

Subsec. (d)(3). Pub. L. 109-461, §101(f)(5), substituted "fee to an agent or attorney" for "attorneys' fee" and struck out "of this subsection" after "paragraph (1)".

1998—Subsecs. (c)(2), (d)(3). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals" wherever appearing.

1994—Subsec. (d)(2)(A). Pub. L. 103-446 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "A fee agreement referred to in paragraph (1) of this subsection is one under which (i) the amount of the fee payable to the attorney is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim, and (ii) the amount of the fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant."

1992—Subsec. (c)(1). Pub. L. 102-405, §303(a)(1), substituted "Except as provided in paragraph (3), in" for "In".

Subsec. (c)(3). Pub. L. 102-405, §303(a)(2), added par. (3).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3404 of this title as this section.

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

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

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

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

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in par. (4).

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

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (c)(2). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "7263(d)" for "4063(d)".

Subsec. (d)(2)(A), (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

1988—Subsecs. (c), (d). Pub. L. 100-687 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees—

"(1) shall be determined and paid as prescribed by the Administrator;

"(2) shall not exceed \$10 with respect to any one claim; and

"(3) shall be deducted from monetary benefits claimed and allowed."

1986—Subsec. (b). Pub. L. 99-576 substituted "the Administrator" for "he" in introductory text.

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 2006 AMENDMENT

Pub. L. 109-461, title I, §101(h), Dec. 22, 2006, 120 Stat. 3408, provided that: "The amendments made by subsections (c)(1) and (d) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006] and shall apply with respect to services of agents and attorneys that are provided with respect to cases in which notices of disagreement are filed on or after that date."

Pub. L. 109-461, title I, §101(i), Dec. 22, 2006, 120 Stat. 3408, provided that: "No assessments on fees may be collected under paragraph (6) of section 5904(a) of title 38, United States Code (as added by subsection (a)(1)(D) of this section), until the date on which the Secretary of Veterans Affairs prescribes the regulations [regulations prescribed effective June 23, 2008, see 73 F.R. 29851] required by the amendments made by this section [amending this section and sections 5902, 5903, and 5905 of this title]."

EFFECTIVE DATE OF 1998 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-446, title V, §504(b), Nov. 2, 1994, 108 Stat. 4664, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fee agreements entered into on or after the date of the enactment of this Act [Nov. 2, 1994]."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-405, title III, §303(b), Oct. 9, 1992, 106 Stat. 1985, provided that: "Paragraph (3) [now (4)] of section 5904(c) of title 38, United States Code, as added by subsection (a), shall apply with respect to services of agents and attorneys provided after the date of the enactment of this Act [Oct. 9, 1992]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

FEE AGREEMENTS

Subsec. (d) of this section not to prevent award of fees and expenses under section 2412(d) of Title 28, Judiciary and Judicial Procedure, but subsec. (d) of this section inapplicable to such award where fees for the same work are received under both sections and claimant's attorney refunds to claimant amount of smaller fee, see section 506(c) of Pub. L. 102-572, set out as a note under section 2412 of Title 28.

APPLICABILITY TO ATTORNEYS' FEES

Pub. L. 100-687, title IV, §403, Nov. 18, 1988, 102 Stat. 4122, which provided that the amendment to subsec. (c) of this section by section 104(a) of Pub. L. 100-687 applied only to services of agents and attorneys in cases in which a notice of disagreement was filed with the Department of Veterans Affairs on or after Nov. 18, 1988, was repealed by Pub. L. 107-103, title VI, §603(b), Dec. 27, 2001, 115 Stat. 999.

[Repeal of section 403 of Pub. L. 100-687, formerly set out above, applicable to any appeal filed with the United States Court of Appeals for Veterans Claims on or after Dec. 27, 2001, or before that date but in which a final decision has not been made under section 7291 of this title as of that date, see section 603(d) of Pub. L. 107-103, set out as a note under section 7251 of this title.]

§ 5905. Penalty for certain acts

Whoever wrongfully withholds from any claimant or beneficiary any part of a benefit or

claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1239, §3405; Pub. L. 99–576, title VII, §701(81), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100–687, div. A, title I, §104(b), Nov. 18, 1988, 102 Stat. 4109; renumbered §5905 and amended Pub. L. 102–40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 109–461, title I, §101(g), Dec. 22, 2006, 120 Stat. 3408.)

