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115TH CONGRESS
1ST SESSION

H. R. 2288

[Report No. 115–135]

To amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2017

Mr. BOST (for himself, Ms. ESTY of Connecticut, Mr. ROE of Tennessee, Mr. WALZ, Mr. BILIRAKIS, Mr. TAKANO, Mr. COFFMAN, Ms. BROWNLEY of California, Mr. WENSTRUP, Ms. KUSTER of New Hampshire, Mrs. RADEWAGEN, Mr. O’ROURKE, Mr. POLIQUIN, Miss RICE of New York, Mr. DUNN, Mr. CORREA, Mr. ARRINGTON, Mr. SABLAN, Mr. RUTHERFORD, Mr. PETERS, Mr. HIGGINS of Louisiana, Mr. BERGMAN, Mr. BANKS of Indiana, Miss GONZÁLEZ-COLÓN of Puerto Rico, and Ms. TITUS) introduced the following bill; which was referred to the Committee on Veterans’ Affairs

MAY 19, 2017

Additional sponsors: Mr. COSTELLO of Pennsylvania and Mr. CARTER of Georgia

MAY 19, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, 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 Appeals Im-
5 provement and Modernization Act of 2017”.

6 **SEC. 2. REFORM OF RIGHTS AND PROCESSES RELATING TO**
7 **APPEALS OF DECISIONS REGARDING CLAIMS**
8 **FOR BENEFITS UNDER LAWS ADMINISTERED**
9 **BY SECRETARY OF VETERANS AFFAIRS.**

10 (a) DEFINITIONS.—Section 101 of title 38, United
11 States Code, is amended by adding at the end the fol-
12 lowing new paragraphs:

13 “(34) The term ‘agency of original jurisdiction’
14 means the activity which entered the original determina-
15 tion with regard to a claim for benefits under laws admin-
16 istered by the Secretary.

17 “(35) The term ‘relevant evidence’ means evidence
18 that tends to prove or disprove a matter in issue.

19 “(36) The term ‘supplemental claim’ means any
20 claim for benefits under laws administered by the Sec-
21 retary filed by a claimant who had previously filed a claim
22 for the same or similar benefits on the same or similar
23 basis.”.

24 (b) NOTICE REGARDING CLAIMS.—Section 5103(a)
25 of such title is amended—

1 (1) in paragraph (1), in the first sentence, by
2 striking “The” and inserting “Except as provided in
3 paragraph (3), the”;

4 (2) in paragraph (2)(B)(i) by striking “, a
5 claim for reopening a prior decision on a claim, or
6 a claim for an increase in benefits;” and inserting
7 “or a supplemental claim;”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(3) The requirement to provide notice under para-
11 graph (1) shall not apply with respect to a supplemental
12 claim that is filed within the timeframe set forth in sub-
13 paragraphs (B) and (D) of section 5110(a)(2) of this
14 title.”.

15 (c) MODIFICATION OF RULE REGARDING DIS-
16 ALLOWED CLAIMS.—Section 5103A(f) of such title is
17 amended—

18 (1) by striking “reopen” and inserting “readju-
19 dicate”; and

20 (2) by striking “material” and inserting “rel-
21 evant”.

22 (d) MODIFICATION OF DUTY TO ASSIST CLAIM-
23 ANTS.—Section 5103A of such title is amended—

24 (1) by redesignating subsections (e) through (g)
25 as subsections (g) through (i), respectively; and

1 (2) by inserting after subsection (d) the fol-
2 lowing new subsections:

3 “(e) APPLICABILITY OF DUTY TO ASSIST.—(1) The
4 Secretary’s duty to assist under this section shall apply
5 only to a claim, or supplemental claim, for a benefit under
6 a law administered by the Secretary until the time that
7 a claimant is provided notice of the agency of original ju-
8 risdiction’s decision with respect to such claim, or supple-
9 mental claim, under section 5104 of this title.

10 “(2) The Secretary’s duty to assist under this section
11 shall not apply to higher-level review by the agency of
12 original jurisdiction, pursuant to section 5104B of this
13 title, or to review on appeal by the Board of Veterans’
14 Appeals.

