

tion shall be payable to any person by virtue of the amendments made by subsection (a) of this section [amending this section] for any person prior to the effective date of this Act [June 25, 1970]."

Pub. L. 91-291, §14(a), June 25, 1970, 84 Stat. 332, provided that: "The amendments made by this Act [amending this section and sections 705, 707, 745, 765, 767, 768, 769, 770, and 774 [now 1905, 1907, 1945, 1965, 1967, 1968, 1969, 1970, and 1974] of this title and enacting provisions set out as notes under this section] shall take effect as of the date of enactment [June 25, 1970], except that sections 10 and 12 [amending sections 717 and 752 [now 1917 and 1952] of this title] shall take effect as of the first day of the first calendar month which begins more than six calendar months after the date of enactment of this Act [June 25, 1970]."

#### DEPENDENCY AND INDEMNITY COMPENSATION; ELIGIBILITY

Pub. L. 92-197, §8, Dec. 15, 1971, 85 Stat. 662, provided that: "Any person who before January 1, 1972, was not eligible for dependency and indemnity compensation under such title by reason of the provisions of the prior section 417(a) of title 38, United States Code, may elect, in such manner as the Administrator of Veterans' Affairs shall prescribe, to receive dependency and indemnity compensation, and an election so made shall be final. A person receiving, or entitled to receive, death compensation on December 31, 1971, shall continue to receive death compensation, if otherwise eligible, in the absence of an election to receive dependency and indemnity compensation."

### § 1318. Benefits for survivors of certain veterans rated totally disabled at time of death

(a) The Secretary shall pay benefits under this chapter to the surviving spouse and to the children of a deceased veteran described in subsection (b) of this section in the same manner as if the veteran's death were service connected.

(b) A deceased veteran referred to in subsection (a) of this section is a veteran who dies, not as the result of the veteran's own willful misconduct, and who was in receipt of or entitled to receive (or but for the receipt of retired or retirement pay was entitled to receive) compensation at the time of death for a service-connected disability rated totally disabling if—

(1) the disability was continuously rated totally disabling for a period of 10 or more years immediately preceding death;

(2) the disability was continuously rated totally disabling for a period of not less than five years from the date of such veteran's discharge or other release from active duty; or

(3) the veteran was a former prisoner of war and the disability was continuously rated totally disabling for a period of not less than one year immediately preceding death.

(c) Benefits may not be paid under this chapter by reason of this section to a surviving spouse of a veteran unless—

(1) the surviving spouse was married to the veteran for one year or more immediately preceding the veteran's death; or

(2) a child was born of the marriage or was born to them before the marriage.

(d) If a surviving spouse or a child receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the death of a veteran described in subsection (a) of this section, benefits

under this chapter payable to such surviving spouse or child by virtue of this section shall not be paid for any month following a month in which any such money or property is received until such time as the total amount of such benefits that would otherwise have been payable equals the total of the amount of the money received and the fair market value of the property received.

(e) For purposes of sections 1448(d) and 1450(c) of title 10, eligibility for benefits under this chapter by virtue of this section shall be deemed eligibility for dependency and indemnity compensation under section 1311(a) of this title.

(Added Pub. L. 100-687, div. B, title XIV, §1403(a)(1), Nov. 18, 1988, 102 Stat. 4130, §418; amended Pub. L. 101-237, title I, §113, Dec. 18, 1989, 103 Stat. 2065; renumbered §1318 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 106-117, title V, §501(b), Nov. 30, 1999, 113 Stat. 1573; Pub. L. 106-419, title IV, §404(a)(2), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 111-275, title VI, §603(a), Oct. 13, 2010, 124 Stat. 2885.)

#### Editorial Notes

##### AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111-275 struck out "who died after September 30, 1999," after "prisoner of war".

2000—Subsec. (b)(3). Pub. L. 106-419 substituted "not less than" for "not later than".

1999—Subsec. (b). Pub. L. 106-117, §501(b)(1), substituted "rated totally disabling if—" for "that either—" in introductory provisions.

Subsec. (b)(1). Pub. L. 106-117, §501(b)(2), inserted "the disability" after "(1)" and struck out "or" after "death".

Subsec. (b)(2). Pub. L. 106-117, §501(b)(3), substituted "the disability was continuously rated totally disabling" for "if so rated for a lesser period, was so rated continuously" and substituted "; or" for the period at the end.

Subsec. (b)(3). Pub. L. 106-117, §501(b)(4), added par. (3).

1991—Pub. L. 102-83, §5(a), renumbered section 418 of this title as this section.

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

Subsec. (e). Pub. L. 102-83, §5(c)(1), substituted "1311(a)" for "411(a)".

1989—Subsec. (c)(1). Pub. L. 101-237 substituted "one year" for "two years".

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-275, title VI, §603(b), Oct. 13, 2010, 124 Stat. 2885, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2011."

#### SUBCHAPTER III—CERTIFICATIONS

### § 1321. Certifications with respect to pay grade

The Secretary concerned shall, at the request of the Secretary, certify to the Secretary the pay grade of deceased persons with respect to whose deaths applications for benefits are filed under this chapter. The certification of the Secretary concerned shall be binding upon the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1132, §421; Pub. L. 91-96, §4, Oct. 27, 1969, 83 Stat. 145; Pub.

