

VETERANS CLAIMS ASSISTANCE ACT OF 2000

—————
JULY 24, 2000.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. STUMP, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 4864]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4864) to amend title 38, United States Code, to reaffirm and clarify the duty of the Secretary of Veterans Affairs to assist claimants for benefits under laws administered by the Secretary, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Claims Assistance Act of 2000".

SEC. 2. CLARIFICATION OF DEFINITION OF "CLAIMANT" FOR PURPOSES OF VETERANS LAWS.

(a) **IN GENERAL.**—Chapter 51 of title 38, United States Code, is amended by inserting before section 5101 the following new section:

"§ 5100. Definition of 'claimant'

"For purposes of this chapter, the term 'claimant' means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary."

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 5101 the following new item:

"5100. Definition of 'claimant'."

SEC. 3. ASSISTANCE TO CLAIMANTS.

(a) **REAFFIRMATION AND CLARIFICATION OF DUTY TO ASSIST.**—Chapter 51 of title 38, United States Code, is amended by striking sections 5102 and 5103 and inserting the following:

“§ 5102. Applications: forms furnished upon request; notice to claimants of incomplete applications

“(a) FURNISHING FORMS.—Upon request made in person or in writing by any person claiming or applying for a benefit under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing such claim.

“(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. The Secretary shall notify each claimant of any additional information and medical and lay evidence necessary to substantiate the claim. As part of such notice, the Secretary shall indicate which portion of such evidence, if any, is to be provided by the claimant and which portion of such evidence, if any, the Secretary will attempt to obtain on behalf of the claimant.

“(c) TIME LIMITATION.—In the case of evidence that the claimant is notified is to be provided by the claimant, if such evidence is not received by the Secretary within one year from the date of such notification, no benefits may be paid or furnished by reason of such application.

“(d) INAPPLICABILITY TO CERTAIN BENEFITS.—This section shall not apply to any application or claim for Government life insurance benefits.

“§ 5103. Applications: Duty to assist claimants

“(a) DUTY TO ASSIST.—The Secretary shall make reasonable efforts to assist in obtaining evidence necessary to establish a claimant’s eligibility for a benefit under a law administered by the Secretary. However, the Secretary may decide a claim without providing assistance under this subsection when no reasonable possibility exists that such assistance will aid in the establishment of eligibility for the benefit sought.

“(b) ASSISTANCE IN OBTAINING RECORDS.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant 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 records sought, the Secretary shall inform the claimant that the Secretary is unable to obtain such records. Such a notice shall—

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

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

“(C) describe any further actions to be taken by the Secretary with respect to the claim; and

“(D) request the claimant, if the claimant intends to attempt to obtain such records independently, to so notify the Secretary within a time period to be specified in the notice.

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

“(1) The claimant’s existing service medical records and, if the claimant has furnished information sufficient to locate such records, other relevant service records.

“(2) Existing records of relevant medical treatment or examination of the veteran at Department health-care facilities or at the expense of the Department, if the claimant has furnished information sufficient to locate such records.

“(3) Information as described in section 5106 of this title.

“(d) MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.—In the case of a claim by a veteran for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination, or obtaining a medical opinion, when the evidence of record before the Secretary—

“(1) establishes that—

“(A) the claimant has—

“(i) a current disability;

“(ii) current symptoms of a disease that may not be characterized by symptoms for extended periods of time; or

“(iii) persistent or recurrent symptoms of disability following discharge or release from active military, naval, or air service; and

“(B) there was an event, injury, or disease (or combination of events, injuries, or diseases) during the claimant’s active military, naval, or air service capable of causing or aggravating the claimant’s current disability or symptoms, but

“(2) is insufficient to establish service-connection of the current disability or symptoms.

“(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall include provisions for—

“(1) specifying the evidence necessary under subsection (a) to establish a claimant’s eligibility for a benefit under a law administered by the Secretary; and

“(2) determining under subsections (b) and (c) what records are relevant to a claim.

“(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 to a claimant as the Secretary considers appropriate.”.

(b) REENACTMENT OF RULE FOR CLAIMANT’S LACKING A MAILING ADDRESS.—Chapter 51 of such title is amended by adding at the end the following new section:

“§ 5126. Benefits not to be denied based on lack of mailing address

“Benefits under laws administered by the Secretary may not be denied a claimant on the basis that the claimant does not have a mailing address.”.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 51 of such title is amended—

(1) by striking the items relating to sections 5102 and 5103 and inserting the following:

“5102. Applications: forms furnished upon request; notice to claimants of incomplete applications.