15 “(f) CORRECTION OF DUTY TO ASSIST ERRORS.—
16 (1) If, during review of the agency of original jurisdiction
17 decision under section 5104B of this title, the higher-level
18 adjudicator identifies or learns of an error on the part of
19 the agency of original jurisdiction to satisfy its duties
20 under this section, and that error occurred prior to the
21 agency of original jurisdiction decision being reviewed, un-
22 less the claim can be granted in full, the higher-level adju-
23 dicator shall return the claim for correction of such error
24 and readjudication.

1 “(2)(A) If the Board of Veterans’ Appeals, during re-
2 view on appeal of an agency of original jurisdiction deci-
3 sion, identifies or learns of an error on the part of the
4 agency of original jurisdiction to satisfy its duties under
5 this section, and that error occurred prior to the agency
6 of original jurisdiction decision on appeal, unless the claim
7 can be granted in full, the Board shall remand the claim
8 to the agency of original jurisdiction for correction of such
9 error and readjudication.

10 “(B) Remand for correction of such error may in-
11 clude directing the agency of original jurisdiction to obtain
12 an advisory medical opinion under section 5109 of this
13 title.

14 “(3) Nothing in this subsection shall be construed to
15 imply that the Secretary, during the consideration of a
16 claim, does not have a duty to correct an error described
17 in paragraph (1) or (2) that was erroneously not identified
18 during higher-level review or during review on appeal with
19 respect to the claim.”.

20 (e) DECISIONS AND NOTICES OF DECISIONS.—Sub-
21 section (b) of section 5104 of such title is amended to read
22 as follows:

23 “(b) Each notice provided under subsection (a) shall
24 also include all of the following:

25 “(1) Identification of the issues adjudicated.

1 “(2) A summary of the evidence considered by
2 the Secretary.

3 “(3) A summary of the applicable laws and reg-
4 ulations.

5 “(4) Identification of findings favorable to the
6 claimant.

7 “(5) In the case of a denial of a claim, identi-
8 fication of elements not satisfied leading to the de-
9 nial.

10 “(6) An explanation of how to obtain or access
11 evidence used in making the decision.

12 “(7) If applicable, identification of the criteria
13 that must be satisfied to grant service connection or
14 the next higher level of compensation.”.

15 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

16 (1) IN GENERAL.—Chapter 51 of such title is
17 amended by inserting after section 5104 the fol-
18 lowing new section:

19 **“§ 5104A. Binding nature of favorable findings**

20 “Any finding favorable to the claimant as described
21 in section 5104(b)(4) of this title shall be binding on all
22 subsequent adjudicators within the Department, unless
23 clear and convincing evidence is shown to the contrary to
24 rebut such favorable finding.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 51 of such title is
 3 amended by inserting after the item relating to sec-
 4 tion 5104 the following new item:

“5104A. Binding nature of favorable findings.”.

5 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-
 6 NAL JURISDICTION.—

7 (1) IN GENERAL.—Chapter 51 of such title, as
 8 amended by subsection (f), is further amended by in-
 9 serting after section 5104A, as added by such sub-
 10 section, the following new section:

11 **“§ 5104B. Higher-level review by the agency of origi-**
 12 **nal jurisdiction**

13 “(a) IN GENERAL.—(1) A claimant may request a
 14 review of the decision of the agency of original jurisdiction
 15 by a higher-level adjudicator within the agency of original
 16 jurisdiction.

17 “(2) The Secretary shall approve each request for re-
 18 view under paragraph (1).

19 “(b) TIME AND MANNER OF REQUEST.—(1) A re-
 20 quest for higher-level review by the agency of original ju-
 21 risdiction shall be—

22 “(A) in writing in such form as the Secretary
 23 may prescribe; and

24 “(B) made within one year of the notice of the
 25 agency of original jurisdiction’s decision.

1 “(2) Such request may specifically indicate whether
2 such review is requested by a higher-level adjudicator at
3 the same office within the agency of original jurisdiction
4 or by an adjudicator at a different office of the agency
5 of original jurisdiction. The Secretary shall not deny such
6 a request for review by an adjudicator at a different office
7 of the agency of original jurisdiction without good cause.

