, title V, §502(a), Dec. 10, 2004, 118 Stat. 3618.)

#### EFFECTIVE DATE

Section effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 5508. Periodic onsite reviews of institutional fiduciaries

In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total annual amount of such benefits exceeds \$50,000, as adjusted pursuant to section 5312 of this title.

(Added Pub. L. 108-454, title V, §504(a)(1), Dec. 10, 2004, 118 Stat. 3620.)

#### EFFECTIVE DATE

Section effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting

(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary

entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.

(Added Pub. L. 108-454, title V, §504(a)(1), Dec. 10, 2004, 118 Stat. 3621.)

#### EFFECTIVE DATE

Section effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 5510. Annual report

The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following: —<sup>1</sup>

- (1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).
- (2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).
- (3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.
- (4) The number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payees.
- (5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.
- (6) How such cases of misuse of benefits were addressed by the Secretary.
- (7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.
- (8) The number of fiduciary cases referred to the Office of the Inspector General and the nature of the actions taken by the Inspector General.
- (9) The total amount of money recovered by the government<sup>2</sup> in cases arising from the misuse of benefits by a fiduciary.
- (10) Such other information as the Secretary considers appropriate.

(Added Pub. L. 108-454, title V, §505(a), Dec. 10, 2004, 118 Stat. 3621.)

#### EFFECTIVE DATE

Section effective Dec. 10, 2004, see section 507(b)(1) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

## CHAPTER 57—RECORDS AND INVESTIGATIONS

### SUBCHAPTER I—RECORDS

Sec.  
5701. Confidential nature of claims.

Sec.  
5702. Furnishing of records.  
5703. Certification of records of District of Columbia.  
5704. Transcript of trial records.  
5705. Confidentiality of medical quality-assurance records.

### SUBCHAPTER II—INVESTIGATIONS

5711. Authority to issue subpoenas.  
5712. Validity of affidavits.  
5713. Disobedience to subpoena.

#### AMENDMENTS

1991—Pub. L. 102-54, §14(d)(5)(B), (6)(C), June 13, 1991, 105 Stat. 286, amended table of sections at beginning of chapter as in effect immediately before the enactment of Pub. L. 102-40 by substituting "subpoenas" for "subpenas" in item 3311 and "subpoena" for "subpena" in item 3313.

Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3301 to 3313 as 5701 to 5713, respectively.

1980—Pub. L. 96-385, title V, §505(b), Oct. 7, 1980, 94 Stat. 1537, added item 3305.

### SUBCHAPTER I—RECORDS

#### § 5701. Confidential nature of claims

(a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the Department shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.

(b) The Secretary shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:

(1) To a claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone when, in the judgment of the Secretary, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 5109 or 7109 of this title.

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental competency of a claimant.

(5) In any suit or other judicial proceeding when in the judgment of the Secretary such disclosure is deemed necessary and proper.

(6) In connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Secretary when in the judgment of the Secretary such disclosure is deemed necessary and proper.

(c)(1) The amount of any payment made by the Secretary to any person receiving benefits under a program administered by the Secretary shall

<sup>1</sup> So in original.

<sup>2</sup> So in original. Probably should be capitalized.

be made known to any person who applies for such information.

(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Secretary in connection with any loan guaranteed, insured, or made under chapter 37 of this title shall be made available to any person who applies for such report or certificate.

(3) Subject to the approval of the President, the Secretary may publish at any time and in any manner any or all information of record pertaining to any claim filed with the Secretary if the Secretary determines that the public interest warrants or requires such publication.

(d) The Secretary as a matter of discretion may authorize an inspection of Department records by duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Secretary may release information, statistics, or reports to individuals or organizations when in the Secretary's judgment such release would serve a useful purpose.

(f) The Secretary may, pursuant to regulations the Secretary shall prescribe, release the name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Secretary pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of any subsequent offense.

(g)(1) Subject to the provisions of this subsection, and under regulations which the Secretary shall prescribe, the Secretary may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a dependent of a present or former member of the Armed Forces, to a consumer reporting agency if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection concerning a person described in such paragraph may be made for the purpose of—

(A) locating such a person—

(i) who has been administratively determined to be indebted to the United States by virtue of the person's participation in a benefits program administered by the Secretary; or

(ii) if the Secretary has determined under such regulations that (I) it is necessary to

locate such person in order to conduct a study pursuant to section 527 of this title or a study required by any other provision of law, and (II) all reasonable steps have been taken to assure that the release of such information to such reporting agency will not have an adverse effect on such person; or

(B) obtaining a consumer report in order to assess the ability of a person described in subparagraph (A)(i) of this paragraph to repay the indebtedness of such person to the United States, but the Secretary may release the name or address of such person for the purpose stated in this clause only if the Secretary determines under such regulations that such person has failed to respond appropriately to administrative efforts to collect such indebtedness.

(3) The Secretary may also release to a consumer reporting agency, for the purposes specified in subparagraph (A) or (B) of paragraph (2) of this subsection, such other information as the Secretary determines under such regulations is reasonably necessary to identify a person described in such paragraph, except that the Secretary may not release to a consumer reporting agency any information which indicates any indebtedness on the part of such person to the United States or any information which reflects adversely on such person. Before releasing any information under this paragraph, the Secretary shall, under such regulations, take reasonable steps to provide for the protection of the personal privacy of persons about whom information is proposed to be released under this paragraph.

(4)(A) If the Secretary determines, under regulations which the Secretary shall prescribe, that a person described in paragraph (1) of this subsection has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness of such person described in paragraph (2)(A)(i) of this subsection, the Secretary may release information concerning the indebtedness, including the name and address of such person, to a consumer reporting agency for the purpose of making such information available for inclusion in consumer reports regarding such person and, if necessary, for the purpose of locating such person, if—

(i) the Secretary has (I) made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 5302 of this title, (II) afforded such person a reasonable opportunity to exercise such rights, and (III) made a determination with respect to any such dispute or request; and

(ii) thirty calendar days have elapsed after the day on which the Secretary has made a determination that reasonable efforts have been made to notify such person (I) that the Secretary intends to release such information for such purpose or purposes, and (II) that, upon the request of such person, the Secretary shall inform such person of whether such information has been so released and of the name and address of each consumer reporting agency to

which such information was released by the Secretary and of the specific information so released.

