

Pub. L. 100-322, title II, §216(e)(2), May 20, 1988, 102 Stat. 530, added item for chapter 76.

CHAPTER 71—BOARD OF VETERANS' APPEALS

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APPLICABILITY OF AMENDMENT

Amendment of analysis by section 2(q)(2), (s)(2), (u)(3), (w)(3) of Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims. See 2017 Amendment note below.

AMENDMENTS

2017—Pub. L. 115-55, §2(q)(2), (s)(2), (u)(3), (w)(3), Aug. 23, 2017, 131 Stat. 1112, 1113, 1115, substituted "Filing of appeal" for "Filing of notice of disagreement and appeal" in item 7105, struck out items 7106 "Administrative appeals" and 7109 "Independent medical opinions", and added item 7113.

2003—Pub. L. 108-183, title VII, §707(b)(2), Dec. 16, 2003, 117 Stat. 2673, added item 7112.

1997—Pub. L. 105-111, §1(b)(2), Nov. 21, 1997, 111 Stat. 2272, added item 7111.

1994—Pub. L. 103-446, title II, §201(a)(2), Nov. 2, 1994, 108 Stat. 4656, added item 7101A.

Pub. L. 103-271, §§6(b), 7(a)(2), (b)(3), July 1, 1994, 108 Stat. 742, 743, substituted "Reconsideration; correction of obvious errors" for "Determinations by the Board" in item 7103, substituted "Appeals: dockets; hearings" for "Docketing of appeals" in item 7107, and struck out item 7110 "Traveling sections".

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4001 to 4010 as 7101 to 7110, respectively.

1988—Pub. L. 100-687, div. A, title II, §207(b), Nov. 18, 1988, 102 Stat. 4112, added item 4010.

1962—Pub. L. 87-671, §3, Sept. 19, 1962, 76 Stat. 557, added item 4009.

Pub. L. 87-666, §2, Sept. 19, 1962, 76 Stat. 554, added item 4005A, and substituted "Filing of notice of disagreement and appeal" for "Applications for review on appeal" in item 4005, "Administrative appeals" for "Docketing of appeals" in item 4006, and "Docketing of appeals" for "Simultaneously contested claims" in item 4007.

§ 7101. Composition of Board of Veterans' Appeals

(a) There is in the Department a Board of Veterans' Appeals (hereinafter in this chapter re-

ferred to as the "Board"). The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary. The Board shall consist of a Chairman, a Vice Chairman, and such number of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Appeals for Veterans Claims.

(2) The Chairman may be removed by the President for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which, in the opinion of the President, prevents the proper execution of the Chairman's duties. The Chairman may not be removed from office by the President on any other grounds. Any such removal may only be made after notice and opportunity for hearing.

(3) The Chairman may be appointed under this subsection to more than one term. If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed, but not beyond the end of the Congress during which the term of office expired.

(4) The Secretary shall designate one member of the Board as Vice Chairman. The Vice Chairman shall perform such functions as the Chairman may specify. Such member shall serve as Vice Chairman at the pleasure of the Secretary.

(c)(1)(A) The Chairman may from time to time designate one or more employees of the Department to serve as acting members of the Board. Except as provided in subparagraph (B), any such designation shall be for a period not to exceed 90 days, as determined by the Chairman.

(B) An individual designated as an acting member of the Board may continue to serve as an acting member of the Board in the making of any determination on a proceeding for which the individual was designated as an acting member of the Board, notwithstanding the termination of the period of designation of the individual as an acting member of the Board under subparagraph (A) or (C).

(C) An individual may not serve as an acting member of the Board for more than 270 days during any one-year period.

(D) At no time may the number of acting members exceed 20 percent of the total of the number of Board members and acting Board members combined.

(2) In each annual report to the Congress under section 529 of this title, the Secretary shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the Secretary shall indicate, in terms of full-time employee equivalents, the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made.

(d)(1) After the end of each fiscal year, the Chairman shall prepare a report on the activities of the Board during that fiscal year and the projected activities of the Board for the fiscal year during which the report is prepared and the next fiscal year. Such report shall be included in the documents providing detailed information on the budget for the Department that the Secretary submits to the Congress in conjunction with the President's budget submission for any fiscal year pursuant to section 1105 of title 31.

