

(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.

(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.)

§ 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)", "subsection (a)" for "paragraph (1) of this subsection", "(1)" for "(A)", and "(2)" for "(B)".

EFFECTIVE DATE

Section 115(b) of Pub. L. 101-237 provided that: "Section 3004 [now 5104] of title 38, United States Code, as added by subsection (a), shall apply with respect to decisions by the Secretary of Veterans Affairs made after January 31, 1990."

§ 5105. Joint applications for social security and dependency and indemnity compensation

(a) The Secretary and the Commissioner of Social Security shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.).

(b) When an application on such a form is filed with either the Secretary or the Commissioner of Social Security, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with either the Secretary or the Commissioner, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary or the Commissioner with such application, and which may be needed by the other official in connection therewith, shall be transmitted by the Secretary or the Commissioner receiving the application to the other official. The preceding sentence shall not prevent the Secretary and the Commissioner of Social Security from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1226, §3005; Pub. L. 97-295, §4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title VII, §702(16), Nov. 21, 1983, 97 Stat. 1010; renumbered §5105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(9), Aug. 6, 1991, 105 Stat.

405; Pub. L. 103-296, title I, §108(k), Aug. 15, 1994, 108 Stat. 1488.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Prior section 5105 was renumbered section 8305 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-296, §108(k)(1), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

Subsec. (b). Pub. L. 103-296, §108(k), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services” in two places and amended second sentence generally. Prior to amendment, second sentence read as follows: “A copy of each such application filed with either Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by that Secretary with such application, and which may be needed by the other Secretary in connection therewith, shall be transmitted by the Secretary receiving the application to the other Secretary.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3005 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(9)(A)–(C), substituted “(a) The Secretary” for “The Administrator” at the beginning of text and substituted “401 et seq.” for “401 et seq.”; and “in second sentence.

Subsec. (b). Pub. L. 102-83, §4(b)(9)(D)–(J), substituted “(b) When an application on such a form is filed with either the Secretary” for “when an application on such form has been filed with either the Administrator”, “filed with either Secretary” for “filed with the Administrator”, “received by that Secretary” for “received by the Administrator”, “needed by the other Secretary” for “needed by the Secretary”, and “by the Secretary receiving the application to the other Secretary.” for “by the Administrator to the Secretary.”; struck out “and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator.” before “The preceding sentence”, and substituted “the Secretary and the Secretary of Health and Human Services” for “the Secretary and the Administrator”.

1983—Pub. L. 98-160 substituted “title II of the Social Security Act (42 U.S.C. 401 et seq.)” for “subchapter II of chapter 7 of title 42” wherever appearing.

1982—Pub. L. 97-295 substituted “Health and Human Services” for “Health, Education, and Welfare” wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

§ 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. The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.

(Added Pub. L. 94-432, title IV, §403(2), Sept. 30, 1976, 90 Stat. 1372, §3006; amended Pub. L. 99-576, title VII, §701(62), Oct. 28, 1986, 100 Stat. 3296; renumbered §5106, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 106-475, §5, Nov. 9, 2000, 114 Stat. 2099.)

AMENDMENTS

2000—Pub. L. 106-475 inserted at end “The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.”

1991—Pub. L. 102-40 renumbered section 3006 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places.

1986—Pub. L. 99-576 substituted “the Administrator” for “he” before “may request”.

EFFECTIVE DATE

Section effective Sept. 30, 1976, see section 405(a) of Pub. L. 94-432, set out as an Effective Date of 1976 Amendment note under section 1521 of this title.

§ 5107. Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY.—Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

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

(Added Pub. L. 100-687, div. A, title I, §103(a)(1), Nov. 18, 1988, 102 Stat. 4106, §3007; renumbered §5107 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 106-419, title I, §104(c)(2), Nov. 1, 2000, 114 Stat. 1828; Pub. L. 106-475, §4, Nov. 9, 2000, 114 Stat. 2098.)

AMENDMENTS

2000—Pub. L. 106-475 substituted “Claimant responsibility; benefit of the doubt” for “Burden of proof; benefit of the doubt” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(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.