



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 8, 1997

S. 464

A bill to amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error

*As ordered reported by the Senate Committee on Veterans' Affairs
on October 7, 1997*

CBO estimates that S. 464 would raise administrative costs over the first two or three years after enactment by \$1 million to \$2 million in total, but in the longer run administrative costs would rise by less than \$500,000 a year. In addition, CBO estimates that the bill would have a direct spending impact of less than \$500,000 a year through 2002. Because the bill would raise direct spending, it would be subject to pay-as-you go procedures. S. 464 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

Section 1(a) would have no budgetary impact because it would codify the current procedure for revising veterans' claims decisions made by regional offices. Other sections of the bill would give certain veterans new rights and opportunities for appeal. Under current law, a veteran may appeal a regional office's decision to the Board of Veterans Appeals (BVA). Once the BVA has rendered a decision, a veteran may appeal directly to the Court of Veterans Appeals (COVA) or move for reconsideration of the Board's decision on the basis of "obvious error." The Chairman of BVA reviews the motion and at his discretion may allow it, thus referring the matter to a panel of members for reconsideration. Section 1(b) would require BVA to review decisions challenged on the basis of "clear and unmistakable error." Section 1(c) would make sections 1(a) and 1(b) retroactive and would allow veterans to appeal BVA decisions involving claims of clear and unmistakable error to COVA and other higher courts regardless of a current restriction limiting consideration to cases in which administrative appeals were initiated on or after November 18, 1988.

To obtain revision of a BVA decision under the bill, the claimant must assert "clear and unmistakable error," which is an error of law or fact in the record at the initial decision that compels the conclusion that the decision would have been different but for the error. The "clear and unmistakable error" standard is roughly the same as the current standard of "obvious error." The standard of review, therefore, is not the key change that the bill would

make in the procedure. Rather, the bill would eliminate the Chairman's discretion to allow or not allow reconsideration and make the review of a BVA decision a matter of right.

The administrative costs of the bill would have two parts--a continuing increase in costs associated with the annual caseload under current law and a larger initial increase that would stem from retroactively extending the right to review. CBO assumes that the longer run increase in caseload resulting from this bill would be a portion of the requests for reconsideration under current law that are denied. From 1991 to 1995, BVA denied reconsideration for about 500 motions a year, including motions that might have been based on clear and unmistakable error. Data from the Department of Veterans Affairs indicate that the average cost per case is about \$1,000. Because the marginal cost of each new case would be less than \$1,000 and BVA would have to review fewer than 500 new motions a year, the long-run costs of administration would be less than \$500,000 annually.

The number of veterans who would demand review of past cases based on clear and unmistakable error is the key uncertainty in estimating the costs of the bill. Whether or not the case involved such error, the demand would still add to BVA's workload and costs because it would at least have to screen the demands and document its conclusions. Nevertheless, the current process for adjudicating veterans claims allows many opportunities for appeal, and it is probable that most veterans having claims pursue them under current law. CBO estimates that up to 2,000 veterans would return to BVA for reconsideration under the bill and add about \$1 million to \$2 million to BVA's administrative costs, currently about \$38 million annually, during the first three years after enactment.

By their nature, claims of clear and unmistakable error, if sustained, are very likely to lead to additional benefits to the claimant. The bill would raise direct spending to the extent that the cases involved such benefits as disability compensation, pension benefits, or survivor benefits. Although the extra administrative costs of the bill would not cumulate from year to year, the additional benefits would be paid for the life of the veteran or surviving beneficiary. How much direct spending would rise depends on the caseload and average award in benefits, both of which are very uncertain. Because veterans have many opportunities under current law to appeal claims decisions, CBO estimates that a small number of additional cases would be successfully appealed under the bill. Also, it is unlikely that the average annual benefit involved in such a case would be more than \$1,000 to \$2,000. Thus, the bill would probably increase direct spending by less than \$500,000 a year in 1998 and the next several years.

The CBO staff contact for this estimate is Mary Helen Petrus. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.