(B) After release of any information under subparagraph (A) of this paragraph concerning the indebtedness of any person, the Secretary shall promptly notify—

(i) each consumer reporting agency to which such information has been released by the Secretary; and

(ii) each consumer reporting agency described in subsection (i)(3)(B)(i) of this section to which such information has been transmitted by the Secretary through a consumer reporting agency described in subsection (i)(3)(B)(ii)(I) of this section,

of any substantial change in the status or amount of such indebtedness and, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly verify or correct, as appropriate, such information. The Secretary shall also, after the release of such information, inform such person, upon the request of such person, of the name and address of each consumer reporting agency described in clause (i) or (ii) of this subparagraph to which such information was released or transmitted by the Secretary and of the specific information so released or transmitted.

(h)(1) Under regulations which the Secretary shall prescribe, the Secretary may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a dependent of a present or former member of the Armed Forces (and other information relating to the identity of such person), to any person in a category of persons described in such regulations and specified in such regulations as a category of persons to whom such information may be released, if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection may be made for the purpose of—

(A) determining the creditworthiness, credit capacity, income, or financial resources of a person who has (i) applied for any benefit under chapter 37 of this title, or (ii) submitted an offer to the Secretary for the purchase of property acquired by the Secretary under section 3720(a)(5) of this title;

(B) verifying, either before or after the Secretary has approved a person's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title, information submitted by a lender to the Secretary regarding the creditworthiness, credit capacity, income, or financial resources of such person;

(C) offering for sale or other disposition by the Secretary, pursuant to section 3720 of this title, any loan or installment sale contract owned or held by the Secretary; or

(D) providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits if the Secretary promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made.

(i)(1) No contract entered into for any of the purposes of subsection (g) or (h) of this section, and no action taken pursuant to any such contract or either such subsection, shall result in the application of section 552a of title 5 to any consumer reporting agency or any employee of a consumer reporting agency.

(2) The Secretary shall take reasonable steps to provide for the protection of the personal privacy of persons about whom information is disclosed under subsection (g) or (h) of this section.

(3) For the purposes of this subsection and of subsection (g) of this section—

(A) The term "consumer report" has the meaning provided such term in subsection (d) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

(B) The term "consumer reporting agency" means—

(i) a consumer reporting agency as such term is defined in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or

(ii) any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies (as defined in clause (i) of this paragraph), or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies.

(j) Except as provided in subsection (i)(1) of this section, any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1236, § 3301; Pub. L. 87-671, § 2, Sept. 19, 1962, 76 Stat. 557; Pub. L. 91-24, § 11, June 11, 1969, 83 Stat. 34; Pub. L. 92-540, title IV, § 412, Oct. 24, 1972, 86 Stat. 1093; Pub. L. 94-321, § 1(a), June 29, 1976, 90 Stat. 713; Pub. L. 94-581, title II, § 210(b), Oct. 21, 1976, 90 Stat. 2863; Pub. L. 96-466, title VI, § 606, Oct. 17, 1980, 94 Stat. 2212; Pub. L. 101-94, title III, § 302(a), Aug. 16, 1989, 103 Stat. 628; renumbered § 5701 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§ 2(c)(6), 4(a)(1), (2)(A)(xi), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 402-406; Pub. L. 107-14, § 8(a)(13), June 5, 2001, 115 Stat. 35.)

#### AMENDMENTS

2001—Subsec. (g)(2)(B). Pub. L. 107-14 substituted "subparagraph (A)(i)" for "clause (A)(i)".

Subsec. (g)(3). Pub. L. 107-14 substituted "subparagraph (A) or (B)" for "clause (A) or (B)".

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3301 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

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

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and in pars. (1), (5), and (6).

Pub. L. 102-83, § 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in par. (6).

Pub. L. 102-40, § 402(d)(1), substituted "5109" and "7109" for "3009" and "4009", respectively, in par. (1).

Subsec. (c)(1). Pub. L. 102-83, § 4(a)(2)(A)(xi), substituted "Secretary" for first reference to "Veterans' Administration".

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

Subsec. (c)(2). Pub. L. 102-83, § 4(a)(2)(A)(xi), substituted "Secretary" for "Veterans' Administration".

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

Pub. L. 102-83, § 4(a)(2)(A)(xi), substituted "Secretary" for "Veterans' Administration" after "with the".

Subsec. (d). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (e). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's".

Subsec. (f). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

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

Subsec. (g)(2)(A)(i). Pub. L. 102-83, § 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (g)(2)(A)(ii). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, § 2(c)(6), substituted "section 527" for "section 219".

Subsec. (g)(2)(B), (3), (4). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (g)(4)(A)(i). Pub. L. 102-40, § 402(d)(1), substituted "5302" for "3102".

Subsec. (h). Pub. L. 102-83, § 5(c)(1), substituted "3720(a)(5)" for "1820(a)(5)" in par. (2)(A) and "3720" for "1820" in par. (2)(C).

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (i)(2). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1989—Subsec. (b)(1). Pub. L. 101-94 substituted "section 3009 or 4009" for "section 4009".

1980—Subsec. (a). Pub. L. 96-466, § 606(a), substituted "members of the Armed Forces" for "personnel of the armed services".

Subsec. (b)(6). Pub. L. 96-466, § 606(b), added par. (6).

Subsec. (c). Pub. L. 96-466, § 606(c), designated existing provisions as pars. (1) and (3) with minor changes in language, and in par. (1) as so designated, substituted reference to the amount of any payment made by the Veterans' Administration to any person receiving benefits under a program administered by the Veterans' Administration for reference to the amount of pension, compensation, or dependency and indemnity compensation of any beneficiary, and added par. (2).

Subsec. (f). Pub. L. 96-466, § 606(d), substituted "name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces" for "names or addresses, or both, of any present or former members of the Armed Forces, and/or their dependents" and "written request that such name or address" for "written request that such names or addresses".

Subsecs. (g) to (i). Pub. L. 96-466, § 606(e), added subsecs. (g) to (i). Former subsec. (g) redesignated (j).

Subsec. (j). Pub. L. 96-466, § 606(e), (f), redesignated former subsec. (g) as (j) and substituted "Except as provided in subsection (i)(1) of this section, any" for "Any".

1976—Subsec. (a). Pub. L. 94-321, § 1(a)(1), (2), designated introductory par. as subsec. (a) and as so designated, substituted "provided in this section." for "follows:".

Subsec. (b). Pub. L. 94-321, § 1(a)(2), added subsec. (b). Pars. (1) to (5), formerly set out following introductory par., became part of such subsec. (b).

Subsec. (b)(1). Pub. L. 94-581, § 210(b)(1), substituted "claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone" for "claimant or his duly authorized agent or representative as to matters concerning himself alone".

Subsec. (c). Pub. L. 94-321, § 1(a)(3), redesignated par. (6) as subsec. (c).

