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-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS

-HEAD-

CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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AMENDMENTS

2008 - Pub. L. 110-389, title II, Sec. 212(b), Oct. 10, 2008, 122 Stat. 4151, added item 5121A.

Pub. L. 110-387, title IX, Sec. 901(a)(5), Oct. 10, 2008, 122 Stat. 4142, substituted "death of a beneficiary" for "death of beneficiary" in item 5121.

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

2000 - Pub. L. 106-475, Sec. 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, Sec. 1 [[div. A], title XVI, Sec. 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, Sec. 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, Sec. 1 [[div. A], title XVI, Sec. 1611(b)], were deemed for all purposes not to have taken effect and that Pub. L. 106-398, Sec. 1 [[div. A], title XVI, Sec. 1611(b)], ceased to be in effect.

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

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

1991 - Pub. L. 102-40, title IV, Sec. 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, Sec. 115(a)(2), Dec. 18, 1989, 103 Stat. 2066, added item 3004.

1988 - Pub. L. 100-687, div. A, title I, Sec. 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, Secs. 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, Sec. 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, Sec. 403(1), Sept. 30, 1976, 90 Stat. 1372, added item 3006.

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

-End-

-CITE-

38 USC SUBCHAPTER I - CLAIMS

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
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SUBCHAPTER I - CLAIMS

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AMENDMENTS

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

-End-

-CITE-

38 USC Sec. 5100

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5100. Definition of "claimant"

-STATUTE-

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.

-SOURCE-

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

-End-

-CITE-

38 USC Sec. 5101

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5101. Claims and forms

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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, Sec. 402(b)(1), renumbered section 3001 of this title as this section.

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

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

Pub. L. 102-40, Sec. 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".

PILOT PROGRAMS ON EXPEDITED TREATMENT OF FULLY DEVELOPED CLAIMS AND PROVISION OF CHECKLISTS TO INDIVIDUALS SUBMITTING CLAIMS

Pub. L. 110-389, title II, Sec. 221, Oct. 10, 2008, 122 Stat. 4154, provided that:

"(a) Pilot Program on Expedited Treatment of Fully Developed Claims. -

"(1) In general. - The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of providing expeditious treatment of fully developed compensation or pension claims to ensure that such claims are adjudicated not later than 90 days after the date on which such claim is submitted as fully developed.

"(2) Duration of pilot program. - The pilot program under this subsection shall be carried out during the one-year period beginning on the date that is 60 days after the date of the enactment of this Act [Oct. 10, 2008].

"(3) Program locations. - The pilot program under this

subsection shall be carried out at 10 regional offices of the Department of Veterans Affairs selected by the Secretary for purposes of such pilot program.

"(4) Fully developed claim defined. - For purposes of this subsection, the term 'fully developed claim' means a claim for a benefit under a law administered by the Secretary -

"(A) for which the claimant -

"(i) received assistance from a veterans service officer, a State or country [probably should be "county"] veterans service officer, an agent, or an attorney; or

"(ii) submits along with the claim an appropriate indication that the claimant does not intend to submit any additional information or evidence in support of the claim and does not require additional assistance with respect to the claim; and

"(B) for which the claimant -

"(i) submits a certification in writing that is signed and dated by the claimant stating that, as of such date, no additional information or evidence is available or needs to be submitted in order for the claim to be adjudicated; and

"(ii) for which the claimant's representative, if any, submits a certification in writing that is signed and dated by the representative stating that, as of such date, no additional information or evidence is available or needs to be submitted in order for the claim to be adjudicated.

"(b) Pilot Program on Provision of Checklists to Individuals Submitting Claims. -

"(1) In general. - The Secretary shall carry out a pilot program to assess the feasibility and advisability of providing to a claimant for whom the Secretary is required under section 5103(a) of title 38, United States Code, to provide notice of required information and evidence to such claimant and such claimant's representative, if any, a checklist that includes information or evidence required to be submitted by the claimant to substantiate the claim.

