

## -CITE-

38 USC CHAPTER 53 - SPECIAL PROVISIONS RELATING TO  
BENEFITS

01/08/2008

## -EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

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CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

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## AMENDMENTS

2007 - Pub. L. 110-157, title III, Sec. 301(b)(2), Dec. 26, 2007, 121 Stat. 1836, added item 5317A.

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

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

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

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

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

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

1981 - Pub. L. 97-66, title VI, Sec. 604(a)(2), Oct. 17, 1981, 95

Stat. 1036, added item 3103A.

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

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

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

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

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

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

-End-

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38 USC Sec. 5301

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TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

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Sec. 5301. Nonassignability and exempt status of benefits

-STATUTE-

(a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

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

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

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer

pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

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

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

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

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

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

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

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

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

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

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

(e) In the case of a person who -

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members

of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

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

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

-SOURCE-

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

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

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

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

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

Subsec. (c)(1). 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".

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

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

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

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

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

Administration".

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

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

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

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

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

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

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

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

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

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

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

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

#### EFFECTIVE DATE OF 1991 AMENDMENT

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

#### EFFECTIVE DATE OF 1989 AMENDMENT

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

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-479 effective Oct. 1, 1978, see section 401 of Pub. L. 95-479, set out as a note under section 1114 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

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

-TRANS-

#### TRANSFER OF FUNCTIONS

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

-MISC2-

#### UNDUE HARDSHIP CASES

Pub. L. 95-202, title III, Sec. 305(c), Nov. 23, 1977, 91 Stat. 1444, provided that Administrator could provide equitable relief to

educational institutions and accredited correspondence schools which were in possession of a veteran's or eligible person's benefit check payable to the veteran or person and mailed to the institution or school for certain courses or lessons completed by the veteran or person at the institution or school before certain dates in 1977 and which were holding a power of attorney executed by the veteran or person before Dec. 1, 1976, authorizing negotiation of the check.

-End-

-CITE-

38 USC sec. 5302

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5302. waiver of recovery of claims by the United States

-STATUTE-

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

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

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

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

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

insurance appropriation, as applicable.

-SOURCE-

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

-MISC1-

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1986 - Subsec. (b). Pub. L. 99-576, Sec. 701(69)(A), substituted "the veteran's" for "his" before "spouse".

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

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

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

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

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

#### EFFECTIVE DATE OF 1997 AMENDMENT

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

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 407(b) of Pub. L. 97-306 provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to notifications of indebtedness that are made by the Administrator of Veterans' Affairs after March 31, 1983."

#### EFFECTIVE DATE OF 1980 AMENDMENT

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

#### EFFECTIVE DATE OF 1972 AMENDMENT

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

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

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

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

-End-

-CITE-

38 USC Sec. 5303

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

## Sec. 5303. Certain bars to benefits

-STATUTE-

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

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

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

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

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

(2) Notwithstanding any other provision of law -

(A) no person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other

than honorable conditions, shall be entitled to benefits under laws administered by the Secretary except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharge under such standards; and

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

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

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, Sec. 3103; Pub. L. 86-113, July 28, 1959, 73 Stat. 262; Pub. L. 95-126, Sec. 1(a), Oct. 8, 1977, 91 Stat. 1106; Pub. L. 97-295, Sec. 4(75), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-576, title VII, Sec. 701(70), Oct. 28, 1986, 100 Stat. 3296; renumbered Sec. 5303, 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.)

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

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

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

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

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

Pub. L. 102-83, Sec. 4(a)(1), substituted "administered by the

Secretary" for "administered by the Veterans' Administration" in subpar. (A) and last sentence.

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

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

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

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

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

1977 - Subsec. (a). Pub. L. 95-126, Sec. 1(a)(1), inserted provisions barring a person in the Armed Forces from being a recipient of benefits when discharged on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence and barred benefits notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of Title 10.

Subsec. (e). Pub. L. 95-126, Sec. 1(a)(2), added subsec. (e).

1959 - Subsec. (c). Pub. L. 86-113 required affirmative evidence to establish that alien was discharged on his own application or solicitation.

