

S. 748: Veterans Pension Protection Act

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S 748 IS

113th CONGRESS

1st Session

S. 748

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 17, 2013

Mr. WYDEN (for himself, Mr. BURR, Mr. TESTER, Mr. HELLER, Mr. BLUMENTHAL, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Veterans Pension Protection Act’.

SEC. 2. CONSIDERATION BY SECRETARY OF VETERANS AFFAIRS OF RESOURCES DISPOSED OF FOR LESS THAN FAIR MARKET VALUE BY INDIVIDUALS APPLYING FOR PENSION.

(a) Veterans- Section 1522 of title 38, United States Code, is amended--

(1) in subsection (a)--

(A) by inserting ‘(1)’ before ‘The Secretary’; and

(B) by adding at the end the following new paragraph:

‘(2)(A) If a veteran otherwise eligible for payment of pension under section 1513 or 1521 of this title or the spouse of such veteran disposes of covered resources for less than fair market value on or after the look-back date described in subparagraph (C)(i), the Secretary shall deny or discontinue the payment of pension to such veteran under section 1513 or 1521 of this title, as the case may be, for months during the period beginning on the date described in subparagraph (D) and equal to the number of months calculated as provided in subparagraph (E).

‘(B)(i) For purposes of this paragraph, a covered resource is any resource that was a part of the corpus of the estate of the veteran or, if the veteran has a spouse, the corpus of the estates of the veteran and of the veteran’s spouse, that the Secretary considers that under all the circumstances, if the veteran or spouse had not disposed of such resource, it would be reasonable that the resource (or some portion of the resource) be consumed for the veteran’s maintenance.

‘(ii) For purposes of this paragraph, the Secretary may consider, in accordance with regulations the Secretary shall prescribe, a transfer of an asset (including a transfer of an asset to an annuity, trust, or other financial instrument or investment) a disposal of a covered resource for less than fair market value if such transfer reduces the amount in the corpus of the estate of the veteran or, if the veteran has a spouse, the corpus of the estates of the veteran and of the veteran’s spouse, that the Secretary considers, under all the circumstances, would be reasonable to be consumed for the veteran’s maintenance.

‘(C)(i) The look-back date described in this clause is a date that is 36 months before the date described in clause (ii).

‘(ii) The date described in this clause is the date on which the veteran applies for pension under section 1513 or 1521 of this title or, if later, the date on which the veteran (or the spouse of the veteran) disposes of covered resources for less than fair market value.

‘(D) The date described in this subparagraph is the first day of the first month in or after which covered resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

‘(E) The number of months calculated under this subparagraph shall be equal to--

‘(i) the total, cumulative uncompensated value of all covered resources so disposed of by the veteran (or the spouse of the veteran) on or after the look-back date described in subparagraph (C)(i); divided by

‘(ii) the maximum amount of monthly pension that is payable to a veteran under section 1513 or 1521 of this title, including the maximum amount of increased pension payable under such sections on account of family members, but not including any amount of pension payable under such sections because a veteran is in need of regular aid and attendance or is permanently housebound,

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.’;

(2) in subsection (b)--

(A) by inserting ‘(1)’ before ‘The Secretary’; and

(B) by adding at the end the following new paragraph:

‘(2)(A) If a veteran otherwise eligible for payment of increased pension under subsection (c), (d), (e), or (f) of section 1521 of this title on account of a child, the spouse of the veteran, or the child disposes of covered resources for less than fair market value on or after the look-back date described in subparagraph (C)(i), the Secretary shall deny or discontinue payment of such increased pension for months during the period beginning on the date described in subparagraph (D) and equal to the number of months calculated as provided in subparagraph (E).

‘(B)(i) For purposes of this paragraph, a covered resource is any resource that was a part of the corpus of the estate of the child that the Secretary considers that under all the circumstances, if the veteran, the spouse of the veteran, or the child had not disposed of such resource, it would be reasonable that the resource (or some portion of the resource) be consumed for the child’s maintenance.