“5103. Applications: duty to assist claimants.”;

and

(2) by adding at the end the following new item:

“5126. Benefits not to be denied based on lack of mailing address.”.

SEC. 4. BURDEN OF PROOF.

(a) REPEAL OF “WELL-GROUNDED CLAIM” RULE.—Section 5107 of title 38, United States Code, is amended to read as follows:

“§ 5107. Burden of proof; benefit of the doubt

“(a) BURDEN OF PROOF.—Except when otherwise provided by this title or by the Secretary in accordance with the provisions of this title, a claimant shall have the burden of proving entitlement to benefits.

“(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary and shall give the claimant the benefit of the doubt when there is an approximate balance of positive and negative evidence regarding any issue material to the determination of the matter.”.

SEC. 5. PROHIBITION OF CHARGES FOR RECORDS FURNISHED BY OTHER FEDERAL DEPARTMENTS AND AGENCIES.

Section 5106 of title 38, United States Code, is amended by adding at the end the following new sentence: “No charge may be imposed by the head of any such department or agency for providing such information.”.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—Except as specifically provided otherwise, the provisions of section 5107 of title 38, United States Code, as amended by section 4 of this Act, apply to any claim—

(1) filed on or after the date of the enactment of this Act; or

(2) filed before the date of the enactment of this Act and not final as of the date of the enactment of this Act.

(b) RULE FOR CLAIMS THE DENIAL OF WHICH BECAME FINAL AFTER THE COURT OF APPEALS FOR VETERANS CLAIMS DECISION IN THE MORTON CASE.—(1) In the case of any claim for benefits—

(A) the denial of which became final during the period beginning on July 14, 1999, and ending on the date of the enactment of this Act; and

(B) which was denied or dismissed by the Secretary of Veterans Affairs or a court because the claim was not well grounded (as that term was used in section 5107(a) of title 38, United States Code, as in effect during that period), the Secretary of Veterans Affairs shall, upon the request of the claimant, or on the Secretary’s own motion, order the claim readjudicated under chapter 51 of such title, as amended by this Act, as if such denial or dismissal had not been made.

(2) A claim may not be readjudicated under this subsection unless the request is filed or the motion made not later than two years after the date of the enactment of this Act.

(3) In the absence of a timely request of a claimant, nothing in this Act shall be construed as establishing a duty on the part of the Secretary of Veterans Affairs to locate and readjudicate claims described in this subsection.

INTRODUCTION

On July 17, 2000, the Chairman and Ranking Member of the Veterans' Affairs Committee, the Honorable Bob Stump and the Honorable Lane Evans, along with the Chairman and Ranking Member of the Subcommittee on Benefits, the Honorable Jack Quinn and the Honorable Bob Filner, introduced H.R. 4864 to amend title 38, United States Code, to reaffirm and clarify the duty of the Secretary of Veterans Affairs to assist claimants for benefits under laws administered by the Secretary, and for other purposes.

On March 23, 2000, the Subcommittee on Benefits held a hearing on the subject of "well-grounded" claims and H.R. 3193, the Duty to Assist Veterans Act of 1999, introduced by the Honorable Lane Evans and others. Witnesses testifying included: Mr. Richard Schneider, Non Commissioned Officers Association; Mr. Leonard Selfon, Esq., Vietnam Veterans of America; Mr. Rick Surratt, Disabled American Veterans; Mr. Carroll Williams, The American Legion; Mr. Geoff Hopkins, Paralyzed Veterans of America; Mr. John McNeill, Veterans of Foreign Wars of the United States; and Honorable Joseph Thompson, Under Secretary for Benefits, Veterans Benefits Administration.

Mr. Joseph Thompson testified about VA's role in assisting veterans filing claims for benefits and the Department's proposed rules, as a result of the *Morton v. West* decision, relevant to the concept of well-grounded claims and VA's statutory duty to assist claimants in the claim process. The veterans service organization witnesses adamantly opposed VA's regulations, and testified that VA did not have the authority to make the changes proposed in regulation.

SUMMARY OF THE REPORTED BILL

H.R. 4864, as amended, would:

1. Authorize the Secretary of Veterans Affairs to assist a claimant in obtaining evidence to establish entitlement to a benefit.
2. Eliminate the requirement that a claimant submit a "well-grounded" claim before the Secretary can assist in obtaining evidence. (In the context of claims for service-connected disability benefits, a "well-grounded" claim is one that has evidence of in-service injury or disease, a diagnosis of a current disability or disease, and a medical opinion that the current disability or disease is related to the in-service injury or disease).
3. For most kinds of claims, require the Secretary to make reasonable efforts to obtain relevant records that the claimant identifies and authorizes the Secretary to obtain.
4. For service-connected disability compensation claims, require the Secretary to (a) obtain existing service medical records and other Department treatment records, (b) obtain relevant

records in the control of federal agencies, and (c) provide a medical examination if the Secretary finds that the veteran has a current disability or symptoms and there is evidence to suggest that it may be related to an event, injury, or disease which took place in service.