8 “(c) DECISION.—Notice of a higher-level review deci-
9 sion under this section shall be provided in writing and
10 shall include a general statement—

11 “(1) reflecting whether evidence was not consid-
12 ered pursuant to subsection (d); and

13 “(2) noting the options available to the claim-
14 ant to have the evidence described in paragraph (1),
15 if any, considered by the Department.

16 “(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-
17 dentiary record before the higher-level adjudicator shall be
18 limited to the evidence of record in the agency of original
19 jurisdiction decision being reviewed.

20 “(e) DE NOVO REVIEW.—A review of the decision of
21 the agency of original jurisdiction by a higher-level adjudi-
22 cator within the agency of original jurisdiction shall be de
23 novo.”.

24 “(2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 51 of such title, as

1 amended by subsection (f), is further amended by in-
 2 serting after the item relating to section 5104A, as
 3 added by such subsection, the following new item:

“5104B. Higher-level review by the agency of original jurisdiction.”.

4 (h) OPTIONS FOLLOWING DECISION BY AGENCY OF
 5 ORIGINAL JURISDICTION.—

6 (1) IN GENERAL.—Chapter 51 of such title, as
 7 amended by subsection (g), is further amended by
 8 inserting after section 5104B, as added by such sub-
 9 section, the following new section:

10 **“§ 5104C. Options following decision by agency of**
 11 **original jurisdiction**

12 “(a) WITHIN ONE YEAR OF DECISION.—(1) Subject
 13 to paragraph (2), in any case in which the Secretary ren-
 14 ders a decision on a claim, the claimant may take any of
 15 the following actions on or before the date that is one year
 16 after the date on which the agency of original jurisdiction
 17 issues a decision with respect to that claim:

18 “(A) File a request for higher-level review
 19 under section 5104B of this title.

20 “(B) File a supplemental claim under section
 21 5108 of this title.

22 “(C) File a notice of disagreement under sec-
 23 tion 7105 of this title.

24 “(2)(A) Once a claimant takes an action set forth in
 25 paragraph (1), the claimant may not take another action

1 set forth in that paragraph with respect to such claim
2 until—

3 “(i) the higher-level review, supplemental claim,
4 or notice of disagreement is adjudicated; or

5 “(ii) the request for higher-level review, supple-
6 mental claim, or notice of disagreement is with-
7 drawn.

8 “(B) Nothing in this subsection shall prohibit a
9 claimant from taking any of the actions set forth in para-
10 graph (1) in succession with respect to a claim.

11 “(C) Nothing in this subsection shall prohibit a
12 claimant from taking different actions set forth in para-
13 graph (1) with respect to different claims.

14 “(D) The Secretary may, as the Secretary considers
15 appropriate, develop and implement a policy for claimants
16 who—

17 “(i) take an action under paragraph (1);

18 “(ii) wish to withdraw the action before the
19 higher-level review, supplemental claim, or notice of
20 disagreement is adjudicated; and

21 “(iii) in lieu of such action take a different ac-
22 tion under paragraph (1).

23 “(b) MORE THAN ONE YEAR AFTER DECISION.—In
24 any case in which the Secretary renders a decision on a
25 claim and more than one year has passed since the date

1 on which the agency of original jurisdiction issues a deci-
 2 sion with respect to that claim, the claimant may file a
 3 supplemental claim under section 5108 of this title.

4 “(c) BVA AND CAVC.—Nothing in subsection (a) or
 5 (b) may be construed to limit the options available to a
 6 claimant pursuant to chapters 71 or 72 of this title.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-
 8 tions at the beginning of chapter 51 of such title, as
 9 amended by subsection (g), is further amended by
 10 inserting after the item relating to section 5104B, as
 11 added by such subsection, the following new item:

“5104C. Options following decision by agency of original jurisdiction.”.

12 (i) SUPPLEMENTAL CLAIMS.—

13 (1) IN GENERAL.—Section 5108 of such title is
 14 amended to read as follows:

15 **“§ 5108. Supplemental claims**

16 “If new and relevant evidence is presented or secured
 17 with respect to a supplemental claim, the Secretary shall
 18 readjudicate the claim taking into consideration any evi-
 19 dence added to the record prior to the former disposition
 20 of the claim.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
 22 tions at the beginning of chapter 51 of such title is
 23 amended by striking the item relating to section
 24 5108 and inserting the following new item:

“5108. Supplemental claims.”.