Subsec. (d). Pub. L. 94-581, § 210(b)(2), substituted "as a matter of discretion" for "in his discretion".

Pub. L. 94-321, § 1(a)(3), redesignated par. (7) as subsec. (d).

Subsec. (e). Pub. L. 94-581, § 210(b)(3), substituted "in the Administrator's judgment" for "in his judgment".

Pub. L. 94-321, § 1(a)(3), (4), redesignated par. (8) as subsec. (e) and substituted "Except as otherwise specifically provided in this section with respect to certain information, the" for "The".

Subsec. (f). Pub. L. 94-321, § 1(a)(3), (5), redesignated par. (9) as subsec. (f) and inserted provision relating to the release of information pursuant to this subsection to criminal or civil law enforcement governmental agencies and increased the penalty for misuse of such information to the status of a misdemeanor, with a fine of not more than \$5,000 for the first offense and not more than \$20,000 for any subsequent offense.

Subsec. (g). Pub. L. 94-321, § 1(a)(5), added subsec. (g).

1972—Pub. L. 92-540 in introductory provision inserted reference to the names and addresses of present or former personnel of the armed forces, and their dependents, in the possession of the Veterans' Administration, and added par. (9).

1969—Par. (1). Pub. L. 91-24 substituted "the claimant and to an independent" for "the claimant. And to an independent".

1962—Par. (1). Pub. L. 87-671 inserted provisions authorizing disclosure to an independent medical expert or experts for an advisory opinion pursuant to section 4009 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 302(c) of Pub. L. 101-94 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4092 [now 7292] of this title] shall take effect as if included in the Veterans' Judicial Review Act [div. A of Pub. L. 100-687]."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, except as otherwise specifically provided, see section 802(f) of Pub. L. 96-466, set out as an Effective Date note under section 5314 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

Section 1(b) of Pub. L. 94-321 provided that: "The amendments made by subsection (a) of this section with respect to subsection (f) (as redesignated by subsection (a)(3) of this section) of section 3301 [now 5701] of title 38, United States Code (except for the increase in criminal penalties for a violation of the second sentence of such subsection (f)), shall be effective with respect to names or addresses released on and after October 24, 1972."

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 4 of Pub. L. 87-671 provided that: "The amendments made by this Act [enacting section 4009 [now 7109] of this title and amending this section] shall be effective January 1, 1963."

### § 5702. Furnishing of records

(a) Any person desiring a copy of any record, paper, and so forth, in the custody of the Sec-

retary that may be disclosed under section 5701 of this title must submit to the Secretary an application in writing for such copy. The application shall state specifically—

(1) the particular record, paper, and so forth, a copy of which is desired and whether certified or uncertified; and

(2) the purpose for which such copy is desired to be used.

(b) The Secretary may establish a schedule of fees for copies and certification of such records.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1236, §3302; renumbered §5702 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(2)(A)(xii), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 103-446, title XII, §1201(e)(16), Nov. 2, 1994, 108 Stat. 4686.)

#### AMENDMENTS

1994—Pub. L. 103-446, §1201(e)(16)(A), (B), inserted “(a)” before “Any person desiring” and substituted “custody of the Secretary that may be disclosed under section 5701 of this title must submit to the Secretary an application in writing for such copy. The application shall state” for “custody of the Secretary, which may be disclosed under section 5701 of this title, must make written application therefor to the Secretary, stating”.

Subsec. (b). Pub. L. 103-446, §1201(e)(16)(C), which directed amendment of subsec. (c) by substituting “may establish” for “is authorized to fix”, was executed to subsec. (b) to reflect the probable intent of Congress, because the language sought to be amended appears in subsec. (b) and this section does not contain a subsec. (c).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3302 of this title as this section.

Pub. L. 102-83, §4(a)(2)(A)(xii), which directed amendment of subsec. (a) of this section by substituting “Secretary” for “Veterans’ Administration” in two places, was executed to the undesignated first par., to reflect the probable intent of Congress.

Pub. L. 102-40, §402(d)(1), substituted “5701” for “3301” in undesignated first par.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

### § 5703. Certification of records of District of Columbia

When a copy of any public record of the District of Columbia is required by the Secretary to be used in determining the eligibility of any person for benefits under laws administered by the Secretary, the official custodian of such public record shall without charge provide the applicant for such benefits or any person (including any veterans’ organization) acting on the veteran’s behalf or the authorized representative of the Secretary with a certified copy of such record.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, §3303; Pub. L. 99-576, title VII, §701(78), Oct. 28, 1986, 100 Stat. 3298; renumbered §5703, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (2)(A)(xiii), Aug. 6, 1991, 105 Stat. 403.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3303 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Veterans’ Administration” in two places and “administered by the Secretary” for “administered by the Veterans’ Administration”.

1986—Pub. L. 99-576 substituted “the veteran’s” for “his”.

### § 5704. Transcript of trial records

The Secretary may purchase transcripts of the record, including all evidence, of trial of litigated cases.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, §3304; renumbered §5704, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3304 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator”.

### § 5705. Confidentiality of medical quality-assurance records

(a) Records and documents created by the Department as part of a medical quality-assurance program (other than reports submitted pursuant to section 7311(g)<sup>1</sup> of this title) are confidential and privileged and may not be disclosed to any person or entity except as provided in subsection (b) of this section.

(b)(1) Subject to paragraph (2) of this subsection, a record or document described in subsection (a) of this section shall, upon request, be disclosed as follows:

(A) To a Federal agency or private organization, if such record or document is needed by such agency or organization to perform licensing or accreditation functions related to Department health-care facilities or to perform monitoring, required by statute, of Department health-care facilities.

(B) To a Federal executive agency or provider of health-care services, if such record or document is required by such agency or provider for participation by the Department in a health-care program with such agency or provider.

(C) To a criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or document be provided for a purpose authorized by law.

(D) To health-care personnel, to the extent necessary to meet a medical emergency affecting the health or safety of any individual.

(2) The name of and other identifying information regarding any individual patient or employee of the Department, or any other individual associated with the Department for purposes of a medical quality-assurance program, contained in a record or document described in subsection (a) of this section shall be deleted from any record or document before any disclosure made under this subsection if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

<sup>1</sup> See References in Text note below.

(3) No person or entity to whom a record or document has been disclosed under this subsection shall make further disclosure of such record or document except for a purpose provided in this subsection.

(4) Nothing in this section shall be construed as authority to withhold any record or document from a committee of either House of Congress or any joint committee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.

(5) Nothing in this section shall be construed as limiting the use of records and documents described in subsection (a) of this section within the Department (including contractors and consultants of the Department).

