

# Union Calendar No. 448

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4864

[Report No. 106-781]

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2000

Mr. STUMP (for himself, Mr. EVANS, Mr. QUINN, Mr. FILNER, Mr. BILLIRAKIS, Mr. EVERETT, Mr. STEARNS, Mr. HANSEN, Mr. MCKEON, Mr. GIBBONS, Ms. BROWN of Florida, Mr. DOYLE, Mr. PETERSON of Minnesota, Mr. REYES, Mr. SHOWS, Mr. RODRIGUEZ, Ms. BERKLEY, Mr. UDALL of New Mexico, Mr. SPRATT, Mrs. JONES of Ohio, Mr. ROHRABACHER, Mr. DAVIS of Florida, Ms. BALDWIN, Mrs. JOHNSON of Connecticut, Mr. HOBSON, Ms. HOOLEY of Oregon, Mr. UNDERWOOD, Ms. KAPTUR, Mr. CRAMER, Mr. LAZIO, Mr. HOLDEN, Mr. ABERCROMBIE, Mr. MOAKLEY, Ms. ROYBAL-ALLARD, Mr. LUCAS of Oklahoma, Mr. DEFazio, Mr. MOLLOHAN, Mr. NETHERCUTT, Ms. DUNN, Mr. SANDERS, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Veterans' Affairs

JULY 24, 2000

Additional sponsors: Mr. BOEHLERT, Mr. TAYLOR of Mississippi, Mr. REYNOLDS, Mr. OBEY, Mr. SMITH of New Jersey, Mr. MINGE, Ms. CARSON, Mr. BLAGOJEVICH, Ms. PRYCE of Ohio, Ms. LOFGREN, Mr. BAKER, Mr. HASTINGS of Washington, Mr. HINOJOSA, Mr. MCHUGH, Mr. HOUGHTON, Mr. TIAHRT, Mr. WHITFIELD, Mr. OSE, Mrs. CLAYTON, Mr. RAHALL, Mr. BARCIA, Mr. MCCOLLUM, Mr. BATEMAN, Mr. LAHOOD, Mr. GREEN of Texas, Mr. MASCARA, Mr. HALL of Texas, Mr. KILDEE, Mr. SUNUNU, Mr. BALDACCI, Mr. ROMERO-BARCELO, Mr. MURTHA, Mr. STUPAK, Mr. TIERNEY, Mr. FRELINGHUYSEN, Mrs. MORELLA, Mr. GONZALEZ, Mr. WAXMAN, Mr. SAWYER, Mr. CLEMENT, Mr. KOLBE, Mr. BUYER, Mr. COMBEST, Mr. DIAZ-BALART, Mr. LOBIONDO, Mr. WAMP, Mr. HAYWORTH, Mr. POMEROY, Mr. HINCHEY, Mr. COSTELLO, Mr. ISAKSON, Mr. KLECZKA, Mr. SNYDER, Mr. GUTIERREZ, Mr. HILL of In-

diana, Mr. UPTON, Mr. DEMINT, Mr. METCALF, Mr. ROTHMAN, Mr. MANZULLO, Mr. NEY, Mr. PETRI, Mrs. EMERSON, Mr. LARSON, Ms. DELAURO, Mr. WOLF, Mr. SWEENEY, Mr. SHIMKUS, Mr. LATOURETTE, Mrs. FOWLER, and Mr. STRICKLAND

JULY 24, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 17, 2000]

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## A BILL

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.