1 (j) REMAND TO OBTAIN ADVISORY MEDICAL OPIN-
2 ION.—Section 5109 of such title is amended by adding
3 at the end the following new subsection:

4 “(d)(1) The Board of Veterans’ Appeals shall remand
5 a claim to direct the agency of original jurisdiction to ob-
6 tain an advisory medical opinion from an independent
7 medical expert under this section if the Board finds that
8 the Veterans Benefits Administration should have exer-
9 cised its discretion to obtain such an opinion.

10 “(2) The Board’s remand instructions shall include
11 the questions to be posed to the independent medical ex-
12 pert providing the advisory medical opinion.”.

13 (k) RESTATEMENT OF REQUIREMENT FOR EXPE-
14 DITED TREATMENT OF REMANDED CLAIMS.—Section
15 5109B of such title is amended to read as follows:

16 **“§ 5109B. Expedited treatment of remanded claims**

17 “The Secretary shall take such actions as may be
18 necessary to provide for the expeditious treatment by the
19 Veterans Benefits Administration of any claim that is re-
20 turned by a higher level adjudicator under section 5104B
21 of this title or remanded by the Board of Veterans’ Ap-
22 peals.”.

23 (l) EFFECTIVE DATES OF AWARDS.—Section 5110 of
24 title 38, United States Code, is amended—

1 (1) by amending subsection (a) to read as fol-
2 lows:

3 “(a)(1) Unless specifically provided otherwise in this
4 chapter, the effective date of an award based on an initial
5 claim, or a supplemental claim, of compensation, depend-
6 ency and indemnity compensation, or pension, shall be
7 fixed in accordance with the facts found, but shall not be
8 earlier than the date of receipt of application therefor.

9 “(2) For purposes of determining the effective date
10 of an award under this section, the date of application
11 shall be considered the date of the filing of the initial ap-
12 plication for a benefit if the claim is continuously pursued
13 by filing any of the following, either alone or in succession:

14 “(A) A request for higher-level review under
15 section 5104B of this title on or before the date that
16 is one year after the date on which the agency of
17 original jurisdiction issues a decision.

18 “(B) A supplemental claim under section 5108
19 of this title on or before the date that is one year
20 after the date on which the agency of original juris-
21 diction issues a decision.

22 “(C) A notice of disagreement on or before the
23 date that is one year after the date on which the
24 agency of original jurisdiction issues a decision.

1 “(D) A supplemental claim under section 5108
2 of this title on or before the date that is one year
3 after the date on which the Board of Veterans’ Ap-
4 peals issues a decision.

5 “(E) A supplemental claim under section 5108
6 of this title on or before the date that is one year
7 after the date on which the Court of Appeals for
8 Veterans Claims issues a decision.

9 “(3) Except as otherwise provided in this section, for
10 supplemental claims received more than one year after the
11 date on which the agency of original jurisdiction issued
12 a decision or the Board of Veterans’ Appeals issued a deci-
13 sion, the effective date shall be fixed in accordance with
14 the facts found, but shall not be earlier than the date of
15 receipt of the supplemental claim.”; and

16 (2) in subsection (i), in the first sentence—

17 (A) by striking “reopened” and inserting
18 “readjudicated”;

19 (B) by striking “material” and inserting
20 “relevant”; and

21 (C) by striking “reopening” and inserting
22 “readjudication”.

23 (m) DEFINITION OF AWARD OR INCREASED AWARD
24 FOR PURPOSES OF PROVISIONS RELATING TO COM-
25 MENCEMENT OF PERIOD OF PAYMENT.—Section

1 5111(d)(1) of such title is amended by striking “or re-
2 opened award” and inserting “award or award based on
3 a supplemental claim”.

4 (n) MODIFICATION ON LIMITATION ON FEES ALLOW-
5 ABLE FOR REPRESENTATION.—Section 5904(c) of such
6 title is amended, in paragraphs (1) and (2), by striking
7 “notice of disagreement is filed” both places it appears
8 and inserting “claimant is provided notice of the agency
9 of original jurisdiction’s initial decision under section 5104
10 of this title”.