(6) Nothing in this section shall be construed as authorizing or requiring withholding from any person or entity the disclosure of statistical information regarding Department health-care programs (including such information as aggregate morbidity and mortality rates associated with specific activities at individual Department health-care facilities) that does not implicitly or explicitly identify individual patients or employees of the Department, or individuals who participated in the conduct of a medical quality-assurance review.

(c) For the purpose of this section, the term "medical quality-assurance program" means—

(1) with respect to any activity carried out before October 7, 1980, a Department systematic health-care review activity carried out by or for the Department for the purpose of improving the quality of medical care or improving the utilization of health-care resources in Department health-care facilities; and

(2) with respect to any activity carried out on or after October 7, 1980, a Department systematic health-care review activity designated by the Secretary to be carried out by or for the Department for either such purpose.

(d)(1) The Secretary shall prescribe regulations to carry out this section. In prescribing such regulations, the Secretary shall specify those activities carried out before October 7, 1980, which the Secretary determines meet the definition of medical quality-assurance program in subsection (c)(1) of this section and those activities which the Secretary has designated under subsection (c)(2) of this section. The Secretary shall, to the extent appropriate, incorporate into such regulations the provisions of the administrative guidelines and procedures governing such programs in existence on October 7, 1980.

(2) An activity may not be considered as having been designated as a medical quality-assurance program for the purposes of subsection (c)(2) of this section unless the designation has been specified in such regulations.

(e) Any person who, knowing that a document or record is a document or record described in subsection (a) of this section, willfully discloses such record or document except as provided for in subsection (b) of this section shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(Added Pub. L. 96-385, title V, §505(a), Oct. 7, 1980, 94 Stat. 1535, §3305; amended Pub. L. 99-166, title II, §201, Dec. 3, 1985, 99 Stat. 949; renumbered §5705 and amended Pub. L. 102-40, title IV, §§402(b)(1), 403(b)(2), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(d)(4), June 13, 1991, 105 Stat. 285; Pub. L. 102-83, §4(a)(2)(F), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### REFERENCES IN TEXT

Section 7311(g) of this title, referred to in subsec. (a), was repealed by Pub. L. 103-446, title XII, §1201(g)(5), Nov. 2, 1994, 108 Stat. 4687.

#### AMENDMENTS

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3305 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §403(b)(2), substituted "section 7311(g)" for "section 4152(b)".

Subsec. (b)(1)(A), (B). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsec. (b)(2). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-83, §4(a)(2)(F)(i), substituted "patient or employee of the Department" for "Veterans' Administration patient or employee".

Subsec. (b)(5). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Subsec. (b)(6). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-83, §4(a)(2)(F)(ii), substituted "patients or employees of the Department," for "Veterans' Administration patients or employees".

Subsec. (c)(1). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Pub. L. 102-54, §14(d)(4)(A), amended subsec. (c)(1) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "October 7, 1980" for "the date of the enactment of this section".

Subsec. (c)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-54, §14(d)(4)(A), amended subsec. (c)(2) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "October 7, 1980" for "the date of the enactment of this section".

Subsec. (d)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-54, §14(d)(4)(B)(i)-(iii), amended subsec. (d)(1) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "The" for "Not later than 180 days after the date of the enactment of this section, the" in first sentence, substituting "October 7, 1980," for "such enactment date" in second sentence, and striking out "existing" after "provisions of the" and inserting "in existence on October 7, 1980" after "such programs" in last sentence.

Subsec. (d)(2). Pub. L. 102-54, §14(d)(4)(B)(iv), amended subsec. (d)(2) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "An activity may not be considered" for "After the date on which such regulations are first prescribed, no activity shall be considered".

1985—Subsec. (a). Pub. L. 99-166, §201(1), inserted "(other than reports submitted pursuant to section 4152(b) of this title)" after "program".

Subsec. (b)(6). Pub. L. 99-166, §201(2), added par. (6).

#### EFFECTIVE DATE

Section effective Oct. 7, 1980, see section 601(d) of Pub. L. 96-385, set out as an Effective Date of 1980 Amendment note under section 1114 of this title.

## SUBCHAPTER II—INVESTIGATIONS

**§ 5711. Authority to issue subpoenas**

(a) For the purposes of the laws administered by the Secretary, the Secretary, and those employees to whom the Secretary may delegate such authority, to the extent of the authority so delegated, shall have the power to—

- (1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles from the place of hearing;
- (2) require the production of books, papers, documents, and other evidence;
- (3) take affidavits and administer oaths and affirmations;
- (4) aid claimants in the preparation and presentation of claims; and
- (5) make investigations and examine witnesses upon any matter within the jurisdiction of the Department.

(b) Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, §3311; renumbered §5711, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(5)(A), June 13, 1991, 105 Stat. 286.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3311 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by substituting “subpoenas” for “subpenas” in section catchline and amending text generally. Prior to amendment, text read as follows: “For the purposes of the laws administered by the Veterans’ Administration, the Administrator, and those employees to whom the Administrator may delegate such authority, to the extent of the authority so delegated, shall have the power to issue subpenas for and compel the attendance of witnesses within a radius of one hundred miles from the place of hearing, to require the production of books, papers, documents, and other evidence, to take affidavits, to administer oaths and affirmations, to aid claimants in the preparation and presentation of claims, and to make investigations and examine witnesses upon any matter within the jurisdiction of the Veterans’ Administration. Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States.”

**§ 5712. Validity of affidavits**

Any such oath, affirmation, affidavit, or examination, when certified under the hand of any such employee by whom it was administered or taken and authenticated by the seal of the Department, may be offered or used in any court of the United States and without further proof of the identity or authority of such employee shall have like force and effect as if administered or taken before a clerk of such court.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, §3312; renumbered §5712, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3312 of this title as this section.

Pub. L. 102-83 substituted “Department” for “Veterans’ Administration”.

**§ 5713. Disobedience to subpoena**

In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, §3313; renumbered §5713, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(6)(A), (B), June 13, 1991, 105 Stat. 286.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3313 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by substituting “subpoena” for “subpena” in section catchline and in two places in text.

**CHAPTER 59—AGENTS AND ATTORNEYS**

## Sec.

- |       |   |
|-------|---|
| 5901. | Prohibition against acting as claims agent or attorney. |
| 5902. | Recognition of representatives of organizations.        |
| 5903. | Recognition with respect to particular claims.          |
| 5904. | Recognition of agents and attorneys generally.          |
| 5905. | Penalty for certain acts.                               |

## AMENDMENTS

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3401 to 3405 as 5901 to 5905, respectively.