5. Define a “claimant” who would be eligible to receive assistance from the Secretary as any person seeking veterans’ benefits.
6. Require other Federal agencies to furnish relevant records to the Department at no cost to the claimant.
7. Permit veterans who had claims denied or dismissed after the Court of Appeals for Veterans Claims decision in *Morton v. West* to request review of those claims within a two year period following enactment.

BACKGROUND AND DISCUSSION

As the Committee has noted, the Department of Veterans Affairs’ system for deciding benefits claims “is unlike any other adjudicative process. It is specifically designed to be claimant friendly. It is non-adversarial; therefore, the VA must provide a substantial amount of assistance to a veteran seeking benefits.”¹ This assistance includes requesting service records, medical records, and other pertinent documents from sources identified by the claimant. VA also provides medical examinations, when appropriate, to diagnose or evaluate physical and mental conditions. The claims adjudication process inevitably involves some subjective judgment in evaluating the evidence in an individualized case. While VA regional offices historically requested service medical records and documentary evidence in the possession of VA medical facilities on claims, the extent to which a claim is developed more fully to include a VA examination or requesting private medical records differs among VA’s regional offices depending on the subjective determination of the claims examiner that a particular claim is not well-grounded. In such cases, often involving claims filed many years after discharge from military service, a claimant may be requested to provide additional information before an examination is scheduled and full development of the claim is undertaken.²

As a result of court decisions construing the meaning of section 5107 of title 38, United States Code, concerning “well-grounded” claims and the Secretary’s “duty to assist” a veteran in obtaining evidence in support of a claim, the VA is no longer able to provide assistance to veterans as it has in the past. These decisions have led to substantial differences among VA regional offices in the handling of claims which lack one or more of the elements needed to “well-ground” a claim as that term has been defined by the United States Court of Appeals for Veterans Claims (CAVC). Testimony before the Committee and review of files by Committee staff has indicated confusion on the part of VA adjudicators concerning the meaning and application of the “well-grounded” claim requirement. An understanding of the CAVC’s development of the well-grounded

¹H.R. Rept. No. 105-52, at 2 (1997).

²Duty to Assist Veterans Act of 1999: Hearings on H.R. 3193 Before the Subcomm. on Benefits of the House Veterans’ Affairs Committee, 106th Cong. 1-2 (2000) (statement of Joseph Thompson, Under Secretary for Benefits, Department of Veterans Affairs).

claim concept is needed to understand VA's current policy on this issue.

JUDICIAL CONSTRUCTION OF "WELL-GROUNDED" CLAIM AND "DUTY TO ASSIST"

Soon after its establishment, the CAVC was confronted with the necessity to construe the meaning of section 5107, particularly the undefined term, "well-grounded" claim.³ In *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990), the Court established a baseline for veterans' claims adjudication. In this case, the Court read the language of section 5107 as creating a "chronological" order for the submission of evidence which constitutes a "well-grounded" claim and the triggering of the Secretary's "duty to assist."

Read together, §3007(a) and (b) [now codified at §5107(a) and (b)] establish and allocate chronological obligations. Pursuant to §3007(a) the initial obligation rests with the veteran: "A person who submits a claim . . . shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded." Under §3007(b) the "benefit of the doubt" rule does not shift "from the claimant to the [Secretary]" the initial burden to submit a facially valid claim. Thus, the submission of a facially valid claim is necessary; inherently incredible allegations of injury would obviously not suffice.

Id. at 55 (citing 38 U.S.C. §3007 now codified at §5107).

In that same year, *Murphy v. Derwinski*, 1 Vet. App. 78 (1990), refined the Court's definition of a "well-grounded" claim.⁴ Understanding the infancy of the Court and limited precedent case law, the Court pointed to the fact that:

[b]ecause a well grounded claim is neither defined by the statute nor the legislative history, it must be given a common sense construction. A well grounded claim is a plausible claim, one which is meritorious on its own or capable of substantiation. Such a claim need not be conclusive but only possible to satisfy the initial burden of §3007(a) (now codified at 38 U.S.C. §5107(a)).

Id. at 81.

