



Uploaded to VFC Website

▶▶ ▶▶ **May 2013** ◀◀ ◀◀

This Document has been provided to you courtesy of Veterans-For-Change!

Feel free to pass to any veteran who might be able to use this information!

For thousands more files like this and hundreds of links to useful information, and hundreds of "Frequently Asked Questions, please go to:

[Veterans-For-Change](#)

*Veterans-For-Change is a 501(c)(3) Non-Profit Corporation
Tax ID #27-3820181*

If Veteran's don't help Veteran's, who will?

We appreciate all donations to continue to provide information and services to Veterans and their families.

https://www.paypal.com/cgi-bin/webscr?cmd=_s-xclick&hosted_button_id=WGT2M5UTB9A78

Note:

VFC is not liable for source information in this document, it is merely provided as a courtesy to our members.



-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-MISC1-

- Sec.
6101. Misappropriation by fiduciaries.
6102. Fraudulent acceptance of payments.
6103. Forfeiture for fraud.
6104. Forfeiture for treason.
6105. Forfeiture for subversive activities.
6106. Misuse of benefits by fiduciaries.
6107. Reissuance of benefits.
6108. Authority for judicial orders of restitution.

AMENDMENTS

2004 - Pub. L. 108-454, title V, Secs. 503(b), 504(b)(2), Dec. 10, 2004, 118 Stat. 3620, 3621, added items 6106 to 6108.

1991 - Pub. L. 102-40, title IV, Sec. 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3501 to 3505 as 6101 to 6105, respectively.

1959 - Pub. L. 86-222, Sec. 3(b), Sept. 1, 1959, 73 Stat. 453, added item 3505.

-End-

-CITE-

38 USC Sec. 6101

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6101. Misappropriation by fiduciaries

-STATUTE-

(a) Whoever, being a fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary, shall lend, borrow, pledge, hypothecate, use, or exchange for other funds or property, except as authorized by law, or embezzle or in any manner misappropriate any such money or property derived therefrom in whole or in part and coming into such fiduciary's control in any manner whatever in the execution of such fiduciary's trust, or under color of such fiduciary's office or service as such fiduciary, shall be fined in accordance with title 18, or imprisoned not more than five years, or both.

(b) Any willful neglect or refusal to make and file proper accountings or reports concerning such money or property as required by law shall be taken to be sufficient evidence prima facie of such embezzlement or misappropriation.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, Sec. 3501; Pub. L. 99-576, title VII, Sec. 701(82), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 6101, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, Sec. 14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103-446, title XII, Sec. 1201(e)(17), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 108-454, title V, Sec. 501(c), Dec. 10, 2004, 118 Stat. 3618.)

-MISC1-

AMENDMENTS

2004 - Subsec. (a). Pub. L. 108-454, Sec. 501(c), substituted "fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary," for "guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant or a claimant's estate, or any other person having charge and custody in a fiduciary capacity of money heretofore or hereafter paid under any of the laws administered by the Secretary for the benefit of any minor, incompetent, or other beneficiary,".

1994 - Subsec. (a). Pub. L. 103-446 inserted a comma after "title 18".

1991 - Pub. L. 102-40 renumbered section 3501 of this title as this section.

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

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "in accordance with title 18" for "not more than \$2,000".

1986 - Subsec. (a). Pub. L. 99-576 substituted "a claimant's" for "his" before "estate", and "such fiduciary's" for "his" in three places.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-454 effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

-End-

-CITE-

38 USC Sec. 6102

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6102. Fraudulent acceptance of payments

-STATUTE-

(a) Any person entitled to monetary benefits under any of the laws administered by the Secretary whose right to payment thereof

ceases upon the happening of any contingency, who thereafter fraudulently accepts any such payment, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(b) Whoever obtains or receives any money or check under any of the laws administered by the Secretary without being entitled to it, and with intent to defraud the United States or any beneficiary of the United States, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, Sec. 3502; renumbered Sec. 6102, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, Sec. 14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, Sec. 4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 3502 of this title as this section.

Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration" in subsecs. (a) and (b).

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by substituting "in accordance with title 18" for "not more than \$2,000" in subsecs. (a) and (b).