"(2) Duration of pilot program. - The pilot program under this subsection shall be carried out -

"(A) for original claims filed after the date of the enactment of this Act [Oct. 10, 2008], during the one-year period beginning on the date that is 60 days after the date of the enactment of this Act; and

"(B) for claims to reopen and for claims for increased ratings that were filed after the date of the enactment of this Act, during the three-year period beginning on the date that is 60 days after the date of the enactment of this Act.

"(3) Program locations. - The pilot program under this subsection shall be carried out at four regional offices of the Department selected by the Secretary for purposes of such pilot program.

"(4) Construction. - A checklist provided under the pilot program under this subsection -

"(A) shall be construed to be an addendum to a notice provided under section 5103(a) of title 38, United States Code; and

"(B) shall not be considered as part of such notice for purposes of reversal or remand of a decision of the Secretary.

"(c) Reports. -

"(1) First initial report. - Not later than 335 days after the date of the enactment of this Act [Oct. 10, 2008], the Secretary shall submit to Congress a report on the pilot program under subsection (a) and the pilot program under subsection (b) with

respect to claims described in subsection (b)(2)(A).

"(2) Second interim report. - Not later than 1,065 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the pilot program under subsection (b) with respect to claims described in subsection (b)(2)(B).

"(3) Elements of interim reports. - The reports required by paragraphs (1) and (2) shall include the following:

"(A) Data concerning the number and type of claims covered by the respective pilot program.

"(B) The findings of the Secretary with respect to the respective pilot program.

"(C) The recommendations of the Secretary on the feasibility and advisability of continuing or expanding the respective pilot program and any necessary modifications to such pilot program for continuation or expansion.

"(D) Such other information as the Secretary considers appropriate.

"(4) Final report. - Not later than 180 days after the completion of each pilot program carried out under this section, the Secretary shall submit to Congress a final report on the feasibility and advisability of continuing or expanding the respective pilot program."

STUDY OF PERFORMANCE MEASURES FOR CLAIMS ADJUDICATIONS OF THE VETERANS BENEFITS ADMINISTRATION

Pub. L. 110-389, title II, Sec. 226, Oct. 10, 2008, 122 Stat.

4159, provided that:

"(a) Study of Work Credit System and Work Management System Required. - The Secretary of Veterans Affairs shall conduct a study on the effectiveness of the current employee work credit system and work management system of the Veterans Benefits Administration of the Department of Veterans Affairs, which is used -

"(1) to measure and manage the work production of employees of the Veterans Benefits Administration who handle claims for compensation and pension benefits; and

"(2) to evaluate more effective means of improving performance.

"(b) Contents of Study. - In carrying out the study under subsection (a), the Secretary shall consider -

"(1) measures to improve the accountability, quality, and accuracy for processing claims for compensation and pension benefits under laws administered by the Secretary that are adjudicated by the Veterans Benefits Administration;

"(2) accountability for claims adjudication outcomes;

"(3) the quality of claims adjudicated;

"(4) a simplified process to adjudicate claims;

"(5) the maximum use of information technology applications;

"(6) rules-based applications and tools for processing and adjudicating claims efficiently and effectively;

"(7) methods of reducing the time required to obtain information from outside sources; and

"(8) the elements needed to implement -

"(A) performance standards and accountability measures, intended to ensure that -

"(i) claims for benefits under the laws administered by the Secretary are processed in an objective, accurate, consistent, and efficient manner; and

"(ii) final decisions with respect to such claims are consistent and issued within the target identified in the most recent annual Performance and Accountability report submitted by the Secretary to Congress for the most recent fiscal year;

"(B) guidelines and procedures for the identification and prompt processing of such claims that are ready to rate upon submittal;

"(C) guidelines and procedures for the identification and prompt processing of such claims submitted by severely injured and very severely injured veterans, as determined by the Secretary; and

"(D) requirements for assessments of claims processing at each regional office for the purpose of producing lessons learned and best practices.

"(c) Report to Congress. - Not later than October 31, 2009, the Secretary shall submit to Congress a report on -

"(1) the study conducted under subsection (a); and

"(2) the components required to implement the updated system for evaluating employees of the Veterans Benefits Administration required under subsection (d).