The Court was also confronted with the issue of deciding what the Secretary's "duty to assist" entailed:

When a claimant submits a properly filled out and executed VA form 21-526, Veteran's Application for Compensation and Pension, the Secretary has the veteran's biographical, family, medical, and service data. This information will enable the Secretary to fulfill his statutory duty to assist the claimant by securing any relevant VA, military or other governmental records. In addition, if private medical, hospital, employment or other civilian records would assist the development of 'the facts pertinent to the claim', the Secretary would be able to request

³*Id.*, at 4.

⁴*Id.*

them from the claimant or, upon authorization, obtain them directly.

Murphy at 82 (quoting S. Rept. No. 100–418, at 33–34 (1988)).

“The Court has held that while the evidence to make a claim well-grounded need not be conclusive, the statutory scheme ‘requires more than just an allegation; a claimant must submit supporting evidence’ that a claim is plausible.”⁵ The meaning of “supporting evidence,” in turn, was refined by subsequent Court decisions. A 1993 Court decision held that “[w]here the determinative issue involves medical causation or a medical diagnosis, competent medical evidence to the effect that the claim is ‘plausible’ or ‘possible’ is required.” *Grottveit v. Brown*, 5 Vet. App. 91, 93 (1993).

As a result of these and other Court decisions, the understanding of a “well-grounded” claim evolved so that it included a requirement for the submission of medical evidence from a claimant who was seeking benefits for a medical condition claimed to be related to service. The lack of such medical evidence in the claim led the *Grottveit* Court to conclude that the claim “was not one on which relief could be granted; there was no claim to adjudicate on the merits.”⁶

In *Grivois v. Brown*, 6 Vet. App. 136 (1994), the CAVC stated that it is the duty of VA claims examiners who first review a claim to apply the “well-grounded” test “for it is their duty to avoid adjudicating implausible claims at the expense of delaying well-grounded ones.” The CAVC noted that the statutory scheme recognizes that not all claims filed for VA benefits will be meritorious, and that section 5107(a) “reflects a policy that implausible claims should not consume the limited resources of the VA and force into even greater backlog and delay” those claims which are well grounded.⁷ The Court warned that “while no duty to assist arises absent a well-grounded claim, if the Secretary, as a matter of policy, volunteers assistance to establish well groundedness, grave questions of due process can arise if there is apparent disparate treatment between claimants in this regard.”⁸

VA’s response to this case was to revise its procedure manual in January 1994 instructing field offices to fully develop claims before deciding whether they are “well-grounded,” including requesting service medical records, VA and other government records, and private records identified by the claimant as relevant to the claim. VA’s policy was based on an understanding that although it may not do less than the statute requires, it was not prohibited from doing more than the statute requires.⁹

In 1995, the CAVC defined the specific requirements which would “well-ground” a claim for service connection. In *Caluza v. Brown*, 7 Vet. App. 498, 506 (1995) aff’d, 78 F.3d 604 (Fed. Cir. 1996), the Court held that “in order for a claim to be well-grounded, there must be competent evidence [1] of current disability (a medical diagnosis) . . . ; [2] of incurrence or aggravation of a disease or injury in service (lay or medical evidence) . . . ; [3] and of a nexus between the in-service injury or disease and the current

⁵*Id.*, at 5, quoting *Tirpak v. Derwinski*, 2 Vet. App. 609, 610 (1992).

⁶*Id.*, at 6.

⁷*Id.*, at 7.

⁸*Id.*, at 7, quoting *Grivois* at 139–140.

⁹*Id.*, at 7–8.

disability (medical evidence).” The United States Court of Appeals for the Federal Circuit affirmed that holding in *Epps v. Gober*, 126 F.3d 1464 (Fed. Cir. 1997). These three basic elements or requirements have become a standard that a claimant must show in order to establish entitlement to compensation under 38 U.S.C. § 1110.¹⁰ Nonetheless, believing that the statute did not prohibit VA from volunteering assistance, the VA revised internal procedure manual provisions and continued to operate and adjudicate claims in a manner which delayed a decision on “well-groundedness” until a claim had been fully developed.¹¹

The VA position of providing assistance to claimants who had not filed “well-grounded” claims was challenged by the CAVC in *Morton v. West*, 12 Vet. App. 477 (1999), decided on July 14, 1999. In *Morton*, the claimant argued that the VA had created a blanket exception to the “well-grounded” claim requirement of section 5107(a). Citing VA’s internal procedures manual, the claimant argued that the VA had obligated itself to fully develop all claims, regardless of whether they were “well-grounded.” He asserted that those manual provisions were valid exercises of the Secretary’s authority to create exceptions under the “[e]xcept when otherwise provided” clause in the first sentence of section 5107(a).¹²

