

TITLE 38 - VETERANS BENEFITS
PART I - GENERAL PROVISIONS
CHAPTER 1 - GENERAL

§ 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 invalid 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 14 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 1940, 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—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

- (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.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1111; Pub. L. 87–268, § 1(b), Sept. 21, 1961, 75 Stat. 566; Pub. L. 89–641, § 2(a), Oct. 11, 1966, 80 Stat. 885; Pub. L. 97–295, § 4(4), Oct. 12, 1982, 96 Stat. 1305; Pub. L. 99–576, title VII, § 701(6), Oct. 28, 1986, 100 Stat. 3291; Pub. L. 102–83, §§ 4(a)(1), 5 (c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 103–446, title V, § 507(a), Nov. 2, 1994, 108 Stat. 4664; Pub. L. 106–377, § 1(a)(1) [title V, § 501(a)(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A–57; Pub. L. 106–419, title III, §§ 331(b), 332 (a), Nov. 1, 2000, 114 Stat. 1856; Pub. L. 107–14, § 8(a)(1), June 5, 2001, 115 Stat. 34; Pub. L. 107–330, title III, § 308(g)(2), Dec. 6, 2002, 116 Stat. 2828; Pub. L. 108–183, title II, §§ 211(a), 212 (a), Dec. 16, 2003, 117 Stat. 2657; Pub. L. 111–275, title V, § 502(d)(1), Oct. 13, 2010, 124 Stat. 2882.)

References in Text

Section 14 of the Armed Forces Voluntary Recruitment Act of 1945, referred to in subsec. (b), is section 14 of act Oct. 6, 1945, ch. 393, 59 Stat. 543, 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 1940, referred to in subsec. (b)(1), are sections 620 and 621 of act Oct. 8, 1940, ch. 757, title VI, pt. I, as added Apr. 25, 1951, ch. 39, pt. II, § 10, 65 Stat. 36, which enacted sections 820 and 821 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.

The date of the enactment of the Veterans Benefits Act of 2003, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 108–183, which was approved Dec. 16, 2003.

Amendments

2010—Subsecs. (a)(3), (b)(2). Pub. L. 111–275 substituted “section 2402 (a)(8)” for “section 2402 (8)”.

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 (8))” 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 “of the applicable subsection” for “of subsection (a)” 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.

2002—Subsec. (d)(2). Pub. L. 107–330 substituted “November 1, 2000,” for “the date of the enactment of this subsection” 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 subsec. (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).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

2000—Subsec. (a). Pub. L. 106–419, § 332(a)(1), which directed substitution of “Subject to subsection (c), 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.

Pub. L. 106–377, § 1(a)(1) [title V, § 501(a)(1)(A)], substituted “Except as provided in subsection (c), payments” for “Payments” in concluding provisions.

Subsec. (a)(3). Pub. L. 106–419, § 331(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 sentence 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.

1994—Subsecs. (a), (b). Pub. L. 103–446 substituted “rate of” for “rate in pesos as is equivalent to” and for “rate in Philippine pesos as is equivalent to” in second sentence.

1991—Subsec. (a)(3). Pub. L. 102–83, § 5(c)(1), substituted “1312(a)” for “412(a)”.

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.

1982—Subsec. (a)(2). Pub. L. 97–295 substituted “chapter 10 of title 37” for “the Missing Persons Act”.

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. 87–268 substituted “section 412 (a)” for “sections 412” wherever appearing.

Effective Date of 2010 Amendment

Pub. L. 111–275, title V, § 502(e), Oct. 13, 2010, 124 Stat. 2883, provided that: “The amendments made by this section [amending this section and sections 2301, 2306, and 2402 of this title and enacting provisions set out as notes under sections 101 and 2402 of this title] shall apply with respect to the death, on or after the date of the enactment of this Act [Oct. 13, 2010], of the parent of a person described in paragraph (9)(B) of subsection (a) of section 2402 of title 38, United States Code, as added by subsection (b), who dies on or after October 7, 2001.”

Effective Date of 2003 Amendment

Pub. L. 108–183, title II, § 211(b), Dec. 16, 2003, 117 Stat. 2657, provided that: “The amendments made by subsection (a) [amending this section] shall apply to benefits paid for months beginning after the date of the enactment of this Act [Dec. 16, 2003].”