"(d) Evaluation of Certain Veterans Benefits Administration Employees Responsible for Processing Claims for Compensation and Pension Benefits. - Not later than 210 days after the date on which the Secretary submits to Congress the report required under subsection (c), the Secretary shall establish an updated system for evaluating the performance and accountability of employees of the Veterans Benefits Administration who are responsible for processing claims for compensation or pension benefits. Such system shall be based on the findings of the study conducted by the Secretary under subsection (a)."

REVIEW AND ENHANCEMENT OF USE OF INFORMATION TECHNOLOGY IN VETERANS BENEFITS ADMINISTRATION

Pub. L. 110-389, title II, Sec. 227, Oct. 10, 2008, 122 Stat. 4160, provided that:

"(a) Review and Comprehensive Plan. - Not later than one year after the date of the enactment of this Act [Oct. 10, 2008], the Secretary of Veterans Affairs shall -

"(1) conduct a review of the use of information technology in the Veterans Benefits Administration with respect to the processing of claims for compensation and pension benefits; and

"(2) develop a comprehensive plan for the use of such technology in processing such claims so as to reduce subjectivity, avoidable remands, and regional office variances in disability ratings for specific disabilities.

"(b) Information Technology. - The plan developed under subsection (a)(2) shall include the following:

"(1) The use of rules-based processing or information technology systems utilizing automated decision support software at all levels of processing such claims.

"(2) The enhancement of the use of information technology for all aspects of the claims process.

"(3) Development of a technological platform that -

"(A) allows for the use of information that members of the Armed Forces, veterans, and dependents have submitted electronically, including uploaded military records, medical evidence, and other appropriate documentation; and

"(B) to the extent practicable -

"(i) provides the capability to such members, veterans, and dependents to view applications for benefits submitted online; and

"(ii) complies with the provisions of subchapter III of chapter 35 of title 44, United States Code, section 552a of title 5, United States Code, and other relevant security policies and guidelines.

"(4) The use of electronic examination templates in conjunction with the schedule for rating disabilities under section 1155 of title 38, United States Code.

"(5) Such changes as may be required to the electronic health record system of the Department of Veterans Affairs and the Department of Defense to ensure that Veterans Benefits Administration claims examiners can access the available electronic medical information of the Department of Veterans Affairs and the Department of Defense.

"(6) The provision of bi-directional access to medical records and service records between the Department of Veterans Affairs and the Department of Defense.

"(7) The availability, on a secure Internet website of the Department of Veterans Affairs, of a portal that can be used by a claimant to check on the status of any claim submitted by that claimant and that provides information, if applicable, on -

"(A) whether a decision has been reached with respect to such a claim and notice of the decision; or

"(B) if no such decision has been reached, notice of -

"(i) whether the application submitted by the claimant is complete;

"(ii) whether the Secretary requires additional information or evidence to substantiate the claim;

"(iii) the estimated date on which a decision with respect to the claim is expected to be made; and

"(iv) the stage at which the claim is being processed as of the date on which such status is checked.

"(c) Review of Best Practices and Lessons Learned. - In carrying out this section, the Secretary shall review -

"(1) best practices and lessons learned within the Department of Veterans Affairs; and

"(2) the use of the technology known as 'VistA' by other Government entities and private sector organizations who employ information technology and automated decision support software.

"(d) Reduction of Claims Processing Time. - In carrying out this section, the Secretary shall ensure that a plan is developed that, not later than three years after implementation, includes information technology to the extent possible to reduce the processing time for each compensation and pension claim processed by the Veterans Benefits Administration. The performance for claims processing under this plan shall be adjusted for changes to the numbers of claims filed in a given period, the complexity of those claims, and any changes to the basic claims processing rules which occur during the assessment period.

"(e) Consultation. - In carrying out this section, the Secretary of Veterans Affairs shall consult with information technology designers at the Veterans Benefits Administration, the Veterans Health Administration, VistA managers, the Secretary of Defense, appropriate officials of other Government agencies, appropriate individuals in the private and public sectors, veterans service organizations, and other relevant service organizations.