#### EFFECTIVE DATE OF 1977 AMENDMENT

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

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

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

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

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

provided; and

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

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

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

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

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

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

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

REGULATIONS RESPECTING STANDARDS AND PROCEDURES FOR DETERMINATION OF SEPARATION FROM ACTIVE SERVICE UNDER CONDITIONS OTHER THAN

DISHONORABLE FREE OF UNIQUE OR SPECIAL ADVANTAGES OR SPECIAL  
DISTINCTIONS BETWEEN VETERANS

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

-End-

-CITE-

38 USC Sec. 5303A

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5303A. Minimum active-duty service requirement

-STATUTE-

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

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

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

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

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

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

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

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

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

(B) to a person who is discharged or released from active duty

for a disability incurred or aggravated in line of duty;

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

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

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

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

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

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

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

(iv) a discharge or release from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as described in section 3011(a)(1)(A)(ii)(I) of this title; or

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

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

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

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

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

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

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

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

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

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

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

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

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

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

-SOURCE-

(Added Pub. L. 97-66, title VI, Sec. 604(a)(1), Oct. 17, 1981, 95 Stat. 1035, Sec. 3103A; amended Pub. L. 97-306, title IV, Sec. 408(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99-576, title III, Sec. 321(11), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100-689, title I, Sec. 102(b)(3), Nov. 18, 1988, 102 Stat. 4163; Pub. L. 101-510, div. A, title V, Sec. 562(a)(4), Nov. 5, 1990, 104 Stat. 1574; renumbered Sec. 5303A, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Secs. 4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 103-353, Sec. 3, Oct. 13, 1994, 108 Stat. 3169; Pub. L. 103-446, title IX, Sec. 908, Nov. 2, 1994, 108 Stat. 4678; Pub. L. 105-368, title X, Sec. 1005(b)(15), Nov. 11, 1998, 112 Stat. 3365.)

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

38C53

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE

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

DELAYED APPLICATION OF EXCLUSION; ADDITIONAL WAGES CONSIDERED BENEFIT

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

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

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

SCOPE OF EXCLUSION

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

which administers any such benefit."

APPLICABILITY

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

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 5304

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5304. Prohibition against duplication of benefits

-STATUTE-

(a)(1) Except as provided in section 1414 of title 10 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.

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

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

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

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

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

## -SOURCE-

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

## -MISC1-

## AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-385 effective Oct. 1, 1980, see section

601(b) of Pub. L. 96-385, set out as a note under section 1114 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

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

## EFFECTIVE DATE OF 1970 AMENDMENT

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

## EFFECTIVE DATE OF 1964 AMENDMENT

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

## EFFECTIVE DATE OF 1960 AMENDMENT

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

-End-

-CITE-

38 USC Sec. 5305

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5305. Waiver of retired pay

-STATUTE-

Except as provided in section 1414 of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of such person's retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

-SOURCE-

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

-MISC1-

AMENDMENTS

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

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

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

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

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

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

-End-

-CITE-

38 USC Sec. 5306

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART IV - GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5306. Renouncement of right to benefits

-STATUTE-

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

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

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

-SOURCE-

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

-MISC1-

#### AMENDMENTS

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

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

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

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

-End-

-CITE-

38 USC Sec. 5307

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5307. Apportionment of benefits

-STATUTE-

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

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

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

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

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

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, Sec. 3107; Pub. L. 92-540, title V, Sec. 505, Oct. 24, 1972, 86 Stat. 1099; Pub. L. 98-160, title VII, Sec. 703(2), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5307, 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 3107 of this title as this section.

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

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

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

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

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

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

## EFFECTIVE DATE OF 1972 AMENDMENT

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

-End-

-CITE-

38 USC Sec. 5308

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5308. withholding benefits of persons in territory of the enemy

-STATUTE-

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

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

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

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, Sec. 3108; Pub. L. 99-576, title VII, Sec. 701(74), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5308 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.)

-MISC1-

## AMENDMENTS

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 3108 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".

