

**Department of  
Veterans Affairs**

# Memorandum

Date: November 27, 2000

VAOPGCPREC 11-2000

From: General Counsel (022)

Subj: Effective Date of Public Law No. 106-475 -- Duty to Assist

To: Under Secretary for Benefits (20)  
Chairman, Board of Veterans' Appeals (01)

## **QUESTION PRESENTED:**

Do the provisions of Pub. L. No. 106-475, for which that act does not specify an effective date, apply to claims filed before the date of enactment of the act but not finally decided as of that date?

## **DISCUSSION:**

1. On November 9, 2000, the President approved the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096, (the Act) which made several amendments to the law governing VA claims. This opinion discusses the effective date of those changes and which claims are subject to the new provisions of law.

2. The Act made several changes to chapter 51 of title 38, United States Code. It added a new section 5100, which defines "claimant" as any individual applying for, or submitting a claim for, any VA benefit. Pub. L. No. 106-475, § 2, 114 Stat. at 2096. It transferred from section 5103(a) to section 5102(b) a provision imposing on VA a duty to notify a claimant of the evidence necessary to complete an incomplete application, changing the word "evidence" to "information." *Id.* § 3(a), at 2096. It revised section 5103 to impose on VA, upon receipt of a complete or substantially complete application, a duty to notify the claimant of any information, and any medical or lay evidence, not already submitted that is necessary to substantiate the claim. *Id.* § 3(a), at 2096-97. Perhaps most significantly, it added a new section 5103A, which defines VA's duty to assist a claimant in obtaining evidence necessary to substantiate the claim, and eliminated from section 5107(a) the necessity of submitting a well-grounded claim to trigger the duty to assist. *Id.* §§ 3(a), 4, at 2097-98. It also revised section 5107(a) to provide only that, except as otherwise provided, a claimant is responsible for presenting and supporting a claim. *Id.* § 4, at 2098.

3. Section 7 of the Act, the Act's effective-date provision, comprises two subsections. Subsection (a) provides:

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 that date.

114 Stat. at 2099. Subsection (b) provides for the readjudication of certain claims denied or dismissed as not being well grounded, even though those decisions have become final. 114 Stat. at 2099-2100. Section 7 does not, however, mention any title 38 provision as created or amended by the Act other than section 5107, such as section 5100, 5102, 5103, or 5103A, the duty-to-assist provision.

4. In section 7(a), Congress specified that section 5107 as amended applies to claims filed on or after the date of enactment. Also in section 7(a), Congress clearly expressed its intention that section 5107 as amended apply to claims pending on the date of enactment, viz., claims “filed before the date of the enactment...and not final as of that date.” Pub. L. No. 106-475, § 7(a)(2), 114 Stat. at 2099. (Although claims themselves do not become final, we interpret the quoted language to mean claims that have not been finally decided as of the date of enactment.) Congress did not specify in the Act the effective date of any other title 38 provision as created or amended by the Act. In the absence of a specified effective date, a statute takes effect from the date of its passage, which is the date of the President’s approval in the case of a federal statute. *Allin v. Brown*, 6 Vet. App. 207, 211 (1994); 2 Norman J. Singer, *Sutherland Statutory Construction* § 33.06 (5<sup>th</sup> ed. 1993). Therefore, we conclude that all the Act’s provisions apply to claims filed on or after November 9, 2000, the date of the Act’s passage.

5. The question remains whether the title 38 provisions as created or amended by the Act other than section 5107 apply to claims pending on the date of enactment. With respect to whether a law enacted while a case is pending applies to the pending case, the intent of the legislature governs if that intent is clear. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 264, 280 (1994). If a statute contains no clear expression of legislative intent with respect to its applicability to pending cases, a reviewing court must determine whether application of the statute to pending cases would have “retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.” *Id.* at 280. Absent a clear expression of Congress’ intent on the matter, a statute will not be applied to cases pending when it was enacted if application to pending cases would result in such retroactive effect. *Id.* Although the great majority of the United States Supreme Court’s decisions relying on the presumption against retroactive application involved intervening statutes burdening private parties,

that Court has applied the presumption in cases involving new monetary obligations that fell only on the government. *Id.* at 272, n.25.