Pub. L. 108–183, title II, § 212(c), Dec. 16, 2003, 117 Stat. 2658, provided that: “The amendments made by this section [amending this section and section 2402 of this title] shall apply with respect to deaths occurring on or after the date of the enactment of this Act [Dec. 16, 2003].”

Effective Date of 2001 Amendment

Pub. L. 107–14, § 8(a)(1), June 5, 2001, 115 Stat. 34, provided that the amendment made by section 8 (a)(1) is effective Nov. 1, 2000.

Effective Date of 2000 Amendments

Pub. L. 106–419, title III, § 331(c), Nov. 1, 2000, 114 Stat. 1856, provided that: “The amendments made by this section [amending this section and section 2402 of this title] shall apply with respect to deaths occurring on or after the date of the enactment of this Act [Nov. 1, 2000].”

Pub. L. 106–419, title III, § 332(b), Nov. 1, 2000, 114 Stat. 1856, provided that: “No benefits shall accrue to any person for any period before the date of the enactment of this Act [Nov. 1, 2000] by reason of the amendments made by subsection (a) [amending this section].”

Pub. L. 106–377, § 1(a)(1) [title V, § 501(a)(2)], Oct. 27, 2000, 114 Stat. 1441, 1441A–57, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 27, 2000] and shall apply to benefits paid for months beginning on or after that date.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Effective Date of 1994 Amendment

Section 507(c) of Pub. L. 103–446 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, 1994.”

Effective Date of 1966 Amendment

Section 2(b) of Pub. L. 89–641 provided that: “The amendments made by subsection (a) of this section [amending this section] shall take effect on the first day of the second calendar month which begins after the date of enactment of this Act [Oct. 11, 1966].”

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–268 effective Oct. 1, 1961, see section 3 of Pub. L. 87–268, set out as a note under section 1312 of this title.

Payments to Eligible Persons Who Served in the United States Armed Forces in the Far East During World War II

Pub. L. 111–5, div. A, title X, § 1002, Feb. 17, 2009, 123 Stat. 200, provided that:

“(a) Findings.—Congress makes the following findings:

“(1) The Philippine islands became a United States possession in 1898 when they were ceded from Spain following the Spanish-American War.

“(2) During World War II, Filipinos served in a variety of units, some of which came under the direct control of the United States Armed Forces.

“(3) The regular Philippine Scouts, the new Philippine Scouts, the Guerrilla Services, and more than 100,000 members of the Philippine Commonwealth Army were called into the service of the United States Armed Forces of the Far East on July 26, 1941, by an executive order of President Franklin D. Roosevelt.

“(4) Even after hostilities had ceased, wartime service of the new Philippine Scouts continued as a matter of law until the end of 1946, and the force gradually disbanded and was disestablished in 1950.

“(5) Filipino veterans who were granted benefits prior to the enactment of the so-called Rescissions Acts of 1946 (Public Laws 79–301 [60 Stat. 6] and 79–391 [60 Stat. 221]) currently receive full benefits under laws administered by the Secretary of Veterans Affairs, but under section 107 of title 38, United States Code, the service of certain other Filipino veterans is deemed not to be active service for purposes of such laws.

“(6) These other Filipino veterans only receive certain benefits under title 38, United States Code, and, depending on where they legally reside, are paid such benefit amounts at reduced rates.

“(7) The benefits such veterans receive include service-connected compensation benefits paid under chapter 11 of title 38, United States Code, dependency indemnity compensation survivor benefits paid under chapter 13 of title 38, United States Code, and burial benefits under chapters 23 and 24 of title 38, United States Code, and such benefits are paid to beneficiaries at the rate of \$0.50 per dollar authorized, unless they lawfully reside in the United States.

“(8) Dependents’ educational assistance under chapter 35 of title 38, United States Code, is also payable for the dependents of such veterans at the rate of \$0.50 per dollar authorized, regardless of the veterans’ residency.

“(b) Compensation Fund.—

“(1) In General.—There is in the general fund of the Treasury a fund to be known as the ‘Filipino Veterans Equity Compensation Fund’ (in this section referred to as the ‘compensation fund’).

“(2) Availability of Funds.—Subject to the availability of appropriations for such purpose, amounts in the fund shall be available to the Secretary of Veterans Affairs without fiscal year limitation to make 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.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(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) Limitation.—The Secretary may not make more than one payment under this section for each eligible person described in subsection (d).

“(g) 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;

“(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.

“(h) 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].

“(i) 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.

“(j) 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.

“(k) 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.

“(l) 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

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpint.html>).

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.