**§ 5901. Prohibition against acting as claims agent or attorney**

Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3401; Pub. L. 91-24, §12(a), June 11, 1969, 83 Stat. 34; Pub. L. 99-576, title VII, §701(79), Oct. 28, 1986, 100 Stat. 3298; renumbered §5901, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

## AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3401 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

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

1986—Pub. L. 99-576 substituted “such individual” for “he”.

1969—Pub. L. 91-24 substituted “Except as provided by section 500 of title 5, no individual may act” for “No individual may act”.

### § 5902. Recognition of representatives of organizations

(a)(1) The Secretary may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as the Secretary may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary may, in the discretion of the Secretary, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

(b) No individual shall be recognized under this section—

(1) unless the individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

(2) unless, with respect to each claim, such individual has filed with the Secretary a power of attorney, executed in such manner and form as the Secretary may prescribe.

(c)(1) Unless a claimant specifically indicates in a power of attorney filed with the Department a desire to appoint only a recognized representative of an organization listed in or approved under subsection (a), the Secretary may, for any purpose, treat the power of attorney naming such an organization, a specific office of such an organization, or a recognized representative of such an organization as the claimant's representative as an appointment of the entire organization as the claimant's representative.

(2) Whenever the Secretary is required or permitted to notify a claimant's representative, and the claimant has named in a power of attorney an organization listed in or approved under subsection (a), a specific office of such an organization, or a recognized representative of such an organization without specifically indicating a desire to appoint only a recognized representative of the organization, the Secretary shall notify the organization at the address designated by the organization for the purpose of receiving the notification concerned.

(d) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted member of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3402; Pub. L. 91-24, §12(b), June 11, 1969, 83 Stat. 34; Pub. L. 98-160, title VII, §703(5), Nov. 21, 1983, 97 Stat. 1010; renumbered §5902, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 104-275, title V, §508(a), Oct. 9, 1996, 110 Stat. 3343.)

#### AMENDMENTS

1996—Subsecs. (c), (d). Pub. L. 104-275 added subsec. (c) and redesignated former subsec. (c) as (d).

1991—Pub. L. 102-40 renumbered section 3402 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

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

Subsecs. (a)(2), (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

1983—Subsec. (a)(1). Pub. L. 98-160, §703(5)(A), substituted “the Administrator” for “he”.

Subsec. (a)(2). Pub. L. 98-160, §703(5)(B), substituted “the discretion of the Administrator” for “his discretion”.

Subsec. (b)(1). Pub. L. 98-160, §703(5)(C), substituted “the individual” for “he”.

Subsec. (c). Pub. L. 98-160, §703(5)(D), substituted “member” for “man”.

1969—Subsec. (c). Pub. L. 91-24 substituted “sections 203, 205, 206 or 207 of title 18” for “section 281 or 283 of title 18, or a violation of section 99 of title 5”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 508(b) of Pub. L. 104-275 provided that: “The amendments made by this section [amending this section] apply to any power of attorney filed with the Department of Veterans Affairs, regardless of the date of its execution.”

### § 5903. Recognition with respect to particular claims

The Secretary may recognize any individual for the preparation, presentation, and prosecution of any particular claim for benefits under any of the laws administered by the Secretary if—

(1) such individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with such claim; and

(2) such individual has filed with the Secretary a power of attorney, executed in such manner and in such form as the Secretary may prescribe.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3403; renumbered §5903, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3403 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in introductory provisions and wherever appearing in pars. (1) and (2).

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans' Administration” in introductory provisions.

### § 5904. Recognition of agents and attorneys generally

(a) The Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. The Secretary may require that individuals, before being recognized under this section, show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims.

(b) The Secretary, after notice and opportunity for a hearing, may suspend or exclude from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney—

- (1) has engaged in any unlawful, unprofessional, or dishonest practice;
- (2) has been guilty of disreputable conduct;
- (3) is incompetent;
- (4) has violated or refused to comply with any of the laws administered by the Secretary, or with any of the regulations or instructions governing practice before the Department; or
- (5) has in any manner deceived, misled, or threatened any actual or prospective claimant.

(c)(1) Except as provided in paragraph (3), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case. Such a fee may be charged, allowed, or paid in the case of services provided after such date only if an agent or attorney is retained with respect to such case before the end of the one-year period beginning on that date. The limitation in the preceding sentence does not apply to services provided with respect to proceedings before a court.

(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of this subsection, represents a person before the Department or the Board of Veterans' Appeals after the Board first makes a final decision in the case shall file a copy of any fee agreement between them with the Board at such time as may be specified by the Board. The Board, upon its own motion or the request of either party, may review such a fee agreement and may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. A finding or order of the Board under the preceding sentence may be reviewed by the United States Court of Appeals for Veterans Claims under section 7263(d) of this title.

(3) A reasonable fee may be charged or paid in connection with any proceeding before the Department in a case arising out of a loan made, guaranteed, or insured under chapter 37 of this title. A person who charges a fee under this paragraph shall enter into a written agreement with the person represented and shall file a copy of the fee agreement with the Secretary at such time, and in such manner, as may be specified by the Secretary.

(d)(1) When a claimant and an attorney have entered into a fee agreement described in paragraph (2) of this subsection, the total fee payable to the attorney may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim.

(2)(A) A fee agreement referred to in paragraph (1) is one under which the total amount of the fee payable to the attorney—

- (i) is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim; and

(ii) is contingent on whether or not the matter is resolved in a manner favorable to the claimant.

(B) For purposes of subparagraph (A) of this paragraph, a claim shall be considered to have been resolved in a manner favorable to the claimant if all or any part of the relief sought is granted.

(3) To the extent that past-due benefits are awarded in any proceeding before the Secretary, the Board of Veterans' Appeals, or the United States Court of Appeals for Veterans Claims, the Secretary may direct that payment of any attorneys' fee under a fee arrangement described in paragraph (1) of this subsection be made out of such past-due benefits. In no event may the Secretary withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Secretary, the Board of Veterans' Appeals, or Court of Appeals for Veterans Claims making (or ordering the making of) the award.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, § 3404; Pub. L. 99-576, title VII, § 701(80), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title I, § 104(a), Nov. 18, 1988, 102 Stat. 4108; renumbered § 5904 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 102-405, title III, § 303(a), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103-446, title V, § 504(a), Nov. 2, 1994, 108 Stat. 4663; Pub. L. 105-368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

#### AMENDMENTS

1998—Subsecs. (c)(2), (d)(3). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” wherever appearing.

1994—Subsec. (d)(2)(A). Pub. L. 103-446 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “A fee agreement referred to in paragraph (1) of this subsection is one under which (i) the amount of the fee payable to the attorney is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim, and (ii) the amount of the fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant.”