6. In our opinion, Congress did not clearly express an intent with respect to whether the title 38 provisions as created or amended by the Act other than section 5107 apply to claims pending on the date of enactment.<sup>1</sup> Application of those provisions to pending claims, however, would not, as far as claimants are concerned, have the retroactive effect described in *Landgraf*. None of the provisions would impair the rights a claimant had when the claim was filed, would increase a claimant's liability for past conduct, or would impose new duties with respect to already completed transactions. Application of those provisions to pending claims would impose new duties on VA with respect to claims already denied. For example, application of sections 5103 and 5103A to a pending claim that VA had denied as not well grounded would require VA to notify the claimant of the information and evidence necessary to substantiate the claim and make reasonable efforts to assist the claimant in obtaining that evidence regardless of whether the claim was well grounded. Nevertheless, because the new duties that would be imposed on VA do not entail new monetary obligations, the new duties do not constitute a genuinely retroactive effect disfavored by the law. See VAOPGCPREC 1-98 (38 U.S.C. § 7111 applies to claims pending when enacted even though it would impose on the Board of Veterans' Appeals a new duty with respect to claims seeking to revise prior Board decisions based on error). Therefore, the *Landgraf* anti-retroactivity presumption does not prohibit application of the title 38 provisions as created or amended by the Act other than section 5107 to claims pending on the date of enactment.

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<sup>1</sup> Even if, for *Landgraf* purposes, a statute's legislative history could be the source of Congress' *clear* expression of intent, the Act's legislative history does not clearly express such an intent. The Explanatory Statement on the compromise agreement reached by the House and Senate Committees on Veterans' Affairs *indicates* an intent that all of the Act's provisions apply to claims pending on the date of enactment. With respect to the Act's effective date, the Explanatory Statement says that section 6 of the House bill provided that the "provisions in the bill" would apply to pending claims, that the Senate version was virtually identical to the House bill, and that the compromise agreement contains "the provision." 146 Cong. Rec. H9915, H9916 (daily ed. Oct. 17, 2000). In fact, however, the House bill contained the language eventually enacted, i.e., that section 5107 as amended would apply to pending claims. H.R. 4864, 106<sup>th</sup> Cong. § 6(a) (2000). The Senate bill differed from the House bill by providing that both section 5107 as amended and the duty-to-assist provisions of section 5103A as added would apply to "any claim pending on or filed on or after the date of enactment." S. 1810, 106<sup>th</sup> Cong. § 101(f)(1) (2000). Because the Explanatory Statement does not even accurately reflect the provisions contained in the House and Senate bills, it does not, in our opinion, *clearly* express Congress' intent that all the Act's provisions apply to pending claims.

7. Application of the title 38 provisions as created or amended by the Act other than section 5107 to claims pending on the date of enactment would be consistent with *Karnas v. Derwinski*, 1 Vet. App. 308 (1991). In that case, the United States Court of Appeals for Veterans claims held that, if the law changed after a claim has been filed but before the administrative or judicial appeal process has been concluded, the version of the law more favorable to the appellant applies unless Congress provided otherwise or permitted VA to do otherwise and VA did so. *Id.* at 313. In this case, the title 38 provisions as created or amended by the Act are more favorable to a claimant than the pre-Act provisions are. Under the new law, claimants are entitled to two kinds of notice from VA, applicable to completing and substantiating claims, as well as assistance from VA in obtaining evidence without having first to establish a well-grounded claim.

8. Finally, a statutory construction that leads to an absurd result is to be avoided if at all possible. *Timex V.I., Inc. v. United States*, 157 F.3d 879, 886 (Fed. Cir. 1998). A conclusion that the title 38 provisions as created or amended by the Act other than section 5107 do not apply to claims pending on the date of enactment would lead to an absurd result. A well-grounded claim would not be required for those pending claims, because section 5107 as amended does not require a well-grounded claim, but VA would have no duty to assist claimants whose claims are pending, because section 5107 as amended imposes no such duty, and section 5103A, which does, would not apply to those pending claims. Congress could not have intended such an anomalous result. Therefore, we conclude that the title 38 provisions created or amended by the Act other than section 5107 do not apply to claims pending on the date of enactment.

#### **HELD:**

On November 9, 2000, the President approved the Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096, which made several changes to statutory provisions governing Department of Veterans Affairs (VA) benefit claims, VA's duties to inform claimants about the completion and substantiation of their claims, and VA's duties to assist claimants in obtaining evidence necessary to substantiate their claims. Among other things, the act amended 38 U.S.C. §§ 5102, 5103, and 5107 and created new 38 U.S.C. §§ 5100 and 5103A. Section 7(a) of the act, 114 Stat. at 2099, specifies that section 5107 as amended applies to claims filed on or after the date of the act's enactment or to claims filed before then but not finally decided as of that date. However, the act does not specify the effective date of the other provisions of title 38, United States Code, created or amended by the act. We conclude that all of the act's provisions apply to claims filed on or after November 9, 2000, as well as to claims filed before then but not finally decided as of that date.

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