"(f) Report to Congress. - Not later than April 1, 2010, the Secretary shall submit to Congress a report on the review and comprehensive plan required under this section."

TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS

Pub. L. 108-183, title VII, Sec. 704, Dec. 16, 2003, 117 Stat. 2672, as amended by Pub. L. 110-389, Sec. 105, Oct. 10, 2008, 122 Stat. 4149; Pub. L. 111-275, title VIII, Sec. 809, Oct. 13, 2010, 124 Stat. 2894, 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, 2012. 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, Sec. 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, Sec. 302, Nov. 2, 1994, 108 Stat. 4658, as amended by Pub. L. 105-368, title V, Sec. 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, Sec. 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, Sec. 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.

-End-

-CITE-

38 USC Sec. 5102

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

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

-STATUTE-

(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.

-SOURCE-

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

Stat. 2670.)

-MISC1-

PRIOR PROVISIONS

A prior section 5102, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, Sec. 3002; renumbered Sec. 5102, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 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, Sec. 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, Sec. 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)."

-End-

-CITE-

38 USC Sec. 5103

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5103. Notice to claimants of required information and evidence

-STATUTE-

(a) Required Information and Evidence. - (1) 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.

(2)(A) The Secretary shall prescribe in regulations requirements relating to the contents of notice to be provided under this subsection.

(B) The regulations required by this paragraph -

(i) shall specify different contents for notice based on whether the claim concerned is an original claim, a claim for reopening a prior decision on a claim, or a claim for an increase in benefits;

(ii) shall provide that the contents for such notice be appropriate to the type of benefits or services sought under the claim;

(iii) shall specify for each type of claim for benefits the general information and evidence required to substantiate the basic elements of such type of claim; and

(iv) shall specify the time period limitations required pursuant to subsection (b).

(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.

-SOURCE-

(Added Pub. L. 106-475, Sec. 3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 107-14, Sec. 8(a)(12), June 5, 2001, 115 Stat. 35; Pub. L. 108-183, title VII, Sec. 701(b), Dec. 16, 2003, 117 Stat. 2670; Pub. L. 110-389, title I, Sec. 101(a), Oct. 10, 2008, 122 Stat. 4147.)

-MISC1-

PRIOR PROVISIONS

A prior section 5103, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, Sec. 3003; Pub. L. 99-570, title XI, Sec. 11007(a)(1), Oct. 27, 1986, 100 Stat. 3207-170; renumbered Sec. 5103, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 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, Sec. 3(a), Nov. 9, 2000, 114 Stat. 2096.

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

AMENDMENTS

2008 - Subsec. (a). Pub. L. 110-389 designated existing provisions as par. (1) and added par. (2).

2003 - Subsec. (b)(1). Pub. L. 108-183, Sec. 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, Sec. 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.

APPLICABILITY OF REGULATIONS

Pub. L. 110-389, title I, Sec. 101(b), Oct. 10, 2008, 122 Stat.

4148, provided that: "The regulations required by paragraph (2) of section 5103(a) of title 38, United States Code (as amended by subsection (a) of this section), shall apply with respect to notices provided to claimants on or after the effective date of such regulations."

READJUDICATION OF CERTAIN CLAIMS; NOTICE

Pub. L. 108-183, title VII, Sec. 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."

-End-

-CITE-

38 USC Sec. 5103A

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5103A. Duty to assist claimants

-STATUTE-

(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.

-SOURCE-

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

-End-

-CITE-

38 USC Sec. 5104

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5104. Decisions and notices of decisions

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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."

-End-

-CITE-

38 USC Sec. 5105

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5105. Joint applications for social security and dependency and indemnity compensation

-STATUTE-

(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 official. 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.

-SOURCE-

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

-REFTEXT-

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 (Sec. 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.

-MISC1-

PRIOR PROVISIONS

Prior section 5105 was renumbered section 8305 of this title.

AMENDMENTS

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

Subsec. (b). Pub. L. 103-296, Sec. 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, Sec. 402(b)(1), renumbered section 3005 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 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, Sec. 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.

-End-

-CITE-

38 USC Sec. 5106

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5106. Furnishing of information by other agencies

-STATUTE-

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.