11 (o) CLARIFICATION OF BOARD OF VETERANS’ AP-
12 PEALS REFERRAL REQUIREMENTS AFTER ORDER FOR
13 RECONSIDERATION OF DECISIONS.—Section 7103(b)(1)
14 of title 38, United States Code, is amended by striking
15 “heard” both places it appears and inserting “decided”.

16 (p) CONFORMING AMENDMENT RELATING TO RE-
17 ADJUDICATION.—Section 7104(b) of such title is amended
18 by striking “reopened” and inserting “readjudicated”.

19 (q) MODIFICATION OF PROCEDURES FOR APPEALS
20 TO BOARD OF VETERANS’ APPEALS.—

21 (1) IN GENERAL.—Section 7105 of title 38,
22 United States Code, is amended—

23 (A) in subsection (a), by striking the first
24 sentence and inserting “Appellate review shall
25 be initiated by the filing of a notice of disagree-

1 ment in the form prescribed by the Secretary.”;
2 and

3 (B) by amending subsection (b) to read as
4 follows:

5 “(b)(1)(A) Except in the case of simultaneously con-
6 tested claims, notice of disagreement shall be filed within
7 one year from the date of the mailing of notice of the deci-
8 sion of the agency of original jurisdiction pursuant to sec-
9 tion 5104, 5104B, or 5108 of this title.

10 “(B) A notice of disagreement postmarked before the
11 expiration of the 1-year period shall be accepted as timely
12 filed.

13 “(C) A question as to timeliness or adequacy of the
14 notice of disagreement shall be decided by the Board.

15 “(2)(A) Notices of disagreement shall be in writing,
16 shall identify the specific determination with which the
17 claimant disagrees, and may be filed by the claimant, the
18 claimant’s legal guardian, or such accredited representa-
19 tive, attorney, or authorized agent as may be selected by
20 the claimant or legal guardian.

21 “(B) Not more than one recognized organization, at-
22 torney, or agent may be recognized at any one time in
23 the prosecution of a claim.

24 “(C) Notices of disagreement shall be filed with the
25 Board.

1 “(3) The notice of disagreement shall indicate wheth-
2 er the claimant requests—

3 “(A) a hearing before the Board, which shall
4 include an opportunity to submit evidence in accord-
5 ance with section 7113(b) of this title;

6 “(B) an opportunity to submit additional evi-
7 dence without a hearing before the Board, which
8 shall include an opportunity to submit evidence in
9 accordance with section 7113(c) of this title; or

10 “(C) a review by the Board without a hearing
11 or the submittal of additional evidence.

12 “(4) The Secretary may develop a policy to permit
13 a claimant to modify the information identified in the no-
14 tice of disagreement after the notice of disagreement has
15 been filed under this section pursuant to such require-
16 ments as the Secretary may prescribe.”;

17 (C) by amending subsection (c) to read as
18 follows:

19 “(c) If no notice of disagreement is filed in accord-
20 ance with this chapter within the prescribed period, the
21 action or decision of the agency of original jurisdiction
22 shall become final and the claim shall not thereafter be
23 readjudicated or allowed, except as may otherwise be pro-
24 vided by section 5104B or 5108 of this title or such regu-
25 lations as are consistent with this title.”;

1 (D) by striking subsection (d) and insert-
 2 ing the following new subsection (d):

3 “(d) The Board of Veterans’ Appeals may dismiss
 4 any appeal which fails to identify the specific determina-
 5 tion with which the claimant disagrees.”;

6 (E) by striking subsection (e); and

7 (F) in the section heading, by striking
 8 **“notice of disagreement and”**.

9 (2) CLERICAL AMENDMENT.—The table of sec-
 10 tions at the beginning of chapter 71 of such title is
 11 amended by striking the item relating to section
 12 7105 and inserting the following new item:

“7105. Filing of appeal.”.

13 (r) MODIFICATION OF PROCEDURES AND REQUIRE-
 14 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—
 15 Subsection (b) of section 7105A of such title is amended
 16 to read as follows:

17 “(b)(1) The substance of the notice of disagreement
 18 shall be communicated to the other party or parties in in-
 19 terest and a period of thirty days shall be allowed for filing
 20 a brief or argument in response thereto.