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

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

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

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

-End-

-CITE-

38 USC Sec. 5309

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5309. Payment of certain withheld benefits

-STATUTE-

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

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

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1232, Sec. 3109; Pub. L. 97-258, Sec. 3(k)(4), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 99-576, title VII, Sec. 701(75), Oct. 28, 1986, 100 Stat. 3297; renumbered Sec. 5309 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.)

-MISC1-

#### AMENDMENTS

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 3109 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 in last sentence.

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

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

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

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

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

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

-End-

-CITE-

38 USC Sec. 5310

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5310. Payment of benefits for month of death

-STATUTE-

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

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

(2) If (notwithstanding section 5112(b)(1) of this title) a check or other payment is issued to, and in the name of, the deceased veteran as a benefit payment under chapter 11 or 15 of this title for the month in which death occurs, that check or other payment (A) shall be treated for all purposes as being payable to the surviving spouse, and (B) if that check or other payment is negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (1). However, if such check or other payment is in an amount less than the amount of the benefit under paragraph (1), the unpaid amount shall be treated in the same manner as an accrued benefit under section 5121 of this title.

-SOURCE-

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

-MISC1-

#### AMENDMENTS

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

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

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE

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

-End-

-CITE-

38 USC Sec. 5311

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5311. Prohibition of certain benefit payments

-STATUTE-

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

-SOURCE-

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

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

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

-End-

-CITE-

38 USC Sec. 5312

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

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

## -STATUTE-

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 1521, 1541, and 1542 of this title, the rate of increased pension paid under such sections 1521 and 1541 on account of children, and each rate of monthly allowance paid under section 1805 of this title, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

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

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

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

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

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

## -SOURCE-

(Added Pub. L. 95-588, title III, Sec. 305(a), Nov. 4, 1978, 92 Stat. 2507, Sec. 3112; amended Pub. L. 97-295, Sec. 4(76), Oct. 12, 1982, 96 Stat. 1311; renumbered Sec. 5312, Pub. L. 102-40, title

IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Secs. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 104-204, title IV, Sec. 421(c), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 108-454, title V, Sec. 506, Dec. 10, 2004, 118 Stat. 3622.)

## -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 chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

## -MISC1-

## AMENDMENTS

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

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

Subsec. (c)(1). Pub. L. 104-204, Sec. 421(c)(2), substituted "1542, and 1805" for "and 1542".

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

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

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

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

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

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

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

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

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

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

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

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

## EFFECTIVE DATE OF 2004 AMENDMENT

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

"(a) In General. - Except as otherwise provided, this title [enacting sections 5506 to 5510 and 6106 to 6108 of this title and amending this section and sections 5502 and 6101 of this title] and

the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act [Dec. 10, 2004].

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

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

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

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

#### EFFECTIVE DATE

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

-End-

-CITE-

38 USC Sec. 5313

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

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

-STATUTE-

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

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

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

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

(b)(1) All or any part of the compensation not paid to a veteran

by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 5307 of this title.

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

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

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

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

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

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

(e) For purposes of this section -

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

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

-SOURCE-

(Added Pub. L. 96-385, title V, Sec. 504(a), Oct. 7, 1980, 94 Stat. 1534, Sec. 3113; amended Pub. L. 98-160, title VII, Sec. 702(17), Nov. 21, 1983, 97 Stat. 1010; renumbered Sec. 5313 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(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title X, Sec. 1005(b)(16), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 109-461, title X, Sec. 1002(f), Dec. 22, 2006, 120 Stat. 3465.)

-MISC1-

AMENDMENTS

2006 - Subsecs. (a)(1), (b)(3), (c). Pub. L. 109-461 substituted "local, or other penal institution or correctional facility" for "or local penal institution".

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

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

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

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

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

38C53

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

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

EFFECTIVE DATE

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

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

Pub. L. 107-103, title V, Sec. 506, Dec. 27, 2001, 115 Stat. 996, provided that:

"(a) Limitation. - Section 5313 of title 38, United States Code, other than subsection (d) of that section, shall apply with respect to the payment of compensation to or with respect to any veteran described in subsection (b).

