



**CONGRESSIONAL BUDGET OFFICE
PAY-AS-YOU-GO ESTIMATE**

November 14, 1997

H.R. 1090

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

As cleared by the Congress on November 10, 1997

H.R. 1090 would codify the current procedure for revising veterans' claims decisions made by regional offices and give certain veterans new rights and opportunities for appeal. CBO estimates that H.R. 1090 would probably increase direct spending by less than \$500,000 a year through 2007.

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 in reconsideration and make the review of a BVA decision a matter of right.

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. 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 Dawn Sauter. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.