The CAVC rejected those assertions for two reasons. First, it concluded that the manual provisions at issue were merely internal statements of policy or interpretation which could not be enforced against VA. Second, CAVC concluded that if the manual provisions were interpreted as establishing a blanket exception to the statute, such an interpretation would be inconsistent with section 5107(a). Additionally, the Court reiterated its prior holding that section 5107 reflects a Congressional policy that implausible claims should not consume VA’s limited resources and force “well-grounded” claims into ever greater backlog and delay. . . . *Morton*, which is currently on appeal to the Federal Circuit, required the Compensation and Pension Service to respond with a formal change in its policy.¹³

In August 1999, the Department of Veterans Affairs issued a letter informing each VA regional office that a number of provisions in their procedural manual were being rescinded as the result of the *Morton* decision. The August 1999 letter instructed regional offices to follow an interim policy implementing the *Morton* decision pending proposed rulemaking, specifically directing them to: determine whether or not claims are “well-grounded” prior to beginning development; give notice to claimant if material evidence is necessary; and obtain VA medical and service records, but refrain from private treatment records or scheduling a VA examination on claims which are not “well-grounded.” On December 2, 1999, VA proposed a new rule setting forth the circumstances in which it would obtain relevant records or provide medical examinations even if the claimant had not submitted a “well-grounded” claim.¹⁴ 64 Fed. Reg. 67528 (1999) (proposed Dec. 2, 1999). As noted, witnesses at the March 23, 2000, hearing challenged the VA’s author-

¹⁰*Id.*, at 8.

¹¹*Id.*

¹²*Id.*, at 10.

¹³*Id.*, at 10–11.

¹⁴*Id.*, at 11–12.

ity to issue these regulations and criticized the proposed rules for failing to provide enough assistance to claimants.

Historically, the Secretary's "duty to assist" has been interpreted in varying fashions, but the goal is and has been to assist veterans in developing claims and receiving benefits for which they are eligible. As questions abound over the proper role of veterans and the VA in claim development, the Committee finds that it is necessary to clarify claimants' and the VA's duties with respect to obtaining evidence in support of claims for veterans benefits.

SECTION-BY-SECTION ANALYSIS

Section 1 would provide that this Act may be cited as the "Veterans Claims Assistance Act of 2000".

Section 2 would amend chapter 51 of title 38, United States Code, to add a new section at the beginning of the chapter. The new section would define the term "claimant" as that term is used in chapter 51. The term "claimant" would be defined to mean "any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary". The purpose of defining this term is to ensure that the Secretary will provide applications and assistance to persons whose status as a veteran is not yet determined. Similarly, the Secretary would be obligated to respond to applications by persons who claim eligibility for or entitlement to a VA benefit by reason of their relationship to a veteran.

Section 3 would substantially revise sections 5102 and 5103 of title 38, United States Code.

As revised, section 5102 would contain almost all of existing sections 5102 and 5103. Subsection (a) of the proposed section 5102(a) is identical to existing section 5102. Subsections (b), (c), and (d) are, with one exception, identical to existing subsections (a) and (b) of existing section 5103. Proposed section 5102(b) restates the Secretary's obligation to send notices to the claimant and the claimant's representative, and to advise the claimant and the claimant's representative as to information the claimant must submit to complete the application. The Secretary would also be required to notify the claimant (and the claimant's representative) of any additional information and medical and lay evidence necessary to substantiate the claim. It is the Committee's understanding that the Secretary currently undertakes to provide this notification to a claimant, and that codification of this requirement should result in a more uniform practice of notifying a claimant of what evidence he or she must provide to the Department. For example, the Committee expects that information and evidence under the claimant's control such as birth and marriage evidence, school attendance and income information should ordinarily be provided by the claimant. Information and evidence in the control of governmental entities and medical providers should ordinarily be obtained directly by the Secretary.

Proposed subsection (a) of the new section 5103 is a revision of language currently found in section 5107(a) of title 38, United States Code, which requires the Secretary to assist claimants who have filed a "well-grounded" claim. As revised, the Secretary's duty to assist claimants would not be contingent on the claimant filing a claim that is "well-grounded." That is, the Secretary would be obligated to assist a claimant in obtaining evidence that is necessary

to establish eligibility for the benefit being sought. This language recognizes the Secretary's authority to establish differing evidentiary requirements for the various benefits administered by the Department. It also recognizes that certain claims, including those that on their face seek benefits for ineligible claimants (such as a veteran who seeks pension benefits but lacks wartime service), or claims which have been previously decided on the same evidence can be decided without providing any assistance or obtaining any additional evidence, and authorizes the Secretary to decide those claims without providing any assistance under this subsection.