-End-

-CITE-

38 USC Sec. 6103

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6103. Forfeiture for fraud

-STATUTE-

(a) Whoever knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Secretary (except laws pertaining to insurance benefits) shall forfeit all rights, claims, and benefits under all laws administered by the Secretary (except laws pertaining to insurance benefits).

(b) Whenever a veteran entitled to disability compensation has forfeited the right to such compensation under this section, the compensation payable but for the forfeiture shall thereafter be paid to the veteran's spouse, children, and parents. Payments made to a spouse, children, and parents under the preceding sentence shall not exceed the amounts payable to each if the veteran had died from service-connected disability. No spouse, child, or parent who participated in the fraud for which forfeiture was imposed

shall receive any payment by reason of this subsection. An apportionment award under this subsection may not be made in any case after September 1, 1959.

(c) Forfeiture of benefits by a veteran shall not prohibit payment of the burial allowance, death compensation, dependency and indemnity compensation, or death pension in the event of the veteran's death.

(d)(1) After September 1, 1959, no forfeiture of benefits may be imposed under this section or section 6104 of this title upon any individual who was a resident of, or domiciled in, a State at the time the act or acts occurred on account of which benefits would, but not for this subsection, be forfeited unless such individual ceases to be a resident of, or domiciled in, a State before the expiration of the period during which criminal prosecution could be instituted. This subsection shall not apply with respect to (A) any forfeiture occurring before September 1, 1959, or (B) an act or acts which occurred in the Philippine Islands before July 4, 1946.

(2) The Secretary is hereby authorized and directed to review all cases in which, because of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, a forfeiture of gratuitous benefits under laws administered by the Secretary was imposed, pursuant to this section or prior provisions of law, on or before September 1, 1959. In any such case in which the Secretary determines that the forfeiture would not have been imposed under the provisions of this section in effect after September 1, 1959, the Secretary shall remit the forfeiture, effective June 30, 1972. Benefits to which the individual concerned becomes eligible by virtue of any such remission may be awarded, upon application therefor, and the effective date of any award of compensation, dependency and indemnity compensation, or pension made in such a case shall be fixed in accordance with the provisions of section 5110(g) of this title.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, Sec. 3503; Pub. L. 86-222, Sec. 1, Sept. 1, 1959, 73 Stat. 452; Pub. L. 91-24, Sec. 13(a), June 11, 1969, 83 Stat. 34; Pub. L. 92-328, title II, Sec. 206, June 30, 1972, 86 Stat. 397; Pub. L. 98-160, title VII, Sec. 703(6), Nov. 21, 1983, 97 Stat. 1011; Pub. L. 99-576, title VII, Sec. 701(83), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 6103 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(d)(8), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, Sec. 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 103-446, title XII, Sec. 1201(e)(18), (f)(5), Nov. 2, 1994, 108 Stat. 4686, 4687.)

-MISC1-

AMENDMENTS

1994 - Subsec. (d)(1). Pub. L. 103-446, Sec. 1201(e)(18), in second sentence substituted "(A) any" for "(a) any", "(B) an act" for "(b) an act", and "before July 4, 1946" for "prior to July 4, 1946".

Subsec. (d)(2). Pub. L. 103-446, Sec. 1201(f)(5), substituted "June 30, 1972" for "the date of enactment of this amendatory Act".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 3503 of this title as this section.

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

Subsec. (b). Pub. L. 102-54, Sec. 14(d)(8)(A), amended subsec.

(b) as in effect immediately before the enactment of Pub. L. 102-40 by inserting at end "An apportionment award under this subsection may not be made in any case after September 1, 1959."

Subsec. (d)(1). Pub. L. 102-40, Sec. 402(d)(1), substituted "6104" for "3504".

Subsec. (d)(2). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in three 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 "5110(g)" for "3010(g)".

Subsec. (e). Pub. L. 102-54, Sec. 14(d)(8)(B), amended section as in effect immediately before the enactment of Pub. L. 102-40 by striking out subsec. (e) which read as follows: "No apportionment award under subsection (b) of this section shall be made in any case after the date of enactment of this subsection."

1986 - Subsec. (c). Pub. L. 99-576, Sec. 701(83)(A), substituted "the veteran's" for "his".

Subsec. (d)(2). Pub. L. 99-576, Sec. 701(83)(B), substituted "the Administrator" for "he" in two places in second sentence.