1       *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Veterans Claims Assist-*  
 5 *ance Act of 2000”.*

6 **SEC. 2. CLARIFICATION OF DEFINITION OF “CLAIMANT”**

7                               **FOR PURPOSES OF VETERANS LAWS.**

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

11 **“§ 5100. Definition of ‘claimant’**

12       *“For purposes of this chapter, the term ‘claimant’*  
 13 *means any individual applying for, or submitting a claim*

1 *for, any benefit under the laws administered by the Sec-*  
2 *retary.”.*

3 (b) *CLERICAL AMENDMENT.*—*The table of sections at*  
4 *the beginning of such chapter is amended by inserting before*  
5 *the item relating to section 5101 the following new item:*  
*“5100. Definition of ‘claimant’.”.*

6 **SEC. 3. ASSISTANCE TO CLAIMANTS.**

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

11 **“§5102. Applications: forms furnished upon request;**  
12 **notice to claimants of incomplete applica-**  
13 **tions**

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

20 “(b) *INCOMPLETE APPLICATIONS.*—*If a claimant’s ap-*  
21 *plication for a benefit under the laws administered by the*  
22 *Secretary is incomplete, the Secretary shall notify the*  
23 *claimant and the claimant’s representative, if any, of the*  
24 *information necessary to complete the application. The Sec-*  
25 *retary shall notify each claimant of any additional infor-*

1 *mation and medical and lay evidence necessary to substan-*  
2 *tiate the claim. As part of such notice, the Secretary shall*  
3 *indicate which portion of such evidence, if any, is to be*  
4 *provided by the claimant and which portion of such evi-*  
5 *dence, if any, the Secretary will attempt to obtain on behalf*  
6 *of the claimant.*

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

12       “(d) *INAPPLICABILITY TO CERTAIN BENEFITS.*—*This*  
13 *section shall not apply to any application or claim for Gov-*  
14 *ernment life insurance benefits.*

15 **“§ 5103. Applications: Duty to assist claimants**

16       “(a) *DUTY TO ASSIST.*—*The Secretary shall make rea-*  
17 *sonable efforts to assist in obtaining evidence necessary to*  
18 *establish a claimant’s eligibility for a benefit under a law*  
19 *administered by the Secretary. However, the Secretary may*  
20 *decide a claim without providing assistance under this sub-*  
21 *section when no reasonable possibility exists that such as-*  
22 *sistance will aid in the establishment of eligibility for the*  
23 *benefit sought.*

24       “(b) *ASSISTANCE IN OBTAINING RECORDS.*—(1) *As*  
25 *part of the assistance provided under subsection (a), the*

1 *Secretary shall make reasonable efforts to obtain relevant*  
2 *records that the claimant adequately identifies to the Sec-*  
3 *retary and authorizes the Secretary to obtain.*

4       “(2) *Whenever the Secretary, after making such rea-*  
5 *sonable efforts, is unable to obtain all of the records sought,*  
6 *the Secretary shall inform the claimant that the Secretary*  
7 *is unable to obtain such records. Such a notice shall—*

8               “(A) *specifically identify the records the Sec-*  
9 *retary is unable to obtain;*

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

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

14              “(D) *request the claimant, if the claimant in-*  
15 *tends to attempt to obtain such records independently,*  
16 *to so notify the Secretary within a time period to be*  
17 *specified in the notice.*

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

23              “(1) *The claimant’s existing service medical*  
24 *records and, if the claimant has furnished informa-*

1        *tion sufficient to locate such records, other relevant*  
2        *service records.*

3            *“(2) Existing records of relevant medical treat-*  
4        *ment or examination of the veteran at Department*  
5        *health-care facilities or at the expense of the Depart-*  
6        *ment, if the claimant has furnished information suffi-*  
7        *cient to locate such records.*

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

10        *“(d) MEDICAL EXAMINATIONS FOR COMPENSATION*  
11        *CLAIMS.—In the case of a claim by a veteran for disability*  
12        *compensation, the assistance provided by the Secretary*  
13        *under subsection (a) shall include providing a medical ex-*  
14        *amination, or obtaining a medical opinion, when the evi-*  
15        *dence of record before the Secretary—*

16            *“(1) establishes that—*

17            *“(A) the claimant has—*

18            *“(i) a current disability;*

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

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

1           “(B) there was an event, injury, or disease  
2           (or combination of events, injuries, or diseases)  
3           during the claimant’s active military, naval, or  
4           air service capable of causing or aggravating the  
5           claimant’s current disability or symptoms, but  
6           “(2) is insufficient to establish service-connection  
7           of the current disability or symptoms.