Proposed subsection (b) of the new section 5103 clarifies the Secretary's obligation to assist a claimant in obtaining evidence that is relevant to a particular claim. The requirement in section 5107 that the claimant has the burden of proving entitlement to benefits would not be changed by this language. In using the term "reasonable efforts" to describe the Secretary's obligation to assist in obtaining evidence, the Committee expects the Department to use a practical approach to assisting a claimant in obtaining evidence. That is, if the claimant has adequately identified the source of the evidence and has given whatever permission is required for the custodian to provide such evidence, the Committee expects the Secretary to make repeated, but not necessarily exhaustive, efforts to obtain the evidence. In this regard, the Committee notes that one effort to obtain evidence would be clearly inadequate and that four efforts, except in an unusual case, would be exhaustive. Subsection (b) would also require the Secretary to provide notice to the claimant if the effort to obtain evidence is unsuccessful and briefly explain the Secretary's efforts to obtain such evidence, describe any further actions to be taken by the Secretary, and allow the claimant a reasonable opportunity to obtain the evidence before the claim is decided.

Proposed subsection (c) of section 5103 would provide special rules for obtaining evidence in disability compensation claims. For this type of claim, the Secretary would be obligated to obtain existing service medical records, records of treatment or examination at Department health-care facilities, and relevant records in the possession of other Federal agencies if relevant to the veteran's claim. The limitation of "reasonableness" would not apply to the Secretary's obligation to obtain these types of records if they exist and the claimant has furnished sufficient information to locate such records.

Proposed subsection (d) would require the Secretary to provide a medical examination or obtain a medical opinion if the Secretary has evidence establishing that (1) the claimant has (A) a current disability, (B) current symptoms of a disease (such as hepatitis C or post-traumatic arthritis) which may not be characterized by symptoms for extended periods of time, or (C) persistent or recurrent symptoms of disability following discharge from service, and 2) there was an in-service event (or series of events) which could have caused or aggravated the current disability or symptoms, but 3) the evidence is insufficient to establish service-connection. It is the Committee's understanding that the Department requests and obtains in appropriate cases, as part of the report of a medical examination, the examiner's opinion as to whether there is a "nexus" or linkage between the current disability or symptoms and some in-

service event or events. This section is intended to encourage that practice. However, this provision would not require VA to provide an examination where the evidence of record establishes service connection on the basis of applicable presumptions or other laws. The Committee expects the Secretary to continue the current practice of obtaining a medical examination, if needed, to establish the rating to be assigned to a service-connected disability.

Proposed subsection (e) would require the Secretary to prescribe regulations (1) specifying the evidence needed to establish a claimant's eligibility for a benefit, and (2) determining what records or evidence are relevant to a claim. The Committee notes that this subsection would not require the Secretary to prescribe new regulations except to the extent that existing regulations are incomplete, impractical, or inconsistent with the requirements of this Act.

Proposed subsection (f) of section 5103 would specify that nothing in this legislation would affect the requirement in current section 5108 that the Secretary reopen a claim and review the former disposition of the claim only if new and material evidence is presented by the claimant or is secured from a source which previously was unable to produce such evidence.

Proposed subsection (g) of section 5103 would clarify that nothing in this revised section should be construed as limiting the Secretary's authority to provide assistance to claimants. The Committee's intent is to overrule that portion of the decision in *Morton* that found an implied limitation on VA's authority to provide assistance to claimants who had not submitted "well-grounded" claims.

Proposed section 3(b) of the bill would recodify the language presently found at section 5103(c) as a new section 5126 of title 38, United States Code. Although there is no evidence that VA has ever denied a benefit to a person because that person lacked a mailing address, the Committee is retaining this language because of concern that a repeal of it might lead some future VA official to propose such a policy.

Section 4 would revise section 5107 of title 38, United States Code, to eliminate the requirement that a veteran must submit a "well-grounded" claim. In general, the proposed revision to section 5103 discussed above sets out the authority for the Secretary to provide assistance to a claimant. Thus, the extent to which the Secretary conducts a separate threshold examination of the evidence provided in support of a claim is now addressed in that section. The revised section 5107 restates without any substantive change the requirements in existing law that the claimant still has the burden of proving entitlement to benefits, and that the Secretary must provide the benefit of the doubt to the claimant when there is an approximate balance of positive and negative evidence regarding any material issue.

Section 5 would add a new sentence to section 5106 of title 38, United States Code, to provide that Federal departments or agencies shall furnish the Department of Veterans Affairs with records pertinent to a benefits application without charge.