"(b) Covered Veterans. - A veteran described in this subsection is a veteran who is entitled to compensation and who -

"(1) on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date; and

"(2) remains so incarcerated for conviction of that felony as of the date of the enactment of this Act [Dec. 27, 2001].

"(c) Effective Date. - This section shall apply with respect to the payment of compensation for months beginning on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 27, 2001].

"(d) Compensation Defined. - For purposes of this section, the term 'compensation' has the meaning given that term in section 5313 of title 38, United States Code."

-End-

-CITE-

38 USC Sec. 5313A

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5313A. Limitation on payment of clothing allowance to incarcerated veterans

-STATUTE-

In the case of a veteran who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for a period in excess of 60 days and who is furnished clothing without charge by the institution, the amount of any annual clothing allowance payable to the veteran under section 1162 of this title shall be reduced by an amount equal to  $\frac{1}{365}$  of the amount of the allowance otherwise payable under that section for each day on which the veteran was so incarcerated during the 12-month period preceding the date on which payment of the allowance would be due. This section shall be carried out under regulations prescribed by the Secretary.

-SOURCE-

(Added Pub. L. 104-275, title V, Sec. 502(a), Oct. 9, 1996, 110 Stat. 3341; amended Pub. L. 109-461, title X, Sec. 1002(g), Dec. 22, 2006, 120 Stat. 3465.)

-MISC1-

AMENDMENTS

2006 - Pub. L. 109-461 substituted "local, or other penal institution or correctional facility" for "or local penal institution".

-End-

-CITE-

38 USC Sec. 5313B

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5313B. Prohibition on providing certain benefits with respect to persons who are fugitive felons

-STATUTE-

(a) A veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran is a fugitive felon. A dependent of a veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran or such dependent is a fugitive felon.

(b) For purposes of this section:

(1) The term "fugitive felon" means a person who is a fugitive by reason of -

(A) fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(B) violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(2) The term "felony" includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(3) The term "dependent" means a spouse, surviving spouse, child, or dependent parent of a veteran.

(c) A benefit specified in this subsection is a benefit under any of the following:

- (1) Chapter 11 of this title.
- (2) Chapter 13 of this title.
- (3) Chapter 15 of this title.
- (4) Chapter 17 of this title.
- (5) Chapter 19 of this title.
- (6) Chapter 30, 31, 32, 34, or 35 of this title.
- (7) Chapter 37 of this title.

(d)(1) The Secretary shall furnish to any Federal, State, or local law enforcement official, upon the written request of such official, the most current address maintained by the Secretary of a person who is eligible for a benefit specified in subsection (c) if such official -

(A) provides to the Secretary such information as the Secretary may require to fully identify the person;

(B) identifies the person as being a fugitive felon; and

(C) certifies to the Secretary that apprehending such person is within the official duties of such official.

(2) The Secretary shall enter into memoranda of understanding with Federal law enforcement agencies, and may enter into agreements with State and local law enforcement agencies, for purposes of furnishing information to such agencies under paragraph (1).

## -SOURCE-

(Added Pub. L. 107-103, title V, Sec. 505(a)(1), Dec. 27, 2001, 115 Stat. 995.)

-End-

## -CITE-

38 USC Sec. 5314

01/08/2008

## -EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

## -HEAD-

Sec. 5314. Indebtedness offsets

## -STATUTE-

(a) Subject to subsections (b) and (d) of this section and section 3485(e) of this title, the Secretary shall (unless the Secretary waives recovery under section 5302 of this title) deduct the amount of the indebtedness of any person who has been determined to be indebted to the United States by virtue of such person's participation in a benefits program administered by the Secretary from future payments made to such person under any law administered by the Secretary.

(b) Deductions may not be made under subsection (a) of this section with respect to the indebtedness of a person described in such subsection unless the Secretary -

(1) has made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 5302 of this title;

(2) has made a determination with respect to any such dispute or request or has determined that the time required to make such a determination before making deductions would jeopardize the Secretary's ability to recover the full amount of such indebtedness through deductions from such payments; and

(3) has made reasonable efforts to notify such person about the proposed deductions from such payments.