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

11           “(1) specifying the evidence necessary under sub-  
12          section (a) to establish a claimant’s eligibility for a  
13          benefit under a law administered by the Secretary;  
14          and

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

17          “(f) RULE WITH RESPECT TO DISALLOWED  
18          CLAIMS.—Nothing in this section shall be construed to re-  
19          quire the Secretary to reopen a claim that has been dis-  
20          allowed except when new and material evidence is presented  
21          or secured, as described in section 5108 of this title.

22          “(g) OTHER ASSISTANCE NOT PRECLUDED.—Nothing  
23          in this section shall be construed as precluding the Sec-  
24          retary from providing such other assistance to a claimant  
25          as the Secretary considers appropriate.”.

1           (b) *REENACTMENT OF RULE FOR CLAIMANT’S LACK-*  
 2 *ING A MAILING ADDRESS.*—Chapter 51 of such title is  
 3 amended by adding at the end the following new section:

4 **“§5126. Benefits not to be denied based on lack of**  
 5 ***mailing address***

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

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

11                   (1) *by striking the items relating to sections*  
 12 *5102 and 5103 and inserting the following:*

“5102. Applications: forms furnished upon request; notice to claimants of incom-  
 plete applications.

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

13           *and*

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

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

15 **SEC. 4. BURDEN OF PROOF.**

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

19 **“§5107. Burden of proof; benefit of the doubt**

20           “(a) *BURDEN OF PROOF.*—Except when otherwise pro-  
 21 vided by this title or by the Secretary in accordance with  
 22 the provisions of this title, a claimant shall have the burden  
 23 of proving entitlement to benefits.



1       “(b) *BENEFIT OF THE DOUBT.*—*The Secretary shall*  
2 *consider all evidence and material of record in a case before*  
3 *the Department with respect to benefits under laws admin-*  
4 *istered by the Secretary and shall give the claimant the ben-*  
5 *efit of the doubt when there is an approximate balance of*  
6 *positive and negative evidence regarding any issue material*  
7 *to the determination of the matter.”.*

8 **SEC. 5. PROHIBITION OF CHARGES FOR RECORDS FUR-**  
9                                   **NISHED BY OTHER FEDERAL DEPARTMENTS**  
10                                   **AND AGENCIES.**

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

15 **SEC. 6. EFFECTIVE DATE.**

16       *(a) IN GENERAL.*—*Except as specifically provided oth-*  
17 *erwise, the provisions of section 5107 of title 38, United*  
18 *States Code, as amended by section 4 of this Act, apply*  
19 *to any claim—*

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

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

1           (b) *RULE FOR CLAIMS THE DENIAL OF WHICH BE-*  
2 *CAME FINAL AFTER THE COURT OF APPEALS FOR VET-*  
3 *ERANS CLAIMS DECISION IN THE MORTON CASE.—(1) In*  
4 *the case of any claim for benefits—*

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

8           (B) *which was denied or dismissed by the Sec-*  
9 *retary of Veterans Affairs or a court because the claim*  
10 *was not well grounded (as that term was used in sec-*  
11 *tion 5107(a) of title 38, United States Code, as in ef-*  
12 *fect during that period),*

13 *the Secretary of Veterans Affairs shall, upon the request of*  
14 *the claimant, or on the Secretary's own motion, order the*  
15 *claim readjudicated under chapter 51 of such title, as*  
16 *amended by this Act, as if such denial or dismissal had*  
17 *not been made.*

18           (2) *A claim may not be readjudicated under this sub-*  
19 *section unless the request is filed or the motion made not*  
20 *later than two years after the date of the enactment of this*  
21 *Act.*

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



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