

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 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 amend-

ments 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, air, or space 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 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, air, or space service; but

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

(e) **APPLICABILITY OF DUTY TO ASSIST.**—(1) The Secretary's duty to assist under this section shall apply only to a claim, or supplemental claim, for a benefit under a law administered by the Secretary until the time that a claimant is provided notice of the agency of original jurisdiction's decision with respect to such claim, or supplemental claim, under section 5104 of this title.

(2) The Secretary's duty to assist under this section shall not apply to higher-level review by the agency of original jurisdiction, pursuant to section 5104B of this title, or to review on appeal by the Board of Veterans' Appeals.

(f) **CORRECTION OF DUTY TO ASSIST ERRORS.**—(1) If, during review of the agency of original jurisdiction decision under section 5104B of this title, the higher-level adjudicator identifies or learns of an error on the part of the agency of original jurisdiction to satisfy its duties under this section, and that error occurred prior to the agency of original jurisdiction decision being reviewed, unless the Secretary may award the maximum benefit in accordance with this title based on the evidence of record, the higher-level adjudicator shall return the claim for correction of such error and readjudication.

(2)(A) If the Board of Veterans' Appeals, during review on appeal of an agency of original jurisdiction decision, identifies or learns of an error on the part of the agency of original jurisdiction to satisfy its duties under this section, and that error occurred prior to the agency of original jurisdiction decision on appeal, unless the Secretary may award the maximum benefit in accordance with this title based on the evidence of record, the Board shall remand the claim to the agency of original jurisdiction for correction of such error and readjudication.

(B) Remand for correction of such error may include directing the agency of original jurisdiction to obtain an advisory medical opinion under section 5109 of this title.

(3) Nothing in this subsection shall be construed to imply that the Secretary, during the consideration of a claim, does not have a duty to correct an error described in paragraph (1) or (2) that was erroneously not identified during higher-level review or during review on appeal with respect to the claim.

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

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

(i) **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; Pub. L. 115-55, §2(c), (d), Aug. 23, 2017, 131 Stat. 1105; Pub. L. 116-283, div. A, title IX, §926(a)(51), Jan. 1, 2021, 134 Stat. 3830.)

## Editorial Notes

### AMENDMENTS

2021—Subsecs. (c)(1)(A), (d)(2)(B). Pub. L. 116-283 substituted “air, or space service” for “or air service”.

2017—Subsec. (e). Pub. L. 115-55, §2(d)(2), added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 115-55, §2(d)(2), added subsec. (f). Former subsec. (f) redesignated (h).

Pub. L. 115-55, §2(c), substituted “readjudicate” for “reopen” and “relevant” for “material”.

Subsecs. (g) to (i). Pub. L. 115-55, §2(d)(1), redesignated subsecs. (e) to (g) as (g) to (i), respectively.

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.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by 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 section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title, and bracketed note thereunder.

##### 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 pro-

vision 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) Each notice provided under subsection (a) shall also include all of the following:

(1) Identification of the issues adjudicated.

(2) A summary of the evidence considered by the Secretary.

(3) A summary of the applicable laws and regulations.

(4) Identification of findings favorable to the claimant.

(5) In the case of a denial, identification of elements not satisfied leading to the denial.

(6) An explanation of how to obtain or access evidence used in making the decision.

(7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

(c) The Secretary may provide notice under subsection (a) electronically if a claimant (or the claimant's representative) elects to receive such notice electronically. A claimant (or the claimant's representative) may revoke such an election at any time, by means prescribed by the Secretary.

(d) The Secretary shall annually—

(1) solicit recommendations from stakeholders on how to improve notice under this section; and

(2) publish such recommendations on a publicly available website of the Department.

(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; Pub. L. 115-55, § 2(e), Aug. 23, 2017, 131 Stat. 1106; Pub. L. 117-168, title VIII, § 807(a)(2), Aug. 10, 2022, 136 Stat. 1806.)

#### Editorial Notes

##### PRIOR PROVISIONS

Prior section 5104 was renumbered section 8304 of this title.

##### AMENDMENTS

2022—Subsecs. (c), (d). Pub. L. 117-168 added subsecs. (c) and (d).

2017—Subsec. (b). Pub. L. 115-55 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “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.”

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)”, “subsection (a)” for “paragraph (1) of this subsection”, “(1)” for “(A)”, and “(2)” for “(B)”.