1983 - Subsec. (b). Pub. L. 98-160 substituted "the right" for "his right", "the veteran's spouse" for "his wife", and "spouse" for "wife" in two places.

1972 - Subsec. (d). Pub. L. 92-328 designated existing provisions as par. (1) and added par. (2).

1969 - Subsec. (d). Pub. L. 91-24 substituted "September 1, 1959" for "the date of enactment of this subsection" wherever appearing.

1959 - Subsecs. (d) and (e). Pub. L. 86-222 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1972 AMENDMENT

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

-End-

-CITE-

38 USC Sec. 6104

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6104. Forfeiture for treason

-STATUTE-

(a) Any person shown by evidence satisfactory to the Secretary to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future gratuitous benefits under laws administered by the Secretary.

(b) The Secretary, in the Secretary's discretion, may apportion and pay any part of benefits forfeited under subsection (a) to the dependents of the person forfeiting such benefits. No dependent of any person shall receive benefits by reason of this subsection in excess of the amount to which the dependent would be entitled if

such person were dead.

(c) In the case of any forfeiture under this section there shall be no authority after September 1, 1959 (1) to make an apportionment award pursuant to subsection (b) or (2) to make an award to any person of gratuitous benefits based on any period of military, naval, or air service commencing before the date of commission of the offense.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, Sec. 3504; Pub. L. 86-222, Sec. 2, Sept. 1, 1959, 73 Stat. 452; Pub. L. 91-24, Sec. 13(b), June 11, 1969, 83 Stat. 34; Pub. L. 97-295, Sec. 4(78), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 99-576, title VII, Sec. 701(84), Oct. 28, 1986, 100 Stat. 3298; renumbered Sec. 6104, 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.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 3504 of this title as this section.

Subsec. (a). 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".

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

1986 - Subsec. (b). Pub. L. 99-576 substituted "the Administrator's" for "his" and "the dependent" for "he".

1982 - Subsec. (a). Pub. L. 97-295 inserted "to" before "be guilty".

1969 - Subsec. (c). Pub. L. 91-24 substituted "September 1, 1959" for "the date of enactment of this subsection".

1959 - Subsec. (c). Pub. L. 86-222 added subsec. (c).

-End-

-CITE-

38 USC Sec. 6105 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6105. Forfeiture for subversive activities

-STATUTE-

(a) Any individual who is convicted after September 1, 1959, of any offense listed in subsection (b) of this section shall, from and after the date of commission of such offense, have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be

entitled to such benefits on account of such individual. After receipt of notice of the return of an indictment for such an offense the Secretary shall suspend payment of such gratuitous benefits pending disposition of the criminal proceedings. If any individual whose right to benefits has been terminated pursuant to this section is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon.

(b) The offenses referred to in subsection (a) of this section are those offenses for which punishment is prescribed in -

(1) sections 894, 904, and 906 of title 10 (articles 94, 104, and 106 of the Uniform Code of Military Justice);

(2) sections 175, 229, 792, 793, 794, 798, 831, 1091, 2332a, 2332b, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18;

(3) sections 222, 223, 224, 225, and 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2272, 2273, 2274, 2275, and 2276); and

(4) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(c) The Secretary of Defense or the Secretary of Homeland Security, as appropriate, shall notify the Secretary in each case in which an individual is convicted of an offense listed in paragraph (1) of subsection (b). The Attorney General shall notify the Secretary in each case in which an individual is indicted or convicted of an offense listed in paragraph (2), (3), or (4) of subsection (b).

-SOURCE-

(Added Pub. L. 86-222, Sec. 3(a), Sept. 1, 1959, 73 Stat. 453, Sec. 3505; amended Pub. L. 92-128, Sec. 2(c), Sept. 25, 1971, 85 Stat. 348; Pub. L. 93-43, Sec. 8, June 18, 1973, 87 Stat. 88; Pub. L. 97-295, Sec. 4(79), Oct. 12, 1982, 96 Stat. 1311; renumbered Sec. 6105, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, Sec. 14(d)(9), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, Sec. 4(a)(1), (2)(A)(xiv), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 103-446, title XII, Sec. 1201(e)(19), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 107-296, title XVII, Sec. 1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108-183, title VII, Sec. 705(a), Dec. 16, 2003, 117 Stat. 2672.)