-SOURCE-

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

-MISC1-

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.

-End-

-CITE-

38 USC Sec. 5107

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5107. Claimant responsibility; benefit of the doubt

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

AMENDMENTS

2000 - Pub. L. 106-475 substituted "Claimant responsibility; benefit of the doubt" for "Burden of proof; benefit 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, Sec. 1 [[div. A], title XVI, Sec. 1611(a)], directed the general amendment of the section catchline and text. Pub. L. 106-419, Sec. 104(c)(2), provided that, as of the enactment of Pub. L. 106-419, the amendment made by Pub. L. 106-398, Sec. 1 [[div. A], title XVI, Sec. 1611(a)], was deemed for all purposes not to have taken effect and that Pub. L. 106-398, Sec. 1 [[div. A], title XVI, Sec. 1611(a)], ceased to be in effect.

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-475, Sec. 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.

-End-

-CITE-

38 USC Sec. 5108

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5108. Reopening disallowed claims

-STATUTE-

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.

-SOURCE-

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

-MISC1-

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.

-End-

-CITE-

38 USC Sec. 5109

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5109. Independent medical opinions

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

AMENDMENTS

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

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

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

Subsecs. (b), (c). Pub. L. 102-83, Sec. 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.

-End-

-CITE-

38 USC Sec. 5109A

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

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

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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]."

-End-

-CITE-

38 USC Sec. 5109B 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER I - CLAIMS

-HEAD-

Sec. 5109B. Expedited treatment of remanded claims

-STATUTE-

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.

-SOURCE-

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

-End-

-CITE-

38 USC SUBCHAPTER II - EFFECTIVE DATES 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER II - EFFECTIVE DATES

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SUBCHAPTER II - EFFECTIVE DATES

-End-

-CITE-

38 USC Sec. 5110

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER II - EFFECTIVE DATES

-HEAD-

Sec. 5110. Effective dates of awards

-STATUTE-

(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 administrative 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, Sec. 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.

-SOURCE-

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

-MISC1-

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, Sec. 402(b)(1), renumbered section 3010 of this title as this section.

Subsec. (c). Pub. L. 102-83, Sec. 5(c)(1), substituted "1151" for

"351".

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

Subsec. (g). Pub. L. 102-40, Sec. 402(d)(1), substituted "5101" for "3001".

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

Subsec. (n). Pub. L. 102-83, Sec. 4(a)(2)(A)(vi), substituted "Secretary" for "Veterans' Administration".

1986 - Subsec. (b)(1). Pub. L. 99-576 substituted "the veteran's" for "his".

1984 - Subsec. (b)(3)(A). Pub. L. 98-369, Sec. 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, Sec. 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).

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.

-End-

-CITE-

38 USC Sec. 5111

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER II - EFFECTIVE DATES

-HEAD-

Sec. 5111. Commencement of period of payment

-STATUTE-

(a)(1) Notwithstanding section 5110 of this title or any other provision of law and except as provided in paragraph (2) and subsection (c), 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.

(2)(A) In the case of a veteran who is retired or separated from the active military, naval, or air service for a catastrophic disability or disabilities, payment of monetary benefits based on an award of compensation based on an original claim shall be made as of the date on which such award becomes effective as provided under section 5110 of this title or another applicable provision of law.

(B) For the purposes of this paragraph, the term "catastrophic disability", with respect to a veteran, means a permanent, severely disabling injury, disorder, or disease that compromises the ability of the veteran to carry out the activities of daily living to such a degree that the veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.

(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.

-SOURCE-

(Added Pub. L. 97-253, title IV, Sec. 401(a)(1), Sept. 8, 1982, 96 Stat. 801, Sec. 3011; amended Pub. L. 98-223, title I, Sec. 113, Mar. 2, 1984, 98 Stat. 40; renumbered Sec. 5111 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 111-275, title VI, Sec. 605(a), Oct. 13, 2010, 124 Stat. 2885.)

-MISC1-

AMENDMENTS

2010 - Subsec. (a). Pub. L. 111-275 designated existing provisions as par. (1), substituted "in paragraph (2) and subsection (c)" for "in subsection (c) of this section", and added par. (2).