(c) Notwithstanding any other provision of this title or of any other law, the authority of the Secretary to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for the purpose of determining the creditworthiness of a person who owes such an indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

(d) The Secretary shall prescribe regulations for the administration of this section.

## -SOURCE-

(Added Pub. L. 96-466, title VI, Sec. 605(a)(1), Oct. 17, 1980, 94 Stat. 2209, Sec. 3114; amended Pub. L. 102-16, Sec. 6(b)(3), Mar. 22, 1991, 105 Stat. 51; renumbered Sec. 5314 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)(1), (b)(1), (2)(E), 5(c)(1),

Aug. 6, 1991, 105 Stat. 403-406.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 3114 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 5(c)(1), substituted "3485(e)" for "1685(e)".

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" in two places.

Pub. L. 102-40, Sec. 402(d)(1), substituted "5302" for "3102".

Pub. L. 102-16 inserted "and section 1685(e) of this title" after "Subject to subsections (b) and (d) of this section".

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

Pub. L. 102-40, Sec. 402(d)(1), substituted "5302" for "3102" in par. (1).

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

EFFECTIVE DATE

Section 802(f) of Pub. L. 96-466 provided that:

"(1) Except as provided in paragraph (2), the amendments made by title VI [see Tables for classification] shall become effective on October 1, 1980.

"(2) The amendments made by sections 603 [amending sections 1677 and 1798 [now 3698] of this title] and 604 [amending section 1786 [now 3686] of this title] shall not apply to any person receiving educational assistance under chapter 34 or 35 of title 38, United States Code, on September 1, 1980, for the pursuit of a program of education, as defined in section 1652(b) [now 3452(b)] of such title, in which such person is enrolled on that date, for as long as such person continuously thereafter is so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under the provisions of such chapter and chapter 36 of such title as in effect on that date."

RULES AND REGULATIONS

Section 605(b) of Pub. L. 96-466 provided that: "The Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] shall, not later than January 1, 1981, prescribe the regulations required to be prescribed under sections 3114 and 3115 [now 5314 and 5315] of title 38, United States Code, as added by subsection (a)."

-End-

-CITE-

38 USC Sec. 5315

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5315. Interest and administrative cost charges on delinquent payments of certain amounts due the United States

-STATUTE-

(a) Notwithstanding any other provision of this title or of any

other law and subject to sections 3485(e) and 5302 of this title, interest and administrative costs (as described in subsections (b) and (c) of this section) shall be charged, under regulations which the Secretary shall prescribe, on any amount owed to the United States -

(1) for an indebtedness resulting from a person's participation in a benefits program administered by the Secretary other than a loan, loan-guaranty, or loan-insurance program;

(2) for an indebtedness resulting from the provision of care or services under chapter 17 of this title; or

(3) to the extent not precluded by the terms of the loan instruments concerned, for an indebtedness resulting from a person's participation in a program of loans, loan guaranties, or loan insurance administered by the Secretary under this title.

(b)(1) Interest on the amount of any indebtedness described in subsection (a) of this section shall accrue from the day on which the initial notification of the amount due is mailed to the person who owes such amount (using the most current address of such person that is available to the Secretary), but interest under this section shall not be charged (A) for any period before October 17, 1980, or (B) if the amount due is paid within a reasonable period of time. The Secretary shall, in the regulations prescribed pursuant to subsection (a) of this section, prescribe what constitutes a reasonable period of time for payment of an indebtedness after the initial notification of indebtedness has been mailed.

(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Secretary under such regulations.

(c) The administrative costs to be charged under this section with respect to an amount owed to the United States shall be so much of the costs incurred by the United States in collecting such amount as the Secretary determines, under such regulations, to be reasonable and appropriate.

