

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 readjudicate 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 claim-

ant 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 on a claim for purposes of paragraph (1) if the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

(C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

(e) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section.

(f) **RULE WITH RESPECT TO DISALLOWED CLAIMS.**—Nothing in this section shall be construed to require the Secretary to reopen a claim that has been disallowed except when new and material evidence is presented or secured, as described in section 5108 of this title.

(g) **OTHER ASSISTANCE NOT PRECLUDED.**—Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.

(Added Pub. L. 106-475, §3(a), Nov. 9, 2000, 114 Stat. 2097; amended Pub. L. 112-154, title V, §505(a), (b), Aug. 6, 2012, 126 Stat. 1192.)

AMENDMENTS

2012—Subsec. (b). Pub. L. 112-154, §505(a), amended subsec. (b) generally. Prior to amendment, text read as follows:

“(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.

“(2) 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—

“(A) identify the records the Secretary is unable to obtain;

“(B) briefly explain the efforts that the Secretary made to obtain those records; and

“(C) describe any further action to be taken by the Secretary with respect to the claim.

“(3) Whenever the Secretary attempts to obtain records from a Federal department or agency under

this subsection or subsection (c), 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.”

Subsec. (c). Pub. L. 112-154, §505(b), amended subsec. (c) generally. Prior to amendment, text read as follows: “In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (b) shall include obtaining the following records if relevant to the claim:

“(1) 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.

“(2) 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.

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

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-154, title V, §505(c), Aug. 6, 2012, 126 Stat. 1193, provided that:

“(1) **IN GENERAL.**—The amendments made by subsections (a) and (b) [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 assistance obligations of the Secretary of Veterans Affairs on or after such date.

“(2) **CONSTRUCTION.**—Nothing in this section [amending this section] or the amendments made by this section shall be construed to require the Secretary to carry out assistance in accordance with requirements of section 5103A 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.”

§ 5104. Decisions and notices of decisions

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

(b) In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary.

(Added Pub. L. 101-237, title I, §115(a)(1), Dec. 18, 1989, 103 Stat. 2065, §3004; renumbered §5104, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, §14(d)(1), June 13, 1991, 105 Stat. 285; Pub. L. 103-446, title XII, §1201(d)(15), Nov. 2, 1994, 108 Stat. 4684.)

PRIOR PROVISIONS

Prior section 5104 was renumbered section 8304 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 substituted “section 511” for “section 211(a)”.

1991—Pub. L. 102-40 renumbered section 3004 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before enactment of Pub. L. 102-40 by striking out “(1)” after “(a)” and substituting “(b)” for “(2)”,