21 “(2) Such notice shall be forwarded to the last known
 22 address of record of the parties concerned, and such action
 23 shall constitute sufficient evidence of notice.”.

24 (s) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
 25 APPEALS.—

1 (1) IN GENERAL.—Chapter 71 of such title is
2 amended by striking section 7106.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions at the beginning of chapter 71 of such title is
5 amended by striking the item relating to section
6 7106.

7 (t) MODIFICATIONS RELATING TO APPEALS: DOCK-
8 ETS; HEARINGS.—

9 (1) IN GENERAL.—Section 7107 of such title is
10 amended to read as follows:

11 **“§ 7107. Appeals: dockets; hearings**

12 “(a) DOCKETS.—(1) Subject to paragraph (2), the
13 Board shall maintain at least two separate dockets.

14 “(2) The Board may not maintain more than two
15 separate dockets unless the Board notifies the Committee
16 on Veterans’ Affairs of the Senate and the Committee on
17 Veterans’ Affairs of the House of Representatives of any
18 additional docket, including a justification for maintaining
19 such additional docket.

20 “(3)(A) The Board may assign to each docket main-
21 tained under paragraph (1) such cases as the Board con-
22 siders appropriate, except that cases described in clause
23 (i) of subparagraph (B) may not be assigned to any docket
24 to which cases described in clause (ii) of such paragraph
25 are assigned.

1 “(B) Cases described in this subparagraph are the
2 following:

3 “(i) Cases in which no Board hearing is re-
4 quested and no additional evidence will be sub-
5 mitted.

6 “(ii) Cases in which a Board hearing is re-
7 quested in the notice of disagreement.

8 “(4) Except as provided in subsection (b), each case
9 before the Board will be decided in regular order according
10 to its respective place on the docket to which it is assigned
11 by the Board.

12 “(b) ADVANCEMENT ON THE DOCKET.—(1) A case
13 on one of the dockets of the Board maintained under sub-
14 section (a) may, for cause shown, be advanced on motion
15 for earlier consideration and determination.

16 “(2) Any such motion shall set forth succinctly the
17 grounds upon which the motion is based.

18 “(3) Such a motion may be granted only—

19 “(A) if the case involves interpretation of law of
20 general application affecting other claims;

21 “(B) if the appellant is seriously ill or is under
22 severe financial hardship; or

23 “(C) for other sufficient cause shown.

24 “(c) MANNER AND SCHEDULING OF HEARINGS FOR
25 CASES ON DOCKET THAT MAY INCLUDE HEARING.—(1)

1 For cases on a docket maintained by the Board under sub-
2 section (a) that may include a hearing, in which a hearing
3 is requested in the notice of disagreement, the Board shall
4 notify the appellant whether a Board hearing will be
5 held—

6 “(A) at its principal location; or

7 “(B) by picture and voice transmission at a fa-
8 cility of the Department where the Secretary has
9 provided suitable facilities and equipment to conduct
10 such hearings.

11 “(2)(A) Upon notification of a Board hearing at the
12 Board’s principal location as described in subparagraph
13 (A) of paragraph (1), the appellant may alternatively re-
14 quest a hearing as described in subparagraph (B) of such
15 paragraph. If so requested, the Board shall grant such re-
16 quest.

17 “(B) Upon notification of a Board hearing by picture
18 and voice transmission as described in subparagraph (B)
19 of paragraph (1), the appellant may alternatively request
20 a hearing as described in subparagraph (A) of such para-
21 graph. If so requested, the Board shall grant such request.

22 “(d) SCREENING OF CASES.—Nothing in this section
23 shall be construed to preclude the screening of cases for
24 purposes of—

1 “(1) determining the adequacy of the record for
2 decisional purposes; or

3 “(2) the development, or attempted develop-
4 ment, of a record found to be inadequate for
5 decisional purposes.

6 “(e) POLICY ON CHANGING DOCKETS.—The Sec-
7 retary may develop and implement a policy allowing a
8 claimant to move the claimant’s case from one docket to
9 another docket.”.