Editorial Notes

AMENDMENTS

2006—Pub. L. 109–461 struck out “(1) directly or indirectly solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation except as provided in sections 5904 or 1984 of this title, or (2)” after “Whoever”.

1991—Pub. L. 102–40 renumbered section 3405 of this title as this section and substituted “5904” for “3404”.

Pub. L. 102–83 substituted “1984” for “784”.

1988—Pub. L. 100–687 substituted “shall be fined as provided in title 18, or imprisoned not more than one year, or both” for “shall be fined not more than \$500 or imprisoned at hard labor for not more than two years, or both”.

1986—Pub. L. 99–576 substituted “to the claimant or beneficiary” for “him”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100–687, set out as an Effective Date note under section 7251 of this title.

§ 5906. Availability of legal assistance at Department facilities

(a) IN GENERAL.—Not less frequently than three times each year, the Secretary shall facilitate the provision by a qualified legal assistance clinic of pro bono legal assistance described in subsection (c) to eligible individuals at not fewer than one medical center of the Department of Veterans Affairs, or such other facility of the Department as the Secretary considers appropriate, in each State.

(b) ELIGIBLE INDIVIDUALS.—For purposes of this section, an eligible individual is—

- (1) any veteran;
- (2) any surviving spouse; or
- (3) any child of a veteran who has died.

(c) PRO BONO LEGAL ASSISTANCE DESCRIBED.—The pro bono legal assistance described in this subsection is the following:

(1) Legal assistance with any program administered by the Secretary.

(2) Legal assistance associated with—

(A) improving the status of a military discharge or characterization of service in the Armed Forces, including through a discharge review board; or

(B) seeking a review of a military record before a board of correction for military or naval records.

(3) Such other legal assistance as the Secretary—

(A) considers appropriate; and

(B) determines may be needed by eligible individuals.

(d) LIMITATION ON USE OF FACILITIES.—Space in a medical center or facility designated under subsection (a) shall be reserved for and may only be used by the following, subject to review and removal from participation by the Secretary:

- (1) A veterans service organization or other nonprofit organization.
- (2) A legal assistance clinic associated with an accredited law school.
- (3) A legal services organization.
- (4) A bar association.
- (5) Such other attorneys and entities as the Secretary considers appropriate.

(e) LEGAL ASSISTANCE IN RURAL AREAS.—In carrying out this section, the Secretary shall ensure that pro bono legal assistance is provided under subsection (a) in rural areas.

(f) DEFINITION OF VETERANS SERVICE ORGANIZATION.—In this section, the term “veterans service organization” means any organization recognized by the Secretary for the representation of veterans under section 5902 of this title.

(Added Pub. L. 116–283, div. A, title V, §548(a)(1), Jan. 1, 2021, 134 Stat. 3617.)

Statutory Notes and Related Subsidiaries

PILOT PROGRAM TO ESTABLISH AND SUPPORT LEGAL ASSISTANCE CLINICS

Pub. L. 116–283, div. A, title V, §548(b)–(e), Jan. 1, 2021, 134 Stat. 3618, provided that:

“(b)(1) PILOT PROGRAM REQUIRED.—

“(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Veterans Affairs shall establish a pilot program to assess the feasibility and advisability of awarding grants to eligible entities to establish new legal assistance clinics, or enhance existing legal assistance clinics or other pro bono efforts, for the provision of pro bono legal assistance described in subsection (c) of section 5906 of title 38, United States Code, as added by subsection (a), on a year-round basis to individuals who served in the Armed Forces, including individuals who served in a reserve component of the Armed Forces, and who were discharged or released therefrom, regardless of the conditions of such discharge or release, at locations other than medical centers and facilities described in subsection (a) of such section.

“(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to limit or affect—

“(i) the provision of pro bono legal assistance to eligible individuals at medical centers and facilities of the Department of Veterans Affairs under section 5906(a) of title 38, United States Code, as added by subsection (a); or

“(ii) any other legal assistance provided pro bono at medical centers or facilities of the Department as of the date of the enactment of this Act.

“(2) ELIGIBLE ENTITIES.—For purposes of the pilot program, an eligible entity is—

“(A) a veterans service organization or other nonprofit organization specifically focused on assisting veterans;

“(B) an entity specifically focused on assisting veterans and associated with an accredited law school;

“(C) a legal services organization or bar association; or

“(D) such other type of entity as the Secretary considers appropriate for purposes of the pilot program.

“(3) LOCATIONS.—The Secretary shall ensure that at least one grant is awarded under paragraph (1)(A) to