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

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

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

Subsec. (c)(1). Pub. L. 102-40, Sec. 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 2010 AMENDMENT

Pub. L. 111-275, title VI, Sec. 605(b), Oct. 13, 2010, 124 Stat. 2886, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2011, and shall apply with respect to awards of compensation based on original claims that become effective on or after that date."

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."

-End-

-CITE-

38 USC Sec. 5112

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER II - EFFECTIVE DATES

-HEAD-

Sec. 5112. Effective dates of reductions and discontinuances

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

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, Sec. 402(b)(1), renumbered section 3012 of this title as this section.

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

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

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

Subsec. (c). Pub. L. 99-576, Sec. 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, Sec. 402(1), inserted "annulment," before "divorce" in two places.

Subsec. (b)(9). Pub. L. 94-433, Sec. 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.

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.

-End-

-CITE-

38 USC Sec. 5113

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER II - EFFECTIVE DATES

-HEAD-

Sec. 5113. Effective dates of educational benefits

-STATUTE-

(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 subparagraphs (A), (B), (D), and (E) of section 3501(a)(1) of this title.

(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 the death of the person from whom such eligibility is derived or (ii) the existence of the service-connected total disability permanent in nature (or, in the case of a person made eligible under section 3501(a)(1)(E), the total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service) of the person from whom such eligibility is derived, 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.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1227, Sec. 3013; Pub. L. 89-358, Sec. 4(p), Mar. 3, 1966, 80 Stat. 25; Pub. L. 99-576, title III, Sec. 321(10), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100-322, title III, Sec. 323, May 20, 1988, 102 Stat. 536; Pub. L. 101-237, title IV, Sec. 419, Dec. 18, 1989, 103 Stat. 2087; Pub. L. 102-16, Sec. 10(a)(9), Mar. 22, 1991, 105 Stat. 56; renumbered Sec. 5113, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 106-419, title I, Sec. 113(a), Nov. 1, 2000, 114 Stat. 1832; Pub. L. 109-444, Sec. 3(c)(2), Dec. 21, 2006, 120 Stat. 3307; Pub. L. 109-461, title III, Sec. 301(c)(2), title X, Sec. 1006(b), Dec. 22, 2006, 120 Stat. 3427, 3468.)

-MISC1-

AMENDMENTS

2006 - Pub. L. 109-461, Sec. 1006(b), provided that as of the enactment of Pub. L. 109-461, the amendments made by Pub. L. 109-444 were deemed for all purposes not to have taken effect and that Pub. L. 109-444 ceased to be in effect. See Amendment notes below and section 1006(b) of Pub. L. 109-461, set out as a Coordination

of Provisions With Pub. L. 109-444 note under section 101 of this title.

Subsec. (b)(3)(B). Pub. L. 109-461, Sec. 301(c)(2)(A), substituted "subparagraphs (A), (B), (D), and (E) of section 3501(a)(1) of this title." for "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."

Pub. L. 109-444, Sec. 3(c)(2)(A), which substituted "subparagraphs (A), (B), (D), and (E) of section 3501(a)(1) of this title." for "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.", was terminated by Pub. L. 109-461, Sec. 1006(b). See Amendment notes above.

Subsec. (b)(3)(C). Pub. L. 109-461, Sec. 301(c)(2)(B), substituted "the death of the person from whom such eligibility is derived" for "such veteran's death" and "the service-connected total disability permanent in nature (or, in the case of a person made eligible under section 3501(a)(1)(E), the total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service) of the person from whom such eligibility is derived" for "such veteran's service-connected total disability permanent in nature".

Pub. L. 109-444, Sec. 3(c)(2)(B), which substituted "the death of the person from whom such eligibility is derived" for "such veteran's death" and "the service-connected total disability permanent in nature (or, in the case of a person made eligible under section 3501(a)(1)(E), the total disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service) of the person from whom such eligibility is derived" for "such veteran's service-connected total disability permanent in nature", was terminated by Pub. L. 109-461, Sec. 1006(b). See Amendment notes above.