10 (2) REPORT.—Not later than the date that is
11 90 days before the date set forth in subsection (x),
12 the Secretary shall submit to the Committee on Vet-
13 erans’ Affairs of the Senate and the Committee on
14 Veterans’ Affairs of the House of Representatives a
15 report setting forth a description of the docket that
16 will be maintained under section 7107 of title 38,
17 United States Code, as amended by paragraph (1),
18 for cases in which no hearing before the Board of
19 Veterans’ Appeals is requested in the notice of dis-
20 agreement but the appellant requests, in the notice
21 of disagreement, an opportunity to submit additional
22 evidence.

23 (u) REPEAL OF CERTAIN AUTHORITY FOR INDE-
24 PENDENT MEDICAL OPINIONS.—

1 (1) IN GENERAL.—Section 7109 of such title is
2 repealed.

3 (2) CONFORMING AMENDMENT.—Section
4 5701(b)(1) of such title is amended by striking “or
5 7109”.

6 (3) CLERICAL AMENDMENT.—The table of sec-
7 tions at the beginning of chapter 71 of such title is
8 amended by striking the item relating to section
9 7109.

10 (v) CLARIFICATION OF PROCEDURES FOR REVIEW OF
11 DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE
12 ERROR.—Section 7111(e) of such title is amended by
13 striking “, without referral to any adjudicative or hearing
14 official acting on behalf of the Secretary”.

15 (w) EVIDENTIARY RECORD BEFORE BOARD OF VET-
16 ERANS’ APPEALS.—

17 (1) IN GENERAL.—Chapter 71 of such title is
18 amended by adding at the end the following new sec-
19 tion:

20 **“§ 7113. Evidentiary record before the Board of Vet-**
21 **erans’ Appeals**

22 **“(a) CASES WITH NO REQUEST FOR A HEARING OR**
23 **ADDITIONAL EVIDENCE.—**For cases in which a hearing
24 before the Board of Veterans’ Appeals is not requested
25 in the notice of disagreement and no request was made

1 to submit evidence, the evidentiary record before the
2 Board shall be limited to the evidence of record at the
3 time of the decision of the agency of original jurisdiction
4 on appeal.

5 “(b) CASES WITH A REQUEST FOR HEARING.—(1)
6 Except as provided in paragraph (2), for cases in which
7 a hearing is requested in the notice of disagreement, the
8 evidentiary record before the Board shall be limited to the
9 evidence of record at the time of the decision of the agency
10 of original jurisdiction on appeal.

11 “(2) The evidentiary record before the Board for
12 cases described in paragraph (1) shall include each of the
13 following, which the Board shall consider in the first in-
14 stance:

15 “(A) Evidence submitted by the appellant and
16 the representative of the appellant, if any, at the
17 Board hearing.

18 “(B) Evidence submitted by the appellant and
19 the representative of the appellant, if any, within 90
20 days following the Board hearing.

21 “(c) CASES WITH NO REQUEST FOR A HEARING AND
22 WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Ex-
23 cept as provided in paragraph (2), for cases in which a
24 hearing is not requested in the notice of disagreement but
25 an opportunity to submit evidence is requested, the evi-

1 dentiary record before the Board shall be limited to the
 2 evidence considered by the agency of original jurisdiction
 3 in the decision on appeal.

4 “(2) The evidentiary record before the Board for
 5 cases described in paragraph (1) shall include each of the
 6 following, which the Board shall consider in the first in-
 7 stance:

8 “(A) Evidence submitted by the appellant and
 9 the representative of the appellant, if any, with the
 10 notice of disagreement.

11 “(B) Evidence submitted by the appellant and
 12 the representative of the appellant, if any, within 90
 13 days following receipt of the notice of disagree-
 14 ment.”.

15 (2) NOTIFICATION WHEN EVIDENCE NOT CON-
 16 SIDERED.—Section 7104(d) of such title is amend-
 17 ed—

18 (A) in paragraph (1), by striking “; and”
 19 and inserting a semicolon;

20 (B) by redesignating paragraph (2) as
 21 paragraph (3); and

22 (C) by inserting after paragraph (1) the
 23 following new paragraph (2):

24 “(2) a general statement—

1 “(A) reflecting whether evidence was not
2 considered in making the decision because the
3 