1962—Pub. L. 87–302 extended provisions for benefits based on limited periods immediately following discharge from active duty after December 31, 1962 to veterans discharged before such date.

EFFECTIVE DATE OF 1961 AMENDMENT
Section 2 of Pub. L. 87–302 provided that: “No monetary benefits shall accrue by reason of the amendments made by this Act [amending this section] for any period prior to the date of enactment (July 21, 1961).”

SERVICE IN ALASKA TERRITORIAL GUARD
Pub. L. 106–259, title VIII, § 8147(b), (c), Aug. 9, 2000, 114 Stat. 765, provided that:
“(b) Discharge.—(1) The Secretary of Defense shall issue to each individual who served as a member of the Alaska Territorial Guard during World War II a discharge from such service under honorable conditions if the Secretary determines that the nature and duration of the service of the individual so warrants.

“(2) A discharge under paragraph (1) shall designate the date of discharge. The date of discharge shall be the date, as determined by the Secretary, of the termination of service of the individual concerned as described in that paragraph.

WOMEN’S AIR FORCES SERVICE PILOTS
“(a)(1) Notwithstanding any other provision of law, the service of any person as a member of the Women’s Air Forces Service Pilots (a group of Federal civilian employees attached to the United States Army Air Force during World War II) as active military service, issues to each member of such group, determines, on the basis of judicial and other appropriate precedent, that the service of such group constituted active military service, and

“(B) the members of such group were subject to military justice, discipline, and control,

“(C) the members of such group were permitted to receive any benefits under—

“(D) the members of such group were susceptible to assignment for duty in a combat zone, and

“(E) the members of such group had reasonable expectations that their service would be considered to be active military service.

“(1)(1) No benefits shall be paid to any person for any period prior to the date of enactment of this title [Nov. 24, 1977] as a result of the enactment of subsection (a) of this section.

“(2) The provisions of section 106(a)(2) of title 38, United States Code, relating to election of benefits, shall be applicable to persons made eligible for benefits, under laws administered by the Secretary of Veterans Affairs, as a result of implementation of the provisions of subsection (a) of this section.

“(c) Under regulations prescribed by the Secretary of Defense, any person who is issued a discharge under honorable conditions pursuant to the implementation of subsection (a) of this section may be awarded any campaign or service medal warranted by such person’s service.”

[Sentence 1263(b) of Pub. L. 98–94 provided that: “The amendment made by subsection (a) [enacting subsec. (a)(1)(B), set out above] shall apply to all persons issued discharges under honorable conditions pursuant to section 401 of the GI Bill Improvements Act of 1977 (Pub. L. 95–202, set out above) whether such discharges are awarded before, on, or after the date of the enactment of this Act (Sept. 24, 1983).”]


§ 107. Certain service deemed not to be active service

(a) Service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, shall not be deemed to have been active military, naval, or air service for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the Armed Forces, except benefits under—

(1) contracts of National Service Life Insurance entered into before February 18, 1946;

(2) chapter 10 of title 37; and

(3) chapters 11, 13 (except section 1312(a)), 23, and 24 (to the extent provided for in section 2402(a)(8)) of this title.

Except as provided in subsection (c) or (d), payments under such chapters shall be made at a rate of $0.50 for each dollar authorized, and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at a rate of $0.50 for each dollar. Any payments made before February 18, 1946, to any such member under such laws conferring rights, benefits, or privileges shall not be deemed to have been in-
valid by reason of the circumstance that such member’s service was not service in the Armed Forces or any component thereof within the meaning of any such law.

(b) Service in the Philippine Scouts under section 111–275 of the Armed Forces Voluntary Recruitment Act of 1945 shall not be deemed to have been active military, naval, or air service for the purposes of any of the laws administered by the Secretary except—

(1) with respect to contracts of National Service Life Insurance entered into (A) before May 27, 1946, (B) under section 620 or 621 of the National Service Life Insurance Act of 1946, or (C) under section 1922 of this title; and

(2) chapters 11, 13 (except section 1312(a)), 23, and 24 (to the extent provided for in section 2402(a)(8)) of this title.

Except as provided in subsection (c) or (d), payments under such chapters shall be made at a rate of $0.50 for each dollar authorized, and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at a rate of $0.50 for each dollar.

(c) In the case of benefits under subchapters II and IV of chapter 11 of this title and subchapter II of chapter 13 (except section 1312(a)) of this title paid by reason of service described in subsection (a) or (b) to an individual residing in the United States who is a citizen of, or an alien lawfully admitted for permanent residence in, the United States, the second sentence of the applicable subsection shall not apply.

(d)(1) With respect to benefits under chapter 23 of this title, in the case of an individual described in paragraph (2), the second sentence of subsection (a) or (b), as otherwise applicable, shall not apply.