-SOURCE-

(Added Pub. L. 96-466, title VI, Sec. 605(a)(1), Oct. 17, 1980, 94 Stat. 2210, Sec. 3115; amended Pub. L. 102-16, Sec. 6(b)(4), Mar. 22, 1991, 105 Stat. 51; renumbered Sec. 5315 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)(1), (b)(1), (2)(E), 5(C)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 105-368, title X, Sec. 1005(b)(17), Nov. 11, 1998, 112 Stat. 3365.)

-MISC1-

AMENDMENTS

1998 - subsec. (b)(1). Pub. L. 105-368 substituted "October 17, 1980," for "the date of the enactment of this section,".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 3115 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 5(c)(1), substituted "3485(e)" for "1685(e)" in introductory provisions.

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

Pub. L. 102-83, Sec. 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in pars. (1) and (3).

Pub. L. 102-40, Sec. 402(d)(1), substituted "5302" for "3102" in introductory provisions.

Pub. L. 102-16 substituted "sections 1685(e) and 3102" for "section 3102" in introductory provisions.

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

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

-End-

-CITE-

38 USC Sec. 5316

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5316. Authority to sue to collect certain debts

-STATUTE-

(a)(1) The secretary shall take appropriate steps to authorize attorneys employed by the Department to exercise, subject to paragraphs (2) and (3) of this subsection, the right of the United States to bring suit in any court of competent jurisdiction to recover any indebtedness owed to the United States by a person by virtue of such person's participation in a benefits program administered by the Secretary.

(2) No suit may be filed under this section to recover any indebtedness owed by any person to the United States unless the Secretary has determined, under regulations which the Secretary shall prescribe, that such person has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

(3) The activities of attorneys employed by the Department in bringing suit under this section shall be subject to the direction and supervision of the Attorney General of the United States and to such terms and conditions as the Attorney General may prescribe.

(b) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28 to direct and supervise all litigation to which the United States or an agency or officer of the United States is a party.

-SOURCE-

(Added Pub. L. 96-466, title VI, Sec. 605(a)(1), Oct. 17, 1980, 94 Stat. 2211, Sec. 3116; renumbered Sec. 5316, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, Sec. 14(d)(3), June 13, 1991, 105 Stat. 285; 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 3116 of this title as this section.

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

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".

Pub. L. 102-54, Sec. 14(d)(3)(A), amended subsec. (a)(1) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "The" for "within ninety days after the date of the enactment of this section, the".

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

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

Subsecs. (b), (c). Pub. L. 102-54, Sec. 14(d)(3)(B), amended section as in effect immediately before the enactment of Pub. L. 102-40 by redesignating subsec. (c) as (b) and striking out former subsec. (b) which read as follows: "Not later than ninety days after the date of the enactment of this section, the Administrator and the Attorney General of the United States shall submit to the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section."

## EFFECTIVE DATE

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

-End-

-CITE-

38 USC Sec. 5317

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5317. Use of income information from other agencies: notice and verification

-STATUTE-

(a) The secretary shall notify each applicant for a benefit or service described in subsection (c) of this section that income information furnished by the applicant to the Secretary may be compared with information obtained by the Secretary from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986. The secretary shall periodically transmit to recipients of such benefits and services additional notifications of such matters.

(b) The secretary may not, by reason of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986, terminate, deny, suspend, or reduce any benefit or service described in subsection (c) of this section until the Secretary takes appropriate steps to verify independently information relating to the following:

- (1) The amount of the asset or income involved.
- (2) whether such individual actually has (or had) access to such asset or income for the individual's own use.
- (3) The period or periods when the individual actually had such asset or income.

(c) The benefits and services described in this subsection are the following:

- (1) Needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Secretary.
- (2) Parents' dependency and indemnity compensation provided under section 1315 of this title.
- (3) Health-care services furnished under subsections (a)(2)(G), (a)(3), and (b) of section 1710 of this title.
- (4) Compensation paid under chapter 11 of this title at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

(d) In the case of compensation described in subsection (c)(4) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment information referred to in subsection (b) of this section only if the Secretary finds that the amount and duration of the earnings reported in that information clearly indicate that the individual may no longer be qualified for a rating of total disability.