‘(ii) For purposes of this paragraph, the Secretary may consider, in accordance with regulations the Secretary shall prescribe, a transfer of an asset (including a transfer of an asset to an annuity, trust, or other financial instrument or investment) a disposal of a covered resource for less than fair market value if such transfer reduces the amount in the corpus of the estate of the child that the Secretary considers, under all the circumstances, would be reasonable to be consumed for the child’s maintenance.

‘(C)(i) The look-back date described in this clause is a date that is 36 months before the date described in clause (ii).

‘(ii) The date described in this clause is the date on which the veteran applies for payment of increased pension under subsection (c), (d), (e), or (f) of section 1521 of this title on account of a child or, if later, the date on which the veteran, the spouse of the veteran, or the child disposes of covered resources for less than fair market value.

‘(D) The date described in this subparagraph is the first day of the first month in or after which covered resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

‘(E) The number of months calculated under this subparagraph shall be equal to--

‘(i) the total, cumulative uncompensated value of all covered resources so disposed of by the veteran, the spouse of the veteran, or the child on or after the look-back date described in subparagraph (C)(i); divided by

‘(ii) the maximum amount of increased monthly pension that is payable to a veteran under subsection (c), (d), (e), or (f) of section 1521 of this title on account of a child,

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.’; and

(3) by adding at the end the following new subsection:

‘(c)(1) The Secretary shall not deny or discontinue payment of pension under section 1513 or 1521 of this title or payment of increased pension under subsection (c), (d), (e), or (f) of section 1521 of this title on account of a child by reason of the application of subsection (a)(2) or (b)(2) of this section to the disposal of resources by an individual to the extent that--

‘(A) a satisfactory showing is made to the Secretary (in accordance with regulations promulgated by the Secretary) that all resources disposed of for less than fair market value have been returned to the individual who disposed of the resources; or

‘(B) the Secretary determines, under procedures established by the Secretary, that the denial or discontinuance of payment would work an undue hardship as determined on the basis of criteria established by the Secretary.

‘(2) At the time a veteran applies for pension under section 1513 or 1521 of this title or increased pension under subsection (c), (d), (e), or (f) of section 1521 of this title on account of a child, and at such other times as the Secretary considers appropriate, the Secretary shall--

‘(A) inform such veteran of the provisions of subsections (a)(2) and (b)(2) providing for a period of ineligibility for payment of pension under such sections for individuals who make certain dispositions of resources for less than fair market value; and

‘(B) obtain from such veteran information which may be used in determining whether or not a period of ineligibility for such payments would be required by reason of such subsections.’.

(b) Surviving Spouses and Children- Section 1543 of such title is amended--

(1) in subsection (a)--

(A) by redesignating paragraph (2) as paragraph (3);

(B) by inserting after paragraph (1) the following new paragraph (2):

‘(2)(A) If a surviving spouse otherwise eligible for payment of pension under section 1541 of this title disposes of covered resources for less than fair market value on or after the look-back date described in subparagraph (C)(i), the Secretary shall deny or discontinue the payment of pension to such surviving spouse under section 1541 of this title for months during the period beginning on the date described in subparagraph (D) and equal to the number of months calculated as provided in subparagraph (E).

‘(B)(i) For purposes of this paragraph, a covered resource is any resource that was a part of the corpus of the estate of the surviving spouse that the Secretary considers that under all the circumstances, if the surviving spouse had not disposed of such resource, it would be reasonable that the resource (or some portion of the resource) be consumed for the surviving spouse’s maintenance.

‘(ii) For purposes of this paragraph, the Secretary may consider, in accordance with regulations the Secretary shall prescribe, a transfer of an asset (including a transfer of an asset to an annuity, trust, or other financial instrument or investment) a disposal of a covered resource for less than fair market value if such transfer reduces the amount in the corpus of the estate of the surviving spouse that the Secretary considers, under all the circumstances, would be reasonable to be consumed for the surviving spouse’s maintenance.

‘(C)(i) The look-back date described in this clause is a date that is 36 months before the date described in clause (ii).

