

Secretary shall submit to Congress a report on the use of the authority provided in subsection (a). The Secretary shall include in the report an assessment of the effect of examinations under that authority on the cost, timeliness, and thoroughness of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary."

PILOT PROGRAM FOR USE OF CONTRACT PHYSICIANS FOR DISABILITY EXAMINATIONS

Pub. L. 104-275, title V, §504, Oct. 9, 1996, 110 Stat. 3341, as amended by Pub. L. 113-235, div. I, title II, §241, Dec. 16, 2014, 128 Stat. 2568, provided that:

"(a) **AUTHORITY.**—The Secretary of Veterans Affairs, acting through the Under Secretary for Benefits, may conduct a pilot program under this section under which examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary that are carried out through the Under Secretary for Benefits may be made by persons other than employees of the Department of Veterans Affairs. Any such examination shall be performed pursuant to contracts entered into by the Under Secretary for Benefits with those persons.

"(b) **LIMITATION.**—The Secretary may carry out the pilot program under this section as follows:

"(1) In fiscal years before fiscal year 2015, through not more than 10 regional offices of the Department of Veterans Affairs.

"(2) In fiscal year 2015, through not more than 12 regional offices of the Department.

"(3) In fiscal year 2016, through not more than 15 regional offices of the Department.

"(4) In fiscal year 2017 and each fiscal year thereafter, through such regional offices of the Department as the Secretary considers appropriate."

"(c) **SOURCE OF FUNDS.**—Payments for contracts under the pilot program under this section shall be made from amounts available to the Secretary of Veterans Affairs for payment of compensation and pensions.

"(d) **REPORT TO CONGRESS.**—Not later than three years after the date of the enactment of this Act [Oct. 9, 1996], the Secretary shall submit to the Congress a report on the effect of the use of the authority provided by subsection (a) on the cost, timeliness, and thoroughness of medical disability examinations."

EXPEDITED TREATMENT OF REMANDED CLAIMS

Pub. L. 103-446, title III, §302, Nov. 2, 1994, 108 Stat. 4658, as amended by Pub. L. 105-368, title V, §512(c), Nov. 11, 1998, 112 Stat. 3342, provided that Secretary of Veterans Affairs was to take necessary actions to provide for expeditious treatment, by the Board of Veterans' Appeals and by regional offices of the Veterans Benefits Administration, of any claim that had been remanded by the Board of Veterans' Appeals or by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action, prior to repeal by Pub. L. 108-183, title VII, §707(c), Dec. 16, 2003, 117 Stat. 2673.

VETERANS' CLAIMS ADJUDICATION COMMISSION

Pub. L. 103-446, title IV, Nov. 2, 1994, 108 Stat. 4659, as amended by Pub. L. 104-275, title V, §503(a), Oct. 9, 1996, 110 Stat. 3341, established Veterans' Claims Adjudication Commission which was directed to conduct comprehensive evaluation and assessment of Department of Veterans Affairs system for disposition of claims for veterans benefits and of system for delivery of such benefits, together with any related issues determined to be relevant to study, for purpose of determining means of increasing efficiency of system, means of reducing number of claims under system for which final disposition is pending, and means of enhancing ability of Department of Veterans Affairs to achieve final determination regarding claims under system in prompt and appropriate manner, and further provided for membership and powers of Commission, personnel matters,

definitions and funding, and for submission of preliminary report to Secretary of Veterans Affairs and Congress not later than one year after Nov. 2, 1994, submission of final report not later than Dec. 31, 1996, and for termination of Commission 90 days after submission of final report.

§ 5102. Application forms furnished upon request; notice to claimants of incomplete applications

(a) **FURNISHING FORMS.**—Upon request made by any person claiming or applying for, or expressing an intent to claim or apply for, a benefit under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all instructions and forms necessary to apply for that benefit.

(b) **INCOMPLETE APPLICATIONS.**—If a claimant's application for a benefit under the laws administered by the Secretary is incomplete, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application.

(c) **TIME LIMITATION.**—(1) If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary within one year from the date such notice is sent, no benefit may be paid or furnished by reason of the claimant's application.

(2) This subsection shall not apply to any application or claim for Government life insurance benefits.

(Added Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 108-183, title VII, §701(a), Dec. 16, 2003, 117 Stat. 2670.)

PRIOR PROVISIONS

A prior section 5102, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, §3002; renumbered §5102, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405, related to application forms, prior to repeal by Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096.