(2) Each such report shall include, with respect to the preceding fiscal year, information specifying—

(A) the number of cases appealed to the Board during that year;

(B) the number of cases pending before the Board at the beginning and at the end of that year;

(C) the number of such cases which were filed during each of the 36 months preceding the current fiscal year;

(D) the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year;

(E) the number of members of the Board at the end of the year and the number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of the preceding fiscal year; and

(F) the number of employees of the Department designated under subsection (c)(1) to serve as acting members of the Board during that year and the number of cases in which each such member participated during that year.

(3) The projections in each such report for the current fiscal year and for the next fiscal year shall include (for each such year)—

(A) an estimate of the number of cases to be appealed to the Board; and

(B) an evaluation of the ability of the Board (based on existing and projected personnel levels) to ensure timely disposition of such appeals as required by section 7101(a) of this title.

(e) A performance incentive that is authorized by law for officers and employees of the Federal Government may be awarded to a member of the Board (including an acting member) by reason of that member's service on the Board only if the Chairman of the Board determines that such member should be awarded that incentive. A determination by the Chairman for such purpose shall be made taking into consideration the quality of performance of the Board member.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, §4001; Pub. L. 98-223, title II, §208(a)-(c), Mar. 2, 1984, 98

Stat. 43, 44; Pub. L. 100-687, div. A, title II, §§201(a), 202(b), 208, 209, Nov. 18, 1988, 102 Stat. 4109, 4110, 4112; renumbered §7101 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §2(c)(3), 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 402, 404, 405; Pub. L. 103-271, §§2-5, July 1, 1994, 108 Stat. 740, 741; Pub. L. 103-446, title II, §§201(d), 203, Nov. 2, 1994, 108 Stat. 4657; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-14, §8(a)(16), June 5, 2001, 115 Stat. 35.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-14 substituted “hereinafter” for “hereafter”.

1998—Subsec. (b)(1). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1994—Subsec. (a). Pub. L. 103-271, §2, struck out “(not more than 65)” after “such number”.

Subsec. (b). Pub. L. 103-446, §201(d)(1), (2), designated as par. (2) the text in par. (1) beginning “The Chairman may be removed” and struck out former par. (2) which read as follows:

“(2)(A) The other members of the Board (including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman. Each such member shall be appointed for a term of nine years.

“(B) A member of the Board (other than the Chairman) may be removed by the Secretary upon the recommendation of the Chairman. In the case of a removal that would be covered by section 7521 of title 5 in the case of an administrative law judge, a removal of a member of the Board under this paragraph shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subparagraph. In such a removal action, a member shall have the rights set out in section 7513(b) of such title.”

Subsec. (b)(1). Pub. L. 103-271, §3, inserted after first sentence “The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in political activities as apply to judges of the United States Court of Veterans Appeals.”

Subsec. (b)(3). Pub. L. 103-446, §§201(d)(3), 203, substituted “The Chairman” for “Members (including the Chairman)” and inserted at end “If, upon the expiration of the term of office for which the Chairman was appointed, the position of Chairman would become vacant, the individual serving as Chairman may, with the approval of the Secretary, continue to serve as Chairman until either appointed to another term or a successor is appointed, but not beyond the end of the Congress during which the term of office expired.”

Subsec. (c)(1). Pub. L. 103-271, §4(a)(1), added par. (1) and struck out former par. (1) which read as follows: “Subject to paragraph (2) of this subsection, the Chairman may from time to time designate employees of the Department to serve as temporary members of the Board. Any such designation shall be for a period of not to exceed one year, as determined by the Chairman. An individual may not serve as a temporary member of the Board for more than 24 months during any 48-month period.”

Subsec. (c)(2), (3). Pub. L. 103-271, §4(a)(2)-(4), redesignated par. (3) as (2), substituted “the number of acting members of the Board designated under such paragraph (1) during the year for which the report is made.” for “the number of temporary Board members designated under this subsection and the number of acting Board members designated under section 7102(a)(2)(A)(ii) of this title during the year for which the report is made.”, and struck out former par. (2) which read as

follows: "Designation under paragraph (1) of this subsection of an individual as a temporary member of the Board may not be made when there are fewer than 65 members of the Board."

Subsec. (d)(2)(F). Pub. L. 103-271, § 5, added subpar. (F).

Subsec. (d)(3)(B). Pub. L. 103-271, § 4(b)(2), substituted "section 7101(a)" for "section 7103(d)".