‘(ii) The date described in this clause is the date on which the surviving spouse applies for pension under section 1541 of this title or, if later, the date on which the surviving spouse disposes of covered resources for less than fair market value.

‘(D) The date described in this subparagraph is the first day of the first month in or after which covered resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

‘(E) The number of months calculated under this subparagraph shall be equal to--

‘(i) the total, cumulative uncompensated value of all covered resources so disposed of by the surviving spouse on or after the look-back date described in subparagraph (C)(i); divided by

‘(ii) the maximum amount of monthly pension that is payable to a surviving spouse under section 1541 of this title, including the maximum amount of increased pension payable under such section on account of a child, but not including any amount of pension payable under such section because a surviving spouse is in need of regular aid and attendance or is permanently housebound,

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.

‘(F) In the case of a transfer by the surviving spouse during the veteran’s lifetime that resulted in a period of ineligibility for the veteran under section 1522 of this title, the Secretary shall apply to the surviving spouse any remaining ineligibility for that period.’; and

(C) by adding at the end the following new paragraph:

‘(4)(A) If a surviving spouse otherwise eligible for payment of increased pension under subsection (c), (d), or (e) of section 1541 of this title on account of a child or the child disposes of covered resources for less than fair market value on or after the look-back date described in subparagraph (C)(i), the Secretary shall

deny or discontinue payment of such increased pension for months during the period beginning on the date described in subparagraph (D) and equal to the number of months calculated as provided in subparagraph (E).

‘(B)(i) For purposes of this paragraph, a covered resource is any resource that was a part of the corpus of the estate of the child that the Secretary considers that under all the circumstances, if the surviving spouse or the child had not disposed of such resource, it would be reasonable that the resource (or some portion of the resource) be consumed for the child’s maintenance.

‘(ii) For purposes of this paragraph, the Secretary may consider, in accordance with regulations the Secretary shall prescribe, a transfer of an asset (including a transfer of an asset to an annuity, trust, or other financial instrument or investment) a disposal of a covered resource for less than fair market value if such transfer reduces the amount in the corpus of the estate of the child that the Secretary considers, under all the circumstances, would be reasonable to be consumed for the child’s maintenance.

‘(C)(i) The look-back date described in this clause is a date that is 36 months before the date described in clause (ii).

‘(ii) The date described in this clause is the date on which the surviving spouse applies for payment of increased pension under subsection (c), (d), or (e) of section 1541 of this title on account of a child or, if later, the date on which the surviving spouse (or the child) disposes of covered resources for less than fair market value.

‘(D) The date described in this subparagraph is the first day of the first month in or after which covered resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

‘(E) The number of months calculated under this clause shall be equal to--

‘(i) the total, cumulative uncompensated value of all covered resources so disposed of by the surviving spouse (or the child) on or after the look-back date described in subparagraph (C)(i); divided by

‘(ii) the maximum amount of increased monthly pension that is payable to a surviving spouse under subsection (c), (d), or (e) of section 1541 of this title on account of a child,

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.’;

(2) in subsection (b)--

(A) by inserting '(1)' before 'The Secretary'; and

(B) by adding at the end the following new paragraph:

'(2)(A) If a child otherwise eligible for payment of pension under section 1542 of this title or any person with whom such child is residing who is legally responsible for such child's support disposes of covered resources for less than fair market value on or after the look-back date described in subparagraph (C)(i), the Secretary shall deny or discontinue the payment of pension to such child under section 1542 of this title for months during the period beginning on the date described in subparagraph (D) and equal to the number of months calculated as provided in subparagraph (E).

'(B)(i) For purposes of this paragraph, a covered resource is any resource that was a part of the corpus of the estate of the child or the corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support that the Secretary considers that under all the circumstances, if the child or person had not disposed of such resource, it would be reasonable that the resource (or some portion of the resource) be consumed for the child's maintenance.

'(ii) For purposes of this paragraph, the Secretary may consider, in accordance with regulations the Secretary shall prescribe, a transfer of an asset (including a transfer of an asset to an annuity, trust, or other financial instrument or investment) a disposal of a covered resource for less than fair market value if such transfer reduces the amount in the corpus of the estate described in clause (i) that the Secretary considers, under all the circumstances, would be reasonable to be consumed for the child's maintenance.