Another prior section 5102 was renumbered section 8302 of this title.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-183 added subsec. (c).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title VII, §701(c), Dec. 16, 2003, 117 Stat. 2670, provided that: "The amendments made by this section [amending this section and section 5103 of this title] shall take effect as if enacted on November 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000 (Public Law 106-475; 114 Stat. 2096)."

§ 5103. Notice to claimants of required information and evidence

(a) **REQUIRED INFORMATION AND EVIDENCE.**—(1) The Secretary shall provide to the claimant and the claimant's representative, if any, by the most effective means available, including electronic communication or notification in writing, notice of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information

and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

(2)(A) The Secretary shall prescribe in regulations requirements relating to the contents of notice to be provided under this subsection.

(B) The regulations required by this paragraph—

(i) shall specify different contents for notice based on whether the claim concerned is an original claim, a claim for reopening a prior decision on a claim, or a claim for an increase in benefits;

(ii) shall provide that the contents for such notice be appropriate to the type of benefits or services sought under the claim;

(iii) shall specify for each type of claim for benefits the general information and evidence required to substantiate the basic elements of such type of claim; and

(iv) shall specify the time period limitations required pursuant to subsection (b).

(b) **TIME LIMITATION.**—(1) In the case of information or evidence that the claimant is notified under subsection (a) is to be provided by the claimant, such information or evidence must be received by the Secretary within one year from the date such notice is sent.

(2) This subsection shall not apply to any application or claim for Government life insurance benefits.

(3) Nothing in paragraph (1) shall be construed to prohibit the Secretary from making a decision on a claim before the expiration of the period referred to in that subsection.

(4) Nothing in this section shall require the Secretary to provide notice for a subsequent claim that is filed while a previous claim is pending if the notice previously provided for such pending claim—

(A) provides sufficient notice of the information and evidence necessary to substantiate such subsequent claim; and

(B) was sent within one year of the date on which the subsequent claim was filed.

(5)(A) This section shall not apply to any claim or issue where the Secretary may award the maximum benefit in accordance with this title based on the evidence of record.

(B) For purposes of this paragraph, the term “maximum benefit” means the highest evaluation assignable in accordance with the evidence of record, as long as such evidence is adequate for rating purposes and sufficient to grant the earliest possible effective date in accordance with section 5110 of this title.

(Added Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096; amended Pub. L. 107-14, §8(a)(12), June 5, 2001, 115 Stat. 35; Pub. L. 108-183, title VII, §701(b), Dec. 16, 2003, 117 Stat. 2670; Pub. L. 110-389, title I, §101(a), Oct. 10, 2008, 122 Stat. 4147; Pub. L. 112-154, title V, §504(a), Aug. 6, 2012, 126 Stat. 1191.)

PRIOR PROVISIONS

A prior section 5103, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1225, §3003; Pub. L. 99-570, title XI, §11007(a)(1), Oct. 27, 1986, 100 Stat. 3207-170; renumbered §5103, Pub.

L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405, related to incomplete applications, prior to repeal by Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2096.

Another prior section 5103 was renumbered section 8303 of this title.

AMENDMENTS

2012—Subsec. (a)(1). Pub. L. 112-154, §504(a)(1), substituted “The” for “Upon receipt of a complete or substantially complete application, the” and “provide to” for “notify” and inserted “by the most effective means available, including electronic communication or notification in writing, notice” before “of any information”.

Subsec. (b)(4), (5). Pub. L. 112-154, §504(a)(2), added pars. (4) and (5).

2008—Subsec. (a). Pub. L. 110-389 designated existing provisions as par. (1) and added par. (2).

2003—Subsec. (b)(1). Pub. L. 108-183, §701(b)(1), substituted “such information or evidence must be received by the Secretary within one year from the date such notice is sent” for “if such information or evidence is not received by the Secretary within one year from the date of such notification, no benefit may be paid or furnished by reason of the claimant’s application”.

Subsec. (b)(3). Pub. L. 108-183, §701(b)(2), added par. (3).

2001—Subsec. (b)(1). Pub. L. 107-14 substituted “one year” for “1 year”.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title V, §504(c), Aug. 6, 2012, 126 Stat. 1192, provided that:

“(1) **IN GENERAL.**—The amendments made by subsection (a) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Aug. 6, 2012] and shall apply with respect to notification obligations of the Secretary of Veterans Affairs on or after such date.

“(2) **CONSTRUCTION REGARDING APPLICABILITY.**—Nothing in this section [amending this section and enacting provisions set out as a note below] or the amendments made by this section shall be construed to require the Secretary to carry out notification procedures in accordance with requirements of section 5103 of title 38, United States Code, as in effect on the day before the effective date established in paragraph (1) on or after such effective date.”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment effective as if enacted Nov. 9, 2000, immediately after the enactment of the Veterans Claims Assistance Act of 2000, Pub. L. 106-475, see section 701(c) of Pub. L. 108-183, set out as a note under section 5102 of this title.