Section 6 provides that in general, this Act would apply to claims filed after the date of enactment or which have not been finally decided as of that date. Subsection (b) would establish a special rule providing retroactive relief to claims which were finally denied or

which were dismissed as not “well-grounded” beginning on July 14, 1999 (the effective date of the *Morton* decision). In such cases, the Secretary could order the claim to be readjudicated upon the request of the claimant or on the Secretary’s own motion. Subsection (b)(3) would provide that a motion to readjudicate the claim would have to be made within two years from the date of enactment of this Act, while subsection (b)(4) would relieve the Secretary of any obligation to locate and readjudicate claims which might be affected by the change in law described in this subsection.

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2000.

Hon. BOB STUMP,
*Chairman, Committee on Veterans’ Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4864, the Veterans Claims Assistance Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Evan Christman.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

H.R. 4864—Veterans Claims Assistance Act of 2000

Summary: H.R. 4864 would require the Department of Veterans Affairs (VA) to provide assistance to veterans who file claims for VA benefits. CBO estimates that implementing the bill would cost \$4 million in 2001 and \$7 million to \$8 million annually thereafter, assuming appropriation of the necessary funds. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 4864 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

Basis of estimate: H.R. 4864 would require VA to provide more assistance than it does under current law to veterans who file claims for benefits. The bill would require VA to pursue any records the Secretary identifies as necessary to establish a claim, and it would require VA to draft regulations that specify what information is necessary for a claim. H.R. 4864 would direct VA to

inform veterans of any information the VA needs to adjudicate an incomplete claim, pursue information the veteran authorizes or requests the VA to obtain, and inform the veteran when the department cannot locate information pertinent to a claim.

If relevant for claims to disability compensation, VA would be required to obtain pertinent records, including a veteran's medical record from military service, his or her service record, any records of treatment provided by the VA, and any other relevant materials available from other federal agencies. The bill also would require VA to provide medical exams to veterans who need them to substantiate their claims. Also, the bill would allow any claimant who had a claim denied since July 14, 1999, to resubmit it if the claim was denied because it lacked sufficient evidence.

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law for VA's general operating expenses:						
Estimated authorization level ¹	941	941	941	941	941	941
Estimated outlays	925	941	941	941	941	941
Proposed changes:						
Estimated authorization level	0	4	7	8	8	8
Estimated outlays	0	4	7	7	8	8
Spending under H.R. 4864 for VA's general operating expenses:						
Estimated authorization level ¹	941	945	948	949	949	949
Estimated outlays	925	945	948	948	949	949

¹The 2000 level is the amount appropriated for that year.

Note.—This table assumes that funding under current law will remain at the level appropriated for 2000 without adjustment for inflation. If funding over the 2001–2005 period is adjusted for inflation, the base amounts would increase by about \$35 million a year, but the cost of the proposed changes would remain as shown under “Proposed Changes.”

CBO expects that, in order to carry out its responsibilities under H.R. 4864, VA would have to hire additional claims adjudicators. Based on information from the VA, CBO assumes that 110 additional claims adjudicators would be hired at an estimated cost of \$3 million in salary and benefits in 2001 and about \$7 million annually thereafter. CBO estimates that training would cost about \$1 million a year and that one-time costs associated with expanding the claims processing staff would be about \$700,000 in 2001. The cost of providing medical exams is covered under current law. CBO does not expect a significant increase in benefit payments as a result of this bill.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 4864 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On February 23, 2000, CBO transmitted a cost estimate for H.R. 3193, the Duty to Assist Veterans Act of 1999. That bill and H.R. 4864 are similar, but not identical. The estimated costs are the same, however, because CBO believes that VA would implement them substantially the same way.

Estimate prepared by: Federal costs: Evan Christman; impact on State, local, and tribal governments: Susan Seig Tompkins; impact on the private sector: Rachel Schmidt.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

APPLICABILITY TO LEGISLATIVE BRANCH

The reported bill would not be applicable to the legislative branch under the Congressional Accountability Act, Public Law 104-1, because the bill would only affect Department of Veterans Affairs programs and benefits recipients.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a federal mandate under the Unfunded Mandates Reform Act, Public Law 104-4.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER I—CLAIMS

- Sec. 5100. *Definition of "claimant".*
- 5101. Claims and forms.
- 5102. Application forms furnished upon request.
- 5103. Incomplete applications.
- 5102. *Applications: forms furnished upon request; notice to claimants of incomplete applications.*
- 5103. *Applications: duty to assist claimants.*
- * * * * *
- 5126. *Benefits not to be denied based on lack of mailing address.*
- * * * * *

SUBCHAPTER I—CLAIMS

* * * * *

§5100. Definition of “claimant”

For purposes of this chapter, the term “claimant” means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.