1992—Subsec. (c)(1). Pub. L. 102-405, § 303(a)(1), substituted “Except as provided in paragraph (3), in” for “In”.

Subsec. (c)(3). Pub. L. 102-405, § 303(a)(2), added par. (3).

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3404 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

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

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places in introductory provisions.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” in introductory provisions and in par. (4).

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

Subsec. (c)(1). Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration”.

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

Subsec. (c)(2). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "7263(d)" for "4063(d)".

Subsec. (d)(2)(A), (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

1988—Subsecs. (c), (d). Pub. L. 100-687 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees—

"(1) shall be determined and paid as prescribed by the Administrator;

"(2) shall not exceed \$10 with respect to any one claim; and

"(3) shall be deducted from monetary benefits claimed and allowed."

1986—Subsec. (b). Pub. L. 99-576 substituted "the Administrator" for "he" in introductory text.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 504(b) of Pub. L. 103-446 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fee agreements entered into on or after the date of the enactment of this Act [Nov. 2, 1994]."

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 303(b) of Pub. L. 102-405 provided that: "Paragraph (3) of section 5904(c) of title 38, United States Code, as added by subsection (a), shall apply with respect to services of agents and attorneys provided after the date of the enactment of this Act [Oct. 9, 1992]."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

#### FEE AGREEMENTS

Subsec. (d) of this section not to prevent award of fees and expenses under section 2412(d) of Title 28, Judiciary and Judicial Procedure, but subsec. (d) of this section inapplicable to such award where fees for the same work are received under both sections and claimant's attorney refunds to claimant amount of smaller fee, see section 506(c) of Pub. L. 102-572, set out as a note under section 2412 of Title 28.

#### APPLICABILITY TO ATTORNEYS FEES

Section 403 of Pub. L. 100-687, which provided that the amendment to subsec. (c) of this section by section 104(a) of Pub. L. 100-687 applied only to services of agents and attorneys in cases in which a notice of disagreement was filed with the Department of Veterans Affairs on or after Nov. 18, 1988, was repealed by Pub. L. 107-103, title VI, §603(b), Dec. 27, 2001, 115 Stat. 999.

[Repeal of section 403 of Pub. L. 100-687, formerly set out above, applicable to any appeal filed with the United States Court of Appeals for Veterans Claims on or after Dec. 27, 2001, or before that date but in which a final decision has not been made under section 7291 of this title as of that date, see section 603(d) of Pub. L. 107-103, set out as a note under section 7251 of this title.]

#### § 5905. Penalty for certain acts

Whoever (1) directly or indirectly solicits, contracts for, charges, or receives, or attempts to

solicit, contract for, charge, or receive, any fee or compensation except as provided in sections 5904 or 1984 of this title, or (2) wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3405; Pub. L. 99-576, title VII, §701(81), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title I, §104(b), Nov. 18, 1988, 102 Stat. 4109; renumbered §5905 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3405 of this title as this section and substituted "5904" for "3404".

Pub. L. 102-83 substituted "1984" for "784".

1988—Pub. L. 100-687 substituted "shall be fined as provided in title 18, or imprisoned not more than one year, or both" for "shall be fined not more than \$500 or imprisoned at hard labor for not more than two years, or both".

1986—Pub. L. 99-576 substituted "to the claimant or beneficiary" for "him".

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

### CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

#### Sec.

6101.	Misappropriation by fiduciaries.
6102.	Fraudulent acceptance of payments.
6103.	Forfeiture for fraud.
6104.	Forfeiture for treason.
6105.	Forfeiture for subversive activities.
6106.	Misuse of benefits by fiduciaries.
6107.	Reissuance of benefits.
6108.	Authority for judicial orders of restitution.

#### AMENDMENTS

2004—Pub. L. 108-454, title V, §§503(b), 504(b)(2), Dec. 10, 2004, 118 Stat. 3620, 3621, added items 6106 to 6108.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3501 to 3505 as 6101 to 6105, respectively.

1959—Pub. L. 86-222, §3(b), Sept. 1, 1959, 73 Stat. 453, added item 3505.

#### § 6101. Misappropriation by fiduciaries

(a) Whoever, being a fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary, shall lend, borrow, pledge, hypothecate, use, or exchange for other funds or property, except as authorized by law, or embezzle or in any manner misappropriate any such money or property derived therefrom in whole or in part and coming into such fiduciary's control in any manner whatever in the execution of such fiduciary's trust, or under color of such fiduciary's office or service as such fiduciary, shall be fined in accordance with title 18, or imprisoned not more than five years, or both.

(b) Any willful neglect or refusal to make and file proper accountings or reports concerning such money or property as required by law shall

be taken to be sufficient evidence prima facie of such embezzlement or misappropriation.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3501; Pub. L. 99-576, title VII, §701(82), Oct. 28, 1986, 100 Stat. 3298; renumbered §6101, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103-446, title XII, §1201(e)(17), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 108-454, title V, §501(c), Dec. 10, 2004, 118 Stat. 3618.)

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-454, §501(c), substituted “fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary,” for “guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant or a claimant’s estate, or any other person having charge and custody in a fiduciary capacity of money heretofore or hereafter paid under any of the laws administered by the Secretary for the benefit of any minor, incompetent, or other beneficiary.”.

1994—Subsec. (a). Pub. L. 103-446 inserted a comma after “title 18”.

1991—Pub. L. 102-40 renumbered section 3501 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “in accordance with title 18” for “not more than \$2,000”.

1986—Subsec. (a). Pub. L. 99-576 substituted “a claimant’s” for “his” before “estate”, and “such fiduciary’s” for “his” in three places.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-454 effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 6102. Fraudulent acceptance of payments

(a) Any person entitled to monetary benefits under any of the laws administered by the Secretary whose right to payment thereof ceases upon the happening of any contingency, who thereafter fraudulently accepts any such payment, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(b) Whoever obtains or receives any money or check under any of the laws administered by the Secretary without being entitled to it, and with intent to defraud the United States or any beneficiary of the United States, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3502; renumbered §6102, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3502 of this title as this section.

Pub. L. 102-83 substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in subssecs. (a) and (b).

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by sub-

stituting “in accordance with title 18” for “not more than \$2,000” in subssecs. (a) and (b).

### § 6103. Forfeiture for fraud

(a) Whoever knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Secretary (except laws pertaining to insurance benefits) shall forfeit all rights, claims, and benefits under all laws administered by the Secretary (except laws pertaining to insurance benefits).

