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AMENDMENTS

2008—Pub. L. 110-252, title I, § 1303(a)(2), June 30, 2008, 122 Stat. 2327, added item 5302A.

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

2003—Pub. L. 108-183, title VII, § 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, § 505(a)(2), Dec. 27, 2001, 115 Stat. 996, added item 5313B.

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

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

1991—Pub. L. 102-40, title IV, § 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, §§ 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, § 604(a)(2), Oct. 17, 1981, 95 Stat. 1036, added item 3103A.

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

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

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

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

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

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

§ 5301. Nonassignability and exempt status of benefits

(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.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1229, §3101; Pub. L. 94-502, title VII, §701, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-479, title III, §301, Oct. 18, 1978, 92 Stat. 1564; Pub. L. 97-295, §4(74), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-576, title V, §504,

title VII, §701(68), Oct. 28, 1986, 100 Stat. 3286, 3296; Pub. L. 101-189, div. A, title XIV, §1404(b)(2), Nov. 29, 1989, 103 Stat. 1586; Pub. L. 102-25, title VII, §705(c)(2), Apr. 6, 1991, 105 Stat. 120; renumbered §5301 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(d)(2), June 13, 1991, 105 Stat. 285; Pub. L. 102-83, §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, §505(a), Aug. 14, 1991, 105 Stat. 426; Pub. L. 108-183, title VII, §702, Dec. 16, 2003, 117 Stat. 2671.)

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, §2001, Nov. 10, 1978, 92 Stat. 3728, as amended, which is classified generally to subchapter VI (§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.

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, §402(b)(1), renumbered section 3101 of this title as this section.

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

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

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

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

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

Pub. L. 102-40, §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, §701(68)(A), substituted "a" for "his or her" before "benefit check".

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

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

Subsecs. (d), (e). Pub. L. 99-576, §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.

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.

UNDUE HARDSHIP CASES

Pub. L. 95-202, title III, §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.

§ 5302. Waiver of recovery of claims by the United States

(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.

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

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, §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, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in four places.

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

Pub. L. 102-54, §5(1), as amended by Pub. L. 102-547, inserted at end "The Secretary shall include in the no-