

tification 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, §5(c)(1), substituted “3701” and “3702(a)(2)(C)(ii)” for “1801” and “1802(a)(2)(C)(ii)”, respectively.

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

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-54, §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, §4(b)(1), (2)(E), substituted “Secretary’s” for “Administrator’s”.

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

Subsec. (c). Pub. L. 101-237, §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, §701(69)(A), substituted “the veterans’” for “his” before “spouse”.

Subsec. (c). Pub. L. 99-576, §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, §605(c)(3)(A), inserted “(or any interest thereon)” after “overpayments”.

Subsec. (c). Pub. L. 96-466, §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.

#### § 5302A<sup>1</sup> Collection of indebtedness: certain debts of members of the Armed Forces and veterans who die of injury incurred or aggravated in the line of duty in a combat zone

(a) LIMITATION ON AUTHORITY.—The Secretary may not collect all or any part of an amount owed to the United States by a member of the Armed Forces or veteran described in subsection (b) under any program under the laws administered by the Secretary, other than a program referred to in subsection (c), if the Secretary determines that termination of collection is in the best interest of the United States.

(b) COVERED INDIVIDUALS.—A member of the Armed Forces or veteran described in this subsection is any member or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) in a war or in combat against a hostile force during a period of hostilities (as that term is defined in section 1712A(a)(2)(B) of this title) after September 11, 2001.

(c) INAPPLICABILITY TO HOUSING AND SMALL BUSINESS BENEFIT PROGRAMS.—The limitation on authority in subsection (a) shall not apply to any amounts owed the United States under any program carried out under chapter 37 of this title.

(Added Pub. L. 110-252, title I, §1303(a)(1), June 30, 2008, 122 Stat. 2327.)

#### EFFECTIVE DATE

Pub. L. 110-252, title I, §1303(c), June 30, 2008, 122 Stat. 2328, provided that: “The amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [June 30, 2008], and shall apply with respect to collections of indebtedness of members of the Armed Forces and veterans who die on or after September 11, 2001.”

#### EQUITABLE REFUND

Pub. L. 110-389, title VIII, §801(b), Oct. 10, 2008, 122 Stat. 4185, provided that: “The Secretary of Veterans Affairs may refund to the estate of such person any amount collected by the Secretary (whether before, on, or after the date of the enactment of this Act [Oct. 10,

<sup>1</sup> So in original. Probably should be followed by a period.

2008]) from a person who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so.”

Pub. L. 110-252, title I, §1303(b), June 30, 2008, 122 Stat. 2327, provided that: “In any case where all or any part of an indebtedness of a covered individual, as described in section 5302A(a) of title 38, United States Code, as added by subsection (a)(1), was collected after September 11, 2001, and before the date of the enactment of this Act [June 30, 2008], and the Secretary of Veterans Affairs determines that such indebtedness would have been terminated had such section been in effect at such time, the Secretary may refund the amount so collected if the Secretary determines that the individual is equitably entitled to such refund.”

### § 5303. Certain bars to benefits

(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 adminis-