(b) Whenever a veteran entitled to disability compensation has forfeited the right to such compensation under this section, the compensation payable but for the forfeiture shall thereafter be paid to the veteran’s spouse, children, and parents. Payments made to a spouse, children, and parents under the preceding sentence shall not exceed the amounts payable to each if the veteran had died from service-connected disability. No spouse, child, or parent who participated in the fraud for which forfeiture was imposed shall receive any payment by reason of this subsection. An apportionment award under this subsection may not be made in any case after September 1, 1959.

(c) Forfeiture of benefits by a veteran shall not prohibit payment of the burial allowance, death compensation, dependency and indemnity compensation, or death pension in the event of the veteran’s death.

(d)(1) After September 1, 1959, no forfeiture of benefits may be imposed under this section or section 6104 of this title upon any individual who was a resident of, or domiciled in, a State at the time the act or acts occurred on account of which benefits would, but not for this subsection, be forfeited unless such individual ceases to be a resident of, or domiciled in, a State before the expiration of the period during which criminal prosecution could be instituted. This subsection shall not apply with respect to (A) any forfeiture occurring before September 1, 1959, or (B) an act or acts which occurred in the Philippine Islands before July 4, 1946.

(2) The Secretary is hereby authorized and directed to review all cases in which, because of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, a forfeiture of gratuitous benefits under laws administered by the Secretary was imposed, pursuant to this section or prior provisions of law, on or before September 1, 1959. In any such case in which the Secretary determines that the forfeiture would not have been imposed under the provisions of this section in effect after September 1, 1959, the Secretary shall remit the forfeiture, effective June 30, 1972. Benefits to which the individual concerned becomes eligible by virtue of any such remission may be awarded, upon application therefor, and the effective date of any award of compensation, dependency and indemnity compensation, or pension made in such a case shall be fixed in accordance with the provisions of section 5110(g) of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, §3503; Pub. L. 86-222, §1, Sept. 1, 1959, 73 Stat. 452; Pub.

L. 91-24, §13(a), June 11, 1969, 83 Stat. 34; Pub. L. 92-328, title II, §206, June 30, 1972, 86 Stat. 397; Pub. L. 98-160, title VII, §703(6), Nov. 21, 1983, 97 Stat. 1011; Pub. L. 99-576, title VII, §701(83), Oct. 28, 1986, 100 Stat. 3298; renumbered §6103 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(d)(8), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 103-446, title XII, §1201(e)(18), (f)(5), Nov. 2, 1994, 108 Stat. 4686, 4687.)

#### AMENDMENTS

1994—Subsec. (d)(1). Pub. L. 103-446, §1201(e)(18), in second sentence substituted “(A) any” for “(a) any”, “(B) an act” for “(b) an act”, and “before July 4, 1946” for “prior to July 4, 1946”.

Subsec. (d)(2). Pub. L. 103-446, §1201(f)(5), substituted “June 30, 1972” for “the date of enactment of this amendatory Act”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3503 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in two places.

Subsec. (b). Pub. L. 102-54, §14(d)(8)(A), amended subsec. (b) as in effect immediately before the enactment of Pub. L. 102-40 by inserting at end “An apportionment award under this subsection may not be made in any case after September 1, 1959.”

Subsec. (d)(1). Pub. L. 102-40, §402(d)(1), substituted “6104” for “3504”.

Subsec. (d)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in three places.

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

Pub. L. 102-40, §402(d)(1), substituted “5110(g)” for “3010(g)”.

Subsec. (e). Pub. L. 102-54, §14(d)(8)(B), amended section as in effect immediately before the enactment of Pub. L. 102-40 by striking out subsec. (e) which read as follows: “No apportionment award under subsection (b) of this section shall be made in any case after the date of enactment of this subsection.”

1986—Subsec. (c). Pub. L. 99-576, §701(83)(A), substituted “the veteran’s” for “his”.

Subsec. (d)(2). Pub. L. 99-576, §701(83)(B), substituted “the Administrator” for “he” in two places in second sentence.

1983—Subsec. (b). Pub. L. 98-160 substituted “the right” for “his right”, “the veteran’s spouse” for “his wife”, and “spouse” for “wife” in two places.

1972—Subsec. (d). Pub. L. 92-328 designated existing provisions as par. (1) and added par. (2).

1969—Subsec. (d). Pub. L. 91-24 substituted “September 1, 1959” for “the date of enactment of this subsection” wherever appearing.

1959—Subsecs. (d) and (e). Pub. L. 86-222 added subsecs. (d) and (e).

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective June 30, 1972, see section 301(c) of Pub. L. 92-328, set out as a note under section 3713 of this title.

#### § 6104. Forfeiture for treason

(a) Any person shown by evidence satisfactory to the Secretary to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future gratuitous benefits under laws administered by the Secretary.

(b) The Secretary, in the Secretary’s discretion, may apportion and pay any part of benefits

forfeited under subsection (a) to the dependents of the person forfeiting such benefits. No dependent of any person shall receive benefits by reason of this subsection in excess of the amount to which the dependent would be entitled if such person were dead.

(c) In the case of any forfeiture under this section there shall be no authority after September 1, 1959 (1) to make an apportionment award pursuant to subsection (b) or (2) to make an award to any person of gratuitous benefits based on any period of military, naval, or air service commencing before the date of commission of the offense.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, §3504; Pub. L. 86-222, §2, Sept. 1, 1959, 73 Stat. 452; Pub. L. 91-24, §13(b), June 11, 1969, 83 Stat. 34; Pub. L. 97-295, §4(78), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 99-576, title VII, §701(84), Oct. 28, 1986, 100 Stat. 3298; renumbered §6104, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

#### AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3504 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

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

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s”.

1986—Subsec. (b). Pub. L. 99-576 substituted “the Administrator’s” for “his” and “the dependent” for “he”.

1982—Subsec. (a). Pub. L. 97-295 inserted “to” before “be guilty”.

1969—Subsec. (c). Pub. L. 91-24 substituted “September 1, 1959” for “the date of enactment of this subsection”.

1959—Subsec. (c). Pub. L. 86-222 added subsec. (c).

#### § 6105. Forfeiture for subversive activities

(a) Any individual who is convicted after September 1, 1959, of any offense listed in subsection (b) of this section shall, from and after the date of commission of such offense, have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such individual. After receipt of notice of the return of an indictment for such an offense the Secretary shall suspend payment of such gratuitous benefits pending disposition of the criminal proceedings. If any individual whose right to benefits has been terminated pursuant to this section is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon.