Subsec. (e). Pub. L. 103-271, § 4(b)(1), substituted "an acting member" for "a temporary or acting member". 1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4001 of this title as this section.

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

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "There is" for "There shall be" and ". The Board is under the administrative" for "under the administrative".

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

Subsec. (c)(1). Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (c)(3). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, § 2(c)(3), substituted "section 529" for "section 214".

Pub. L. 102-40, § 402(d)(1), substituted "7102(a)(2)(A)(ii)" for "4002(a)(2)(A)(ii)".

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

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (d)(3)(B). Pub. L. 102-40, § 402(d)(1), substituted "7103(d)" for "4003(d)".

1988—Subsec. (a). Pub. L. 100-687, § 202(b), inserted "and" after "Vice Chairman," substituted "necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have" for "necessary, and", and inserted provisions which required that Board have sufficient personnel to conduct hearings and consider and dispose of appeals.

Subsec. (b). Pub. L. 100-687, § 201(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the approval of the President."

Subsec. (d). Pub. L. 100-687, § 208, added subsec. (d).

Subsec. (e). Pub. L. 100-687, § 209, added subsec. (e).

1984—Subsec. (a). Pub. L. 98-223, § 208(a), (c), substituted "65" for "fifty" and struck out "associate" before "members".

Subsec. (c). Pub. L. 98-223, § 208(b), added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 201(a) of Pub. L. 100-687 effective Feb. 1, 1989, amendment by section 202(b) of Pub. L. 100-687 effective Jan. 1, 1989, and amendment by sections 208 and 209 of Pub. L. 100-687 effective Nov. 18, 1988, see section 401(b)-(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

BOARD OF VETERANS' APPEALS

Pub. L. 100-687, div. A, title II, § 201(c), (d), Nov. 18, 1988, 102 Stat. 4109, 4110, provided that:

"(c) TRANSITION TO NEW BOARD.—(1) Appointments of members of the Board of Veterans' Appeals under subsection (b)(2) of section 4001 [now 7101] of title 38,

United States Code (as amended by subsection (a)), may not be made until a Chairman is appointed under subsection (b)(1) of that section.

"(2) An individual who is serving as a member of the Board on the date of the enactment of this Act [Nov. 18, 1988] may continue to serve as a member until the earlier of—

"(A) the date on which the individual's successor (as designated by the Administrator) is appointed under subsection (b)(2) of that section, or

"(B) the end of the 180-day period beginning on the day after the date on which the Chairman is appointed under subsection (b)(1) of such section.

"(d) INITIAL TERMS OF OFFICE.—Notwithstanding the second sentence of section 4001(b)(2) [now 7101(b)(2)] of title 38, United States Code (as amended by subsection (a)), specifying the term for which members of the Board of Veterans' Appeals shall be appointed, of the members first appointed under that section—

"(A) 22 shall be appointed for a term of three years;

"(B) 22 shall be appointed for a term of six years;

and

"(C) 22 shall be appointed for a term of nine years, as determined by the Administrator [now Secretary] at the time of the initial appointments."

§ 7101A. Members of Board: appointment; pay; performance review

(a)(1) The members of the Board of Veterans' Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

(2) Each member of the Board shall be a member in good standing of the bar of a State.

(b) Members of the Board (other than the Chairman and any member of the Board who is a member of the Senior Executive Service) shall, in accordance with regulations prescribed by the Secretary, be paid basic pay at rates equivalent to the rates payable under section 5372 of title 5.

(c)(1)(A) The Chairman shall establish a panel to review the performance of members of the Board. The panel shall be comprised of the Chairman and two other members of the Board (other than the Vice Chairman). The Chairman shall periodically rotate membership on the panel so as to ensure that each member of the Board (other than the Vice Chairman) serves as a member of the panel for and within a reasonable period.

(B) Not less than one year after the job performance standards under subsection (f) are initially established, and not less often than once every three years thereafter, the performance review panel shall determine, with respect to each member of the Board (other than the Chairman or a member who is a member of the Senior Executive Service), whether that member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f). Each such determination shall be in writing.

(2) If the determination of the performance review panel in any case is that the member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f), the Chairman shall recertify the member's appointment as a member of the Board.

(3) If the determination of the performance review panel in any case is that the member's job