

Department of Veterans Affairs

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benefit is subject to variance in accordance with the public laws.

(c) *Provisions of act.* (1) When pension or compensation is granted by a special act, which fixes the rate and commencement, the rate thereunder cannot be increased nor can any other pension or compensation be paid in the absence of the payee's election, unless the special act expressly states that the benefit granted thereby is in addition to the benefit which the person is entitled to receive under any public law.

(2) If a special act corrects the nature of separation from military service and does not grant pension or compensation directly, the claimant acquires a status so that he or she may apply for and be allowed benefits. The claimant, then, is placed in the same position he or she would have been if originally released under conditions other than dishonorable.

(d) *Service.* A special act of Congress, reciting that a person is considered to have been mustered into the service on a named date and honorably discharged on a subsequently named date, is sufficient regardless of whether the service department has any record of such service.

(e) *Hospitalization.* Pension payable under special acts is subject to reduction pursuant to § 3.551.

(Authority: 38 U.S.C. 501(a), 5503)

[26 FR 1605, Feb. 24, 1961, as amended at 39 FR 34532, Sept. 26, 1974; 68 FR 34543, June 10, 2003]

§ 3.802 Medal of Honor.

(a) The Secretary of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Department of Transportation will determine the eligibility of applicants to be entered on the Medal of Honor Roll and will deliver to the Secretary of the Department of Veterans Affairs a certified copy of each certificate issued in which the right of the person named in the certificate to the special pension is set forth. The special pension will be authorized on the basis of such certification.

(Authority: 38 U.S.C. 1560, 1561)

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made as of the date of filing of the application with the Secretary concerned. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor may not receive more than one special pension.

(Authority: 38 U.S.C. 1562)

(c) VA will pay to each person who is receiving or who in the future receives Medal of Honor pension a retroactive lump sum payment equal to the total amount of Medal of Honor pension that person would have received during the period beginning the first day of the month after the date of the event for which the veteran earned the Medal of Honor and ending on the last day of the month preceding the month in which pension was awarded under paragraph (b) of this section. VA will calculate the lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran earned the Medal of Honor, to the last day of the month preceding the month in which the individual was initially awarded the Medal of Honor pension. VA will not make a retroactive lump sum payment under this section before October 1, 2003.

(Authority: 38 U.S.C. 1562(f))

[26 FR 1605, Feb. 24, 1961, as amended at 32 FR 6840, May 4, 1967; 44 FR 22721, Apr. 17, 1979; 52 FR 34909, Sept. 16, 1987; 68 FR 55467, Sept. 26, 2003]

§ 3.803 Naval pension.

(a) Payment of naval pension will be authorized on the basis of a certification by the Secretary of the Navy.

(Authority: 10 U.S.C. 6160)

(b) Awards of naval pension in effect prior to July 14, 1943, or renewed or continued may be paid concurrently with Department of Veterans Affairs pension or compensation; however, naval pension allowance under 10 U.S.C. 6160 may not exceed one-fourth of the rate of disability pension or

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compensation otherwise payable, exclusive of additional allowances for dependents or specific disabilities.

(c) New awards of naval pension may not be made concurrently with Department of Veterans Affairs pension or compensation.

(Authority: 38 U.S.C. 5304(a))

(d) Naval pension remaining unpaid at the date of the veteran's death is not payable by the Department of Veterans Affairs as an accrued benefit.

[26 FR 1605, Feb. 24, 1961, as amended at 28 FR 2857, Mar. 22, 1963; 44 FR 22721, Apr. 17, 1979]

§ 3.804 Special allowance under 38 U.S.C. 1312.

(a) The provisions of this section are applicable to the payment of a special allowance by the Department of Veterans Affairs to the surviving dependents of a veteran who served after September 15, 1940, and who died on or after January 1, 1957, as a result of such service and who was not a fully and currently insured individual under title II of the Social Security Act.

(b) The special allowance is not payable: (1) Where the veteran's death resulted from Department of Veterans Affairs hospitalization, treatment, examination, or training;

(2) Where the veteran's death was due to service rendered with the Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, or was due to service in the Philippine Scouts under section 14, Pub. L. 190, 79th Congress.

(c) A claim for dependency and indemnity compensation on a form prescribed will be accepted as a claim for the special allowance where it is determined that this benefit is payable or where a specific inquiry concerning entitlement to the special allowance is received.

(d) Payment of this allowance will be authorized on the basis of a certification from the Social Security Administration. Award actions subsequent to the original award, including adjustment and discontinuance, will be made in accordance with new certifi-

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cations from the Social Security Administration.

(e)(1) The special allowance will be payable only if the death occurred: (i) While on active duty, active duty for training, or inactive duty training as a member of a uniformed service (line of duty is not a factor); or

(ii) As the result of a disease or injury which was incurred or aggravated in line of duty while on active duty or active duty for training, or an injury which was incurred or aggravated in line of duty while on inactive duty training, as a member of a uniformed service after September 15, 1940, if the veteran was discharged or released from the period of such duty, under conditions other than dishonorable.

(2) Where the veteran died after separation from service: (i) Discharge from service must have been under conditions other than dishonorable as outlined in § 3.12.

(ii) Line of duty and service connection will be determined as outlined in § 3.1(k) and (m) and the § 3.300 series.

[26 FR 1605, Feb. 24, 1961]

§ 3.805 Loan guaranty for surviving spouses; certification.

A certification of loan guaranty benefits may be extended to surviving spouses based on an application filed on or after January 1, 1959, if:

(a) The veteran served in the Armed Forces of the United States (Allied Nations are not included) at any time on or after September 16, 1940; and

(b) The veteran died in service; or

(c) The veteran died after separation from service and such separation was under conditions other than dishonorable provided the veteran's death was the result of injury or disease incurred in or aggravated by service in line of duty rendered on or after September 16, 1940, regardless of the date of entrance into such service (cases where compensation is payable because of death resulting from hospitalization, treatment, examination, or training are not included); and

(d) The surviving spouse meets the requirements of the term "surviving spouse" as outlined in § 3.50; and

(e) The veteran's surviving spouse is unmarried; and