* * * * *

【§ 5102. Application forms furnished upon request

【Upon request made in person or in writing by any person claiming or applying for benefits under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing such claim.

【§ 5103. Incomplete applications

【(a) If a claimant’s application for benefits under the laws administered by the Secretary is incomplete, the Secretary shall notify the claimant of the evidence necessary to complete the application. If such evidence is not received within one year from the date of such notification, no benefits may be paid or furnished by reason of such application.

【(b) This section shall not apply to any application or claim for Government life insurance benefits.

【(c) Benefits under laws administered by the Secretary may not be denied an applicant on the basis that the applicant does not have a mailing address.】

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

(a) *FURNISHING FORMS.*—Upon request made in person or in writing by any person claiming or applying for a benefit under the laws administered by the Secretary, the Secretary shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing such claim.

(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. The Secretary shall notify each claimant of any additional information and medical and lay evidence necessary to substantiate the claim. As part of such notice, the Secretary shall indicate which portion of such evidence, if any, is to be provided by the claimant and which portion of such evidence, if any, the Secretary will attempt to obtain on behalf of the claimant.

(c) *TIME LIMITATION.*—In the case of evidence that the claimant is notified is to be provided by the claimant, if such evidence is not received by the Secretary within one year from the date of such notification, no benefits may be paid or furnished by reason of such application.

(d) *INAPPLICABILITY TO CERTAIN BENEFITS.*—This section shall not apply to any application or claim for Government life insurance benefits.

§ 5103. Applications: Duty to assist claimants

(a) *DUTY TO ASSIST.*—*The Secretary shall make reasonable efforts to assist in obtaining evidence necessary to establish a claimant's eligibility for a benefit under a law administered by the Secretary. However, the Secretary may decide a claim without providing assistance under this subsection when no reasonable possibility exists that such assistance will aid in the establishment of eligibility for the benefit sought.*

(b) *ASSISTANCE IN OBTAINING RECORDS.*—(1) *As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant 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 records sought, the Secretary shall inform the claimant that the Secretary is unable to obtain such records. Such a notice shall—*

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

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

(C) *describe any further actions to be taken by the Secretary with respect to the claim; and*

(D) *request the claimant, if the claimant intends to attempt to obtain such records independently, to so notify the Secretary within a time period to be specified in the notice.*

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

(1) *The claimant's existing service medical records and, if the claimant has furnished information sufficient to locate such records, other relevant service records.*

(2) *Existing records of relevant medical treatment or examination of the veteran at Department health-care facilities or at the expense of the Department, if the claimant has furnished information sufficient to locate such records.*

(3) *Information as described in section 5106 of this title.*

(d) *MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.*—*In the case of a claim by a veteran for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination, or obtaining a medical opinion, when the evidence of record before the Secretary—*

(1) *establishes that—*

(A) *the claimant has—*

(i) *a current disability;*

(ii) *current symptoms of a disease that may not be characterized by symptoms for extended periods of time; or*

(iii) *persistent or recurrent symptoms of disability following discharge or release from active military, naval, or air service; and*

(B) *there was an event, injury, or disease (or combination of events, injuries, or diseases) during the claimant's active*

military, naval, or air service capable of causing or aggravating the claimant's current disability or symptoms, but (2) is insufficient to establish service-connection of the current disability or symptoms.

(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall include provisions for—

(1) specifying the evidence necessary under subsection (a) to establish a claimant's eligibility for a benefit under a law administered by the Secretary; and

(2) determining under subsections (b) and (c) what records are relevant to a claim.

(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 to a claimant as the Secretary considers appropriate.

* * * * *

§ 5106. Furnishing of information by other agencies

The head of any Federal department or agency shall provide such information to the Secretary as the Secretary may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto. *No charge may be imposed by the head of any such department or agency for providing such information.*

§ 5107. Burden of proof; benefit of the doubt

[(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

[(b) When, after consideration of all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. Nothing in this subsection shall be construed as shifting from the claimant to the Secretary the burden specified in subsection (a) of this section.]

§ 5107. Burden of proof; benefit of the doubt

(a) BURDEN OF PROOF.—Except when otherwise provided by this title or by the Secretary in accordance with the provisions of this

title, a claimant shall have the burden of proving entitlement to benefits.

(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary and shall give the claimant the benefit of the doubt when there is an approximate balance of positive and negative evidence regarding any issue material to the determination of the matter.

* * * * *

§ 5126. Benefits not to be denied based on lack of mailing address

Benefits under laws administered by the Secretary may not be denied a claimant on the basis that the claimant does not have a mailing address.

* * * * *

○