(e) The Secretary shall inform the individual of the findings made by the Secretary on the basis of verified information under subsection (b) of this section, and shall give the individual an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

(f) The secretary shall pay the expenses of carrying out this section from amounts available to the Department for the payment of compensation and pension.

(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Commissioner of Social Security under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, 2008.

-SOURCE-

(Added Pub. L. 101-508, title VIII, Sec. 8051(b)(1), Nov. 5, 1990, 104 Stat. 1388-350, Sec. 3117; renumbered Sec. 5317, 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; Pub. L. 102-568, title VI, Sec. 602(a), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 103-66, title XII, Sec. 12004, Aug. 10, 1993, 107 Stat. 414; Pub. L. 104-262, title I, Sec. 101(e)(3), Oct. 9, 1996, 110 Stat. 3181; Pub. L. 105-33, title VIII, Sec. 8014, Aug. 5, 1997, 111 Stat. 664; Pub. L. 106-419, title IV, Sec. 402(d), Nov. 1, 2000, 114 Stat. 1863; Pub. L. 108-183, title VII, Sec. 708(c)(3), Dec. 16, 2003, 117 Stat. 2674.)

-REFTEXT-

REFERENCES IN TEXT

Section 6103(l)(7)(D)(viii) of the Internal Revenue Code, referred to in subsecs. (a), (b), and (g), is classified to section 6103(l)(7)(D)(viii) of Title 26, Internal Revenue Code.

-MISC1-

AMENDMENTS

2003 - subsecs. (a), (b), (g). Pub. L. 108-183 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

2000 - Subsec. (g). Pub. L. 106-419 substituted "September 30, 2008" for "September 30, 2002".

1997 - Subsec. (g). Pub. L. 105-33 substituted "September 30, 2002" for "September 30, 1998".

1996 - Subsec. (c)(3). Pub. L. 104-262 substituted "subsections (a)(2)(G), (a)(3), and (b) of section 1710" for "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)".

1993 - Subsec. (g). Pub. L. 103-66 substituted "1998" for "1997".

1992 - Subsec. (g). Pub. L. 102-568 substituted "1997" for "1992".

1991 - Pub. L. 102-40 renumbered section 3117 of this title as this section.

Subsec. (c)(2). Pub. L. 102-83 substituted "1315" for "415".

Subsec. (c)(3). Pub. L. 102-83 substituted "1710(a)(1)(I)", "1710(a)(2)", "1710(b)", and "1712(a)(2)(B)" for "610(a)(1)(I)", "610(a)(2)", "610(b)", and "612(a)(2)(B)", respectively.

NOTIFICATION PRIOR TO USE OF INCOME INFORMATION FROM OTHER FEDERAL AGENCIES

Section 8051(c) of Pub. L. 101-508 provided that:

"(1) The Secretary of Veterans Affairs shall notify individuals

who (as of the date of the enactment of this Act [Nov. 5, 1990]) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 [now 5317] of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(1)(7)(D) of the Internal Revenue Code of 1986 [26 U.S.C. 6103(1)(7)(D)] (as added by subsection (a)).

"(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

"(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made."

STUDY BY COMPTROLLER GENERAL ON EFFECTIVENESS OF AMENDMENTS BY PUB. L. 101-508

Section 8051(d) of Pub. L. 101-508 provided that: "The Comptroller General of the United States shall conduct a study of the effectiveness of the amendments made by this section [enacting this section] and shall submit a report on such study to the Committees on Veterans' Affairs and Ways and Means of the House of Representatives and the Committees on Veterans' Affairs and Finance of the Senate not later than January 1, 1992."

-End-

-CITE-

38 USC Sec. 5317A

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5317A. Use of income information from other agencies:  
independent verification required before termination or reduction  
of certain benefits and services

-STATUTE-

(a) Independent Verification Required. - The Secretary may terminate, deny, suspend, or reduce any benefit or service specified in section 5317(c), with respect to an individual under age 65 who is an applicant for or recipient of such a benefit or service, by reason of information obtained from the Secretary of Health and Human Services under section 453(j)(11) of the Social Security Act, only if the Secretary takes appropriate steps to verify independently information relating to the individual's employment and income from employment.