(b) The offenses referred to in subsection (a) of this section are those offenses for which punishment is prescribed in—

(1) sections 894, 904, and 906 of title 10 (articles 94, 104, and 106 of the Uniform Code of Military Justice);

(2) sections 175, 229, 792, 793, 794, 798, 831, 1091, 2332a, 2332b, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18;

(3) sections 222, 223, 224, 225, and 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2272, 2273, 2274, 2275, and 2276); and

(4) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(c) The Secretary of Defense or the Secretary of Homeland Security, as appropriate, shall notify the Secretary in each case in which an individual is convicted of an offense listed in paragraph (1) of subsection (b). The Attorney General shall notify the Secretary in each case in which an individual is indicted or convicted of an offense listed in paragraph (2), (3), or (4) of subsection (b).

(Added Pub. L. 86-222, §3(a), Sept. 1, 1959, 73 Stat. 453, §3505; amended Pub. L. 92-128, §2(c), Sept. 25, 1971, 85 Stat. 348; Pub. L. 93-43, §8, June 18, 1973, 87 Stat. 88; Pub. L. 97-295, §4(79), Oct. 12, 1982, 96 Stat. 1311; renumbered §6105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(9), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(a)(1), (2)(A)(xiv), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 103-446, title XII, §1201(e)(19), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 107-296, title XVII, §1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108-183, title VII, §705(a), Dec. 16, 2003, 117 Stat. 2672.)

#### AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-183 inserted “175, 229,” after “sections” and “831, 1091, 2332a, 2332b,” after “798,”.

2002—Subsec. (c). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1994—Subsec. (c). Pub. L. 103-446 substituted “paragraph (2), (3), or (4) of subsection (b)” for “clauses (2), (3), or (4) of subsection (b) of this section” and “paragraph (1) of subsection (b)” for “clause (1) of that subsection” and transposed the first and second sentences.

1991—Pub. L. 102-40 renumbered section 3505 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(2)(A)(xiv), substituted “Secretary” for “Veterans’ Administration” in second sentence.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in first sentence.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “clauses (2),” for “clauses (1),”, “Secretary of Transportation, as” for “Secretary of the Treasury, as may be”, and “clause (1) of that subsection” for “clause (2) of subsection (b) of this section”.

1982—Subsec. (a). Pub. L. 97-295, §4(79)(A), substituted “September 1, 1959,” for “the date of enactment of this section”.

Subsec. (b). Pub. L. 97-295, §4(79)(B), substituted pars. (1), (2), and (3) for cls. (2), (1), and (3), respectively, and inserted citations to the United States Code.

1973—Subsec. (a). Pub. L. 93-43 inserted “(including the right to burial in a national cemetery)” after “gratuitous benefits” in first sentence.

1971—Subsec. (b)(4). Pub. L. 92-128 substituted “in section 4 of the Internal Security Act of 1950” for “in the following sections of the Internal Security Act of 1950; sections 4, 112, and 113”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title VII, §705(b), Dec. 16, 2003, 117 Stat. 2672, provided that: “The amendments made by subsection (a) [amending this section] shall apply to claims filed after the date of the enactment of this Act [Dec. 16, 2003].”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-43 effective June 18, 1973, see section 10(a) of Pub. L. 93-43, set out as an Effective Date note under section 2400 of this title.

### § 6106. Misuse of benefits by fiduciaries

(a) FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual’s benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual’s benefit.

(b) MISUSE OF BENEFITS DEFINED.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary’s dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney’s fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

(c) REGULATIONS.—The Secretary may prescribe by regulation the meaning of the term “use and benefit” for purposes of this section.

(Added Pub. L. 108-454, title V, §503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

#### EFFECTIVE DATE

Section applicable with respect to any determinations by the Secretary of Veterans Affairs made after Dec. 10, 2004, of misuse of funds by a fiduciary, see section 507(b)(2) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 6107. Reissuance of benefits

(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary’s successor fiduciary an amount equal to the amount of benefits that were so misused.

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) A case in which the Secretary failed to review a fiduciary’s accounting within 60 days of the date on which that accounting is scheduled for review.

(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

(C) In any other case in which actual negligence is shown.

(b) REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

(2) Paragraph (1) applies to a fiduciary that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

(c) LIMITATION ON TOTAL AMOUNT PAID.—The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

(d) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

(Added Pub. L. 108-454, title V, §503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

#### EFFECTIVE DATE

Section applicable with respect to any determinations by the Secretary of Veterans Affairs made after Dec. 10, 2004, of misuse of funds by a fiduciary, see section 507(b)(2) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

### § 6108. Authority for judicial orders of restitution

(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(Added Pub. L. 108-454, title V, §504(b)(1), Dec. 10, 2004, 118 Stat. 3621.)

#### EFFECTIVE DATE

Section effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

## PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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#### AMENDMENTS

1998—Pub. L. 105-368, title V, §512(a)(4)(B), Nov. 11, 1998, 112 Stat. 3341, substituted "Appeals for Veterans Claims" for "Veterans Appeals" in item for chapter 72.

1991—Pub. L. 102-83, §2(d)(3), Aug. 6, 1991, 105 Stat. 402, added item for chapter 77.

Pub. L. 102-54, §14(e)(1), June 13, 1991, 105 Stat. 287, inserted "United States" before "Court of Veterans Appeals" in item for chapter 72.

Pub. L. 102-40, title IV, §§402(c)(2), 403(e)(1), (f)(2), May 7, 1991, 105 Stat. 239-241, substituted "BOARDS, ADMINISTRATIONS, AND SERVICES" for "BOARDS AND DEPARTMENTS" in part heading, renumbered section numbers by substituting "7101" for "4001" in item for chapter 71, "7251" for "4051" in item for chapter 72, and "7601" for "4301" in item for chapter 76, substituted "Veterans Health Administration—Organization and Functions" for "Department of Medicine and Surgery" and "7301" for "4101" in item for chapter 73, added item for chapter 74, struck out item for chapter 75 "Veterans' Canteen Service", and added item for chapter 78.

1988—Pub. L. 100-687, div. A, title III, §301(b), Nov. 18, 1988, 102 Stat. 4121, added item for chapter 72.

Pub. L. 100-322, title II, §216(e)(2), May 20, 1988, 102 Stat. 530, added item for chapter 76.

### CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.	
7101.	Composition of Board of Veterans' Appeals.
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7111.	Revision of decisions on grounds of clear and unmistakable error.
7112.	Expedited treatment of remanded claims.

#### AMENDMENTS

2003—Pub. L. 108-183, title VII, §707(b)(2), Dec. 16, 2003, 117 Stat. 2673, added item 7112.

1997—Pub. L. 105-111, §1(b)(2), Nov. 21, 1997, 111 Stat. 2272, added item 7111.