(2) Paragraph (1) applies to any individual whose service is described in subsection (a) and who dies after November 1, 2000, or whose service is described in subsection (b) and who dies after the date of the enactment of the Veterans Benefits Act of 2003, if the individual, on the individual’s date of death—

(A) is a citizen of, or an alien lawfully admitted for permanent residence in, the United States;

(B) is residing in the United States; and

(C) either—

(i) is receiving compensation under chapter 11 of this title; or

(ii) if the individual’s service had been deemed to be active military, naval, or air service, would have been paid pension under section 1521 of this title without denial or discontinuance by reason of section 1522 of this title.


REFERENCES IN TEXT

Section 14 of the Armed Forces Voluntary Recruitment Act of 1945, referred to in subsec. (b)(1), is section 14 of act Oct. 6, 1945, ch. 393, 59 Stat. 545, which enacted section 637 of former Title 10, Army and Air Force, and was omitted from the Code in the revision and reenactment of Title 10, Armed Forces, by act Aug. 10, 1956, ch. 1041, 70A Stat. 1.

Sections 620 and 621 of the National Service Life Insurance Act of 1946, referred to in subsec. (b)(1), are sections 620 and 621 of act Oct. 8, 1940, ch. 737, title VI, pt. I, as added Apr. 25, 1951, ch. 39, pt. II, § 10, 65 Stat. 36, which enacted sections 620 and 621 of former Title 38, Pensions, Bonuses, and Veterans’ Relief, which were repealed and the provisions thereof reenacted as sections 722(a) and 723 [now 1922(a) and 1923] of this title by Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1105.


AMENDMENTS


2003—Subsec. (b), Pub. L. 108–183, § 212(a)(2), inserted “or (d)” after “subsection (c)” in second sentence.

Pub. L. 108–183, § 211(a)(1), substituted “Except as provided in subsection (c), payments” for “Payments” in second sentence.

Subsec. (b)(2), Pub. L. 108–183, § 212(a)(1), substituted a comma for “and” after “chapters 11” and inserted “23, and 24 (to the extent provided for in section 2402(b))” after “(except section 1312(a))”.

Subsec. (c), Pub. L. 108–183, § 211(a)(2), substituted “in subsection (a) or (b)” for “in subsection (a) and (b)” and inserted “and subchapter II of chapter 13 (except section 1312(a)) of this title” after “chapter 11 of this title”.

Subsec. (d)(1), Pub. L. 108–183, § 212(a)(3), inserted “or (b), as otherwise applicable,” after “subsection (a)”.

Subsec. (d)(2), Pub. L. 108–183, § 212(a)(4), inserted “or whose service is described in subsection (b) and who dies after the date of the enactment of the Veterans Benefits Act of 2003,” after “November 1, 2000,” in introductory provisions.


2001—Subsec. (a), Pub. L. 107–14, § 8(a)(1)(A), inserted “or (d)” after “subsection (c)” in concluding provisions.

Subsecs. (c), (d), Pub. L. 107–14, § 8(a)(1)(B), (C), redesignated subsec. (c) relating to the inapplicability of the second sentence of subsection (a) to an individual described in paragraph (2) as (d) and substituted “With respect to benefits under chapter 23 of this title, in” for “In” in par. (1).

2000—Subsec. (a), Pub. L. 106–419, § 332(a)(1), which directed substitution of “Subject to subsection (a), payments” for “Payments”, could not be executed because “Payments” did not appear subsequent to the amendment by Pub. L. 106–377, § 1(a)(1) [title V, § 501(a)(1)(A)]. See below.


Subsec. (a)(3), Pub. L. 106–419, § 332(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “chapters 11, 13 (except section 1312(a)), and 23 of this title.”

Subsec. (c), Pub. L. 106–419, § 332(a)(2), added subsec. (c) relating to the inapplicability of the second sen-
tence of subsec. (a) to an individual described in paragraph (2).

Pub. L. 106–377, §1(a)(1) [title V, §501(a)(1)(B)], added subsec. (c), relating to the inapplicability of the second sentence of subsec. (a) to cases of benefits under subchapters II and IV of chapter 11 of this title paid to United States citizens or to permanent resident aliens. 1996—Subsec. (a)(b) substituted "rate of" for "rate in pesos as is equivalent to" and for "rate in Philippine pesos as is equivalent to" in second sentence.


Subsec. (b). Pub. L. 102–83, §§5(c)(1), substituted "1922" for "722" in par. (1)(C) and "1312(a)" for "412(a)" in par. (2).

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

1986—Subsec. (a). Pub. L. 99–576 substituted "that such member's" for "that his" in last sentence.