(b) Opportunity to Contest Findings. - The Secretary shall inform each individual for whom the Secretary terminates, denies, suspends, or reduces any benefit or service under subsection (a) of the findings made by the Secretary under such subsection on the basis of verified information and shall provide to the individual an opportunity to contest such findings in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

(c) Source of Funds for Reimbursement to Secretary of Health and Human Services. - The Secretary shall pay the expense of reimbursing the Secretary of Health and Human Services in accordance with section 453(j)(11)(E) of the Social Security Act, for the cost incurred by the Secretary of Health and Human Services

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in furnishing information requested by the Secretary under section 453(j)(11) of such Act, from amounts available to the Department for the payment of compensation and pensions.

(d) Expiration of Authority. - The authority under this section shall expire on September 30, 2011.

-SOURCE-

(Added Pub. L. 110-157, title III, Sec. 301(b)(1), Dec. 26, 2007, 121 Stat. 1835.)

-REFTEXT-

REFERENCES IN TEXT

Section 453 of the Social Security Act, referred to in subsecs. (a) and (c), is classified to section 653 of Title 42, The Public Health and welfare.

-End-

-CITE-

38 USC Sec. 5318

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5318. Review of Social Security Administration death information

-STATUTE-

(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Social Security Administration relating to persons who have died for the purposes of -

- (1) determining whether any such persons to whom compensation and pension is being paid are deceased;
- (2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and
- (3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

(b) The Social Security Administration death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Commissioner of Social Security, including death information available to the Commissioner from a State, pursuant to a memorandum of understanding entered into by the Secretary and the Commissioner. Any such memorandum of understanding shall include safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.

-SOURCE-

(Added Pub. L. 101-508, title VIII, Sec. 8053(b)(1), Nov. 5, 1990, 104 Stat. 1388-352, Sec. 3118; renumbered Sec. 5318, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 108-183, title VII, Sec. 708(c)(4)(A), (B)(i), Dec. 16, 2003, 117 Stat. 2674.)

-MISC1-

AMENDMENTS

2003 - Pub. L. 108-183, Sec. 708(c)(4)(B)(i), substituted "Social Security Administration" for "Department of Health and Human

Services" in section catchline.

Subsec. (a). Pub. L. 108-183, Sec. 708(c)(4)(A)(i), substituted "Social Security Administration" for "Department of Health and Human Services" in introductory provisions.

Subsec. (b). Pub. L. 108-183, Sec. 708(c)(4)(A)(ii), substituted "Social Security Administration" for "Department of Health and Human Services", "Commissioner of Social Security" for "Secretary of Health and Human Services" after "through the", "Commissioner" for "Secretary of Health and Human Services" after "available to the", and "the Secretary and the Commissioner" for "such Secretaries".

1991 - Pub. L. 102-40 renumbered section 3118 of this title as this section.

-End-

-CITE-

38 USC Sec. 5319

01/08/2008

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART IV - GENERAL ADMINISTRATIVE PROVISIONS  
CHAPTER 53 - SPECIAL PROVISIONS RELATING TO BENEFITS

-HEAD-

Sec. 5319. Limitations on access to financial records

-STATUTE-

(a) The Secretary may make a request referred to in section 1113(p) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(p)) only if the Secretary determines that the requested information -

(1) is necessary in order for the Secretary to administer the provisions of law referred to in that section; and

(2) cannot be secured by a reasonable search of records and information of the Department.

(b) The Secretary shall include a certification of the determinations referred to in subsection (a) in each request presented to a financial institution.

(c) Information disclosed pursuant to a request referred to in subsection (a) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary if, except for the exemption in subsection (a), the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978.

-SOURCE-

(Added Pub. L. 102-568, title VI, Sec. 603(b)(1), Oct. 29, 1992, 106 Stat. 4342.)

-REFTEXT-

#### REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in subsec. (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (Sec. 3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

-End-