'(C)(i) The look-back date described in this clause is a date that is 36 months before the date described in clause (ii).

'(ii) The date described in this clause is the date on which the child applies for pension under section 1542 of this title or, if later, the date on which the child (or person described in subparagraph (B)) disposes of covered resources for less than fair market value.

'(D) The date described in this clause is the first day of the first month in or after which covered resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

'(E) The number of months calculated under this clause shall be equal to--

‘(i) the total, cumulative uncompensated value of all covered resources so disposed of by the child (or person described in subparagraph (B)) on or after the look-back date described in subparagraph (C)(i); divided by

‘(ii) the maximum amount of monthly pension that is payable to a child under section 1542 of this title,

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.’; and

(3) by adding at the end the following new subsection:

‘(c)(1) The Secretary shall not deny or discontinue payment of pension under section 1541 or 1542 of this title or payment of increased pension under subsection (c), (d), or (e) of section 1541 of this title on account of a child by reason of the application of subsection (a)(2), (a)(4), or (b)(2) of this section to the disposal of resources by an individual to the extent that--

‘(A) a satisfactory showing is made to the Secretary (in accordance with regulations promulgated by the Secretary) that all resources disposed of for less than fair market value have been returned to the individual who disposed of the resources; or

‘(B) the Secretary determines, under procedures established by the Secretary, that the denial or discontinuance of payment would work an undue hardship as determined on the basis of criteria established by the Secretary.

‘(2) At the time a surviving spouse or child applies for pension under section 1541 or 1542 of this title or increased pension under subsection (c), (d), or (e) of section 1541 of this title on account of a child, and at such other times as the Secretary considers appropriate, the Secretary shall--

‘(A) inform such surviving spouse or child of the provisions of subsections (a)(2), (a)(4), and (b)(2), as applicable, providing for a period of ineligibility for payment of pension or increased pension under such sections for individuals who make certain dispositions of resources for less than fair market value; and

‘(B) obtain from such surviving spouse or child information which may be used in determining whether or not a period of ineligibility for such payments would be required by reason of such subsections.’.

(c) Effective Date- Subsections (a)(2), (b)(2), and (c) of section 1522 of title 38, United States Code, as added by subsection (a), and subsections (a)(2), (a)(4), (b)(2), and (c) of section 1543 of such title, as added by

subsection (b), shall take effect on the date that is one year after the date of the enactment of this Act and shall apply with respect to payments of pension and increased pension applied for after such date and to payments of pension and increased pension for which eligibility is redetermined after such date, except that no reduction in pension shall be made under such subsections because of any disposal of covered resources made before such date.

(d) Annual Reports-

(1) IN GENERAL- Not later than two years after the date of the enactment of this Act and not less frequently than once each year thereafter through 2018, the Secretary of Veterans Affairs shall submit to the appropriate committees of Congress a report on the administration of subsections (a)(2), (b)(2), and (c) of section 1522 of title 38, United States Code, as added by subsection (a), and subsections (a)(2), (a)(4), (b)(2), and (c) of section 1543 of such title, as added by subsection (b), during the most recent 12-month period.

(2) ELEMENTS- Each report submitted under paragraph (1) shall include the following, for the period covered by the report:

(A) The number of individuals who applied for pension under chapter 15 of such title.

(B) The number of individuals who received pension under such chapter.

(C) The number of individuals with respect to whom the Secretary denied or discontinued payment of pension under the subsections referred to in paragraph (1).

(D) A description of any trends identified by the Secretary regarding pension payments that have occurred as a result of the amendments made by this section.

(E) Such other information as the Secretary considers appropriate.

(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED- In this subsection, the term 'appropriate committees of Congress' means--

(A) the Committee on Veterans' Affairs and the Select Committee on Aging of the Senate; and

(B) the Committee on Veterans' Affairs of the House of Representatives.