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

Subsecs. (b), (c). Pub. L. 106-419, Sec. 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 2006 AMENDMENT

Amendment by section 301(c)(2) of Pub. L. 109-461 applicable with respect to a payment of educational assistance for a course of education pursued after Dec. 22, 2006, see section 301(d) of Pub. L. 109-461, set out as a note under section 3501 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

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

-End-

-CITE-

38 USC SUBCHAPTER III - PAYMENT OF BENEFITS

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

SUBCHAPTER III - PAYMENT OF BENEFITS

-End-

-CITE-

38 USC Sec. 5120

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5120. Payment of benefits; delivery

-STATUTE-

(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 public 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.

-SOURCE-

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

-MISC1-

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

1986 - Subsec. (a). Pub. L. 99-576, Sec. 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, Sec. 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, Sec. 402(b)(1), struck out "by check" after "benefits" in section catchline.

Subsecs. (d), (e). Pub. L. 95-117, Sec. 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]."

-End-

-CITE-

38 USC Sec. 5121

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5121. Payment of certain accrued benefits upon death of a beneficiary

-STATUTE-

(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.

-SOURCE-

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

-MISC1-

AMENDMENTS

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

Pub. L. 108-183, Sec. 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, Sec. 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, Sec. 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, Sec. 402(b)(1), renumbered section 3021 of this title as this section.

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

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

Pub. L. 102-40, Sec. 402(d)(1), substituted "5122" for "3022" in introductory provisions.

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

1986 - Subsec. (a). Pub. L. 99-576, Sec. 701(66)(A), struck out "his" after "entitled at".

Subsec. (a)(2)(A) to (C). Pub. L. 99-576, Sec. 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, Sec. 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.

-End-

-CITE-

38 USC Sec. 5121A

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5121A. Substitution in case of death of claimant

-STATUTE-

(a) Substitution. - (1) If a claimant dies while a claim for any benefit under a law administered by the Secretary, or an appeal of a decision with respect to such a claim, is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant for the purposes of processing the claim to completion.

(2) Any person seeking to be substituted for the claimant shall present evidence of the right to claim such status within such time as prescribed by the Secretary in regulations.

(3) Substitution under this subsection shall be in accordance with such regulations as the Secretary may prescribe.

(b) Limitation. - Those who are eligible to make a claim under this section shall be determined in accordance with section 5121 of this title.

-SOURCE-

(Added Pub. L. 110-389, title II, Sec. 212(a), Oct. 10, 2008, 122 Stat. 4151.)

-MISC1-

EFFECTIVE DATE

Pub. L. 110-389, title II, Sec. 212(c), Oct. 10, 2008, 122 Stat. 4151, provided that: "Section 5121A of title 38, United States Code, as added by subsection (a), shall apply with respect to the claim of any claimant who dies on or after the date of the enactment of this Act [Oct. 10, 2008]."

-End-

-CITE-

38 USC Sec. 5122 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5122. Cancellation of checks mailed to deceased payees

-STATUTE-

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.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1229, Sec. 3022; Pub. L.

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

-MISC1-

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.

-End-

-CITE-

38 USC Sec. 5123

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5123. Rounding down of pension rates

-STATUTE-

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.

-SOURCE-

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

-REFTEXT-

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.

-MISC1-

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, Sec. 111(e), Apr. 20, 1983, 97 Stat. 73; Pub. L. 98-369, div. B, title VI, Sec. 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."

-End-

-CITE-

38 USC Sec. 5124

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5124. Acceptance of claimant's statement as proof of relationship

-STATUTE-

(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.

-SOURCE-

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

-End-

-CITE-

38 USC Sec. 5125

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

Sec. 5125. Acceptance of reports of private physician examinations

-STATUTE-

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.

-SOURCE-

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

-End-

-CITE-

38 USC Sec. 5126

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 51 - CLAIMS, EFFECTIVE DATES, AND PAYMENTS
SUBCHAPTER III - PAYMENT OF BENEFITS

-HEAD-

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

-STATUTE-

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.

-SOURCE-

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

-End-