-MISC1-

AMENDMENTS

2003 - Subsec. (b)(2). Pub. L. 108-183 inserted "175, 229," after "sections" and "831, 1091, 2332a, 2332b," after "798,".

2002 - Subsec. (c). Pub. L. 107-296 substituted "of Homeland Security" for "of Transportation".

1994 - Subsec. (c). Pub. L. 103-446 substituted "paragraph (2), (3), or (4) of subsection (b)" for "clauses (2), (3), or (4) of subsection (b) of this section" and "paragraph (1) of subsection (b)" for "clause (1) of that subsection" and transposed the first and second sentences.

1991 - Pub. L. 102-40 renumbered section 3505 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(a)(2)(A)(xiv), substituted "Secretary" for "Veterans' Administration" in second sentence.

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

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

"Secretary" for "Administrator" in two places.

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "clauses (2)," for "clauses (1),", "Secretary of Transportation, as" for "Secretary of the Treasury, as may be", and "clause (1) of that subsection" for "clause (2) of subsection (b) of this section".

1982 - Subsec. (a). Pub. L. 97-295, Sec. 4(79)(A), substituted "September 1, 1959," for "the date of enactment of this section".

Subsec. (b). Pub. L. 97-295, Sec. 4(79)(B), substituted pars. (1), (2), and (3) for cls. (2), (1), and (3), respectively, and inserted citations to the United States Code.

1973 - Subsec. (a). Pub. L. 93-43 inserted "(including the right to burial in a national cemetery)" after "gratuitous benefits" in first sentence.

1971 - Subsec. (b)(4). Pub. L. 92-128 substituted "in section 4 of the Internal Security Act of 1950" for "in the following sections of the Internal Security Act of 1950; sections 4, 112, and 113".

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title VII, Sec. 705(b), Dec. 16, 2003, 117 Stat. 2672, provided that: "The amendments made by subsection (a) [amending this section] shall apply to claims filed after the date of the enactment of this Act [Dec. 16, 2003]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-43 effective June 18, 1973, see section 10(a) of Pub. L. 93-43, set out as an Effective Date note under section 2400 of this title.

-End-

-CITE-

38 USC Sec. 6106

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6106. Misuse of benefits by fiduciaries

-STATUTE-

(a) Fee Forfeiture in Case of Benefit Misuse by Fiduciaries. - A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

(b) Misuse of Benefits Defined. - For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the

fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

(c) Regulations. - The Secretary may prescribe by regulation the meaning of the term "use and benefit" for purposes of this section.

-SOURCE-

(Added Pub. L. 108-454, title V, Sec. 503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

-MISC1-

EFFECTIVE DATE

Section applicable with respect to any determinations by the Secretary of Veterans Affairs made after Dec. 10, 2004, of misuse of funds by a fiduciary, see section 507(b)(2) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

-End-

-CITE-

38 USC Sec. 6107

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART IV - GENERAL ADMINISTRATIVE PROVISIONS
CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6107. Reissuance of benefits

-STATUTE-

(a) Negligent Failure by Secretary. - (1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) A case in which the Secretary failed to review a fiduciary's accounting within 60 days of the date on which that accounting is scheduled for review.

(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

(C) In any other case in which actual negligence is shown.

(b) Reissuance of Misused Benefits in Other Cases. - (1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the

Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

(2) Paragraph (1) applies to a fiduciary that -

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

(c) Limitation on Total Amount Paid. - The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

(d) Recoupment of Amounts Reissued. - In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

-SOURCE-

(Added Pub. L. 108-454, title V, Sec. 503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

-MISC1-

EFFECTIVE DATE

Section applicable with respect to any determinations by the Secretary of Veterans Affairs made after Dec. 10, 2004, of misuse of funds by a fiduciary, see section 507(b)(2) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

-End-

-CITE-

38 USC Sec. 6108

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 61 - PENAL AND FORFEITURE PROVISIONS

-HEAD-

Sec. 6108. Authority for judicial orders of restitution

-STATUTE-

(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

-SOURCE-

(Added Pub. L. 108-454, title V, Sec. 504(b)(1), Dec. 10, 2004, 118 Stat. 3621.)

-MISC1-

EFFECTIVE DATE

Section effective on the first day of the seventh month beginning after Dec. 10, 2004, see section 507(a) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

-End-