1966—Pub. L. 89–641 increased the specified dollar/peso rate for payments from one peso for each dollar otherwise authorized to a rate in Philippine pesos equivalent to $0.50 for each dollar.

1961—Pub. L. 87–391 substituted "section 412(a)" for "sections 412" wherever appearing.

**Effective Date of 2010 Amendment**

Pub. L. 111–275, title V, §507(c), Nov. 1, 2010, 124 Stat. 2883, provided that: "The amendments made by this section [amending this section and sections 3532 and 3565 of this title] shall apply with respect to payments made after December 31, 2010."
§ 108

TITLE 38—VETERANS’ BENEFITS

Page 32

payments to eligible persons in accordance with this section.

(c) Payments.—

(1) in General.—The Secretary may make a payment from the compensation fund to an eligible person who, during the one-year period beginning on the date of the enactment of this Act [Feb. 17, 2009], submits to the Secretary a claim for benefits under this section. The application for the claim shall contain such information and evidence as the Secretary may require.

(2) Payment to Surviving Spouse.—If an eligible person who has filed a claim for benefits under this section dies before payment is made under this section, the payment under this section shall be made instead to the surviving spouse, if any, of the eligible person.

(d) Eligible Persons.—An eligible person is any person who—

(1) served—

(A) before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, or

(B) in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 (59 Stat. 538 [543](enacting section 637 of former Title 10, Army and Air Force); and

(2) was discharged or released from service described in paragraph (1) under conditions other than dishonorable.

(e) Payment Amounts.—Each payment under this section shall be—

(1) in the case of an eligible person who is not a citizen of the United States, in the amount of $9,000; and

(2) in the case of an eligible person who is a citizen of the United States, in the amount of $15,000.

(f) Clarification of Treatment of Payments Under Certain Laws.—Amounts paid to a person under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included in income or resources for purposes of determining—

(A) eligibility of an individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits; and

(B) eligibility of an individual to receive benefits under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.], or the amount of such benefits; or

(C) eligibility of an individual for, or the amount of benefits under, any other Federal or federally assisted program.

(g) Release.—

(1) In General.—Except as provided in paragraph (2), the acceptance by an eligible person or surviving spouse, as applicable, of a payment under this section shall be final, and shall constitute a complete release of any claim against the United States by reason of any service described in subsection (d).

(2) Payment of Prior Eligibility Status.—Nothing in this section shall prohibit a person from receiving any benefit (including health care, survivor, or burial benefits) which the person would have been eligible to receive based on laws in effect as of the day before the date of the enactment of this Act [Feb. 17, 2009].

(h) Recognition of Service.—The service of a person as described in subsection (d) is hereby recognized as active military service in the Armed Forces for purposes of, and to the extent provided in, this section.

(i) Administration.—

(1) The Secretary shall promptly issue application forms and instructions to ensure the prompt and efficient administration of the provisions of this section.

(2) The Secretary shall administer the provisions of this section in a manner consistent with applicable provisions of title 38, United States Code, and other provisions of law, and shall apply the definitions in section 101 of such title in the administration of such provisions, except to the extent otherwise provided in this section.

(j) Reports.—The Secretary shall include, in documents submitted to Congress by the Secretary in support of the President’s budget for each fiscal year, detailed information on the operation of the compensation fund, including the number of applicants, the number of eligible persons receiving benefits, the amounts paid out of the compensation fund, and the administration of the compensation fund for the most recent fiscal year for which such data is available.

(k) Authorization of Appropriation.—There is authorized to be appropriated to the compensation fund $198,000,000, to remain available until expended, to make payments under this section.

Refund of erroneously deducted nsli premium to Philippine veterans on proper application

Section 1 of Pub. L. 89–641 provided for refund of erroneously deducted insurance premiums to Philippine armed forces members in service of the United States Armed Forces, such refund to be made upon receipt of an application within two years after Oct. 11, 1966. In event of death of such member, refund was to be made only to widow or widower, children or parents of such member, in that order, with no refunds to heirs or legal representatives.

§ 108. Seven-year absence presumption of death

(a) No State law providing for presumption of death shall be applicable to claims for benefits under laws administered by the Secretary.

(b) If evidence satisfactory to the Secretary is submitted establishing the continued and unexplained absence of any individual from that individual’s home and family for seven or more years, and establishing that after diligent search no evidence of that individual’s existence after the date of disappearance has been found or received, the death of such individual as of the date of the expiration of such period shall be considered as sufficiently proved.

(c) Except in a suit brought pursuant to section 1984 of this title, the finding of death made by the Secretary shall be final and conclusive.

Amendments

1991—Subsec. (a). Pub. L. 102–83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

1986—Subsec. (b). Pub. L. 102–83, § 8(b), substituted “Administrator” for “Secretary”.