L. 94-433, title IV, §405(17), Sept. 30, 1976, 90 Stat. 1380; renumbered §1321 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

#### Editorial Notes

##### AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 421 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary, certify to the Secretary” for “Administrator, certify to the Administrator” and “upon the Secretary” for “upon the Administrator”.

1976—Pub. L. 94-433 substituted “to the Administrator” for “to him”.

1969—Pub. L. 91-96 substituted “Certifications with respect to pay grade” for “Certifications with respect to basic pay” in section catchline and substituted provisions authorizing certifications with respect to the pay grade of deceased persons for provisions authorizing certifications with respect to the basic pay of deceased persons, considering rank or grade and cumulative years of service for pay purposes, and struck out the provision requiring the adjustment of basic pay as determined by this chapter whenever basic pay (as defined under the former provisions of section 401 of this title) is adjusted.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 of this title.

##### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-96 effective first day of second calendar month which begins after Oct. 27, 1969, see section 8 of Pub. L. 91-96, set out as a note under section 1302 of this title.

### § 1322. Certifications with respect to social security entitlement

(a) Determinations required by section 1312(a) of this title (other than a determination required by section 1312(a)(2) of this title) as to whether any survivor described in section 1312(a)(3) of this title of a deceased individual would be entitled to benefits under section 202 of the Social Security Act (42 U.S.C. 402) for any month and as to the amount of the benefits which would be paid for such month, if the deceased veteran had been a fully and currently insured individual at the time of such veteran's death, shall be made by the Commissioner of Social Security, and shall be certified by the Commissioner to the Secretary upon request of the Secretary.

(b) The Secretary shall pay to the Commissioner of Social Security an amount equal to the costs which will be incurred in making determinations and certifications under subsection (a). Such payments shall be made with respect to the costs incurred during such period (but not shorter than a calendar quarter) as the Secretary and the Commissioner may prescribe, with the amount of such payments to be made on the basis of estimates made by the Commissioner after consultation with the Secretary. The amount payable for any period shall be increased or reduced to compensate for any underpayment or overpayment, as the case may be, of the costs incurred in any preceding period.

(c) Except with respect to determinations made under subsection (a) of this section, the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section and section 1312(a) of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1132, §422; Pub. L. 87-268, §1(b), (c), Sept. 21, 1961, 75 Stat. 566; Pub. L. 94-433, title IV, §405(18), Sept. 30, 1976, 90 Stat. 1380; Pub. L. 97-295, §4(12), (95)(A), Oct. 12, 1982, 96 Stat. 1305, 1313; renumbered §1322 and amended Pub. L. 102-83, §§4(b)(1), (2)(A), (E), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 108-183, title VII, §708(c)(1), Dec. 16, 2003, 117 Stat. 2673.)

#### Editorial Notes

##### AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183, §708(c)(1)(A), substituted “Commissioner of Social Security, and shall be certified by the Commissioner to the Secretary upon request of the Secretary.” for “Secretary of Health and Human Services, and shall be certified by such Secretary to the Secretary of Veterans Affairs upon request of the Secretary of Veterans Affairs.”

Subsec. (b). Pub. L. 108-183, §708(c)(1)(B), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services” in first sentence and substituted “the Secretary and the Commissioner” for “the two Secretaries” and “Commissioner” for “Secretary of Health and Human Services” in second sentence.

1991—Pub. L. 102-83, §5(a), renumbered section 422 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1312(a)” for “412(a)”, “1312(a)(2)” for “412(a)(2)”, “1312(a)(3)” for “412(a)(3)”.

Pub. L. 102-83, §4(b)(2)(A)(i), substituted “Secretary of Veterans Affairs” for “Administrator” in two places.

Subsec. (b). Pub. L. 102-83, §4(b)(2)(A)(ii), substituted “The Secretary shall pay to the Secretary of Health and Human Services” for “Upon the basis of estimates made by the Secretary of Health and Human Services after consultation with the Administrator, the Administrator shall pay to the Secretary” and “as the two Secretaries may prescribe, with the amount of such payments to be made on the basis of estimates made by the Secretary of Health and Human Services after consultation with the Secretary” for “as the Secretary and the Administrator may prescribe”.

Subsec. (c). Pub. L. 102-83, §5(c)(1), substituted “1312(a)” for “412(a)”.

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

1982—Subsec. (a). Pub. L. 97-295, §4(12), (95)(A), substituted “section 202 of the Social Security Act (42 U.S.C. 402)” for “section 402 of title 42”, and “Health and Human Services” for “Health, Education, and Welfare”.

Subsec. (b). Pub. L. 97-295, §4(95)(A), substituted “Health and Human Services” for “Health, Education, and Welfare”.

1976—Subsec. (a). Pub. L. 94-433 substituted “such veteran's” and “such Secretary” for “his” and “him”, respectively.

1961—Subsec. (a). Pub. L. 87-268 §1(c), substituted “section 412(a)” for “section 412”, “section 412(a)(2)” for “section 412(2)”, and “section 412(a)(3)” for “section 412(3)”.

Subsec. (c). Pub. L. 87-268, §1(b), substituted “section 412(a)” for “section 412”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 of this title.