CONSTRUCTION

Pub. L. 112-154, title V, §504(b), Aug. 6, 2012, 126 Stat. 1192, provided that: “Nothing in the amendments made by subsection (a) [amending this section] shall be construed as eliminating any requirement with respect to the contents of a notice under section 5103 of title 38, United States Code, that is required under regulations prescribed pursuant to subsection (a)(2) of such section as of the date of the enactment of this Act [Aug. 6, 2012].”

APPLICABILITY OF REGULATIONS

Pub. L. 110-389, title I, §101(b), Oct. 10, 2008, 122 Stat. 4148, provided that: “The regulations required by paragraph (2) of section 5103(a) of title 38, United States Code (as amended by subsection (a) of this section), shall apply with respect to notices provided to claimants on or after the effective date of such regulations.”

READJUDICATION OF CERTAIN CLAIMS; NOTICE

Pub. L. 108-183, title VII, §701(d), (e), Dec. 16, 2003, 117 Stat. 2670, 2671, provided that:

“(d) PROCEDURES FOR READJUDICATION OF CERTAIN CLAIMS.—(1) The Secretary of Veterans Affairs shall re-adjudicate a claim of a qualified claimant if the request for such readjudication is received not later than the end of the one-year period that begins on the date of the enactment of this Act [Dec. 16, 2003].

“(2) For purposes of this subsection, a claimant is qualified within the meaning of paragraph (1) if the claimant—

“(A) received notice under section 5103(a) of title 38, United States Code, requesting information or evidence to substantiate a claim;

“(B) did not submit such information or evidence within a year after the date such notice was sent;

“(C) did not file a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims; and

“(D) submits such information or evidence during the one-year period referred to in paragraph (1).

“(3) If the decision of the Secretary on a readjudication under this subsection is in favor of the qualified claimant, the award of the grant shall take effect as if the prior decision by the Secretary on the claim had not been made.

“(4) Nothing in this subsection shall be construed to establish a duty on the part of the Secretary to identify or readjudicate any claim that—

“(A) is not submitted during the one-year period referred to in paragraph (1); or

“(B) has been the subject of a timely appeal to the Board of Veterans' Appeals or the United States Court of Appeals for Veterans Claims.

“(e) CONSTRUCTION ON PROVIDING RENOTIFICATION.—Nothing in this section [amending this section and section 5102 of this title and enacting provisions set out as a note under section 5102 of this title], or the amendments made by this section, shall be construed to require the Secretary of Veterans Affairs—

“(1) to provide notice under section 5103(a) of such title with respect to a claim insofar as the Secretary has previously provided such notice; or

“(2) to provide for a special notice with respect to this section and the amendments made by this section.”

§ 5103A. Duty to assist claimants

(a) DUTY TO ASSIST.—(1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary.

(2) The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

(3) The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant's application.

(b) ASSISTANCE IN OBTAINING PRIVATE RECORDS.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant private records that the claimant adequately identifies to the Secretary.

(2)(A) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall—

(i) identify the records the Secretary is unable to obtain;

(ii) briefly explain the efforts that the Secretary made to obtain such records; and

(iii) explain that the Secretary will decide the claim based on the evidence of record but

that this section does not prohibit the submission of records at a later date if such submission is otherwise allowed.

(B) The Secretary shall make not less than two requests to a custodian of a private record in order for an effort to obtain relevant private records to be treated as reasonable under this section, unless it is made evident by the first request that a second request would be futile in obtaining such records.

(3)(A) This section shall not apply if the evidence of record allows for the Secretary to award the maximum benefit in accordance with this title based on the evidence of record.

(B) For purposes of this paragraph, the term “maximum benefit” means the highest evaluation assignable in accordance with the evidence of record, as long as such evidence is adequate for rating purposes and sufficient to grant the earliest possible effective date in accordance with section 5110 of this title.

(4) Under regulations prescribed by the Secretary, the Secretary—

(A) shall encourage claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant; and

(B) in obtaining relevant private records under paragraph (1), may require the claimant to authorize the Secretary to obtain such records if such authorization is required to comply with Federal, State, or local law.

(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under this section shall include obtaining the following records if relevant to the claim:

(A) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

(B) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(C) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

(2) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection, the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

(d) MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

(2) The Secretary shall treat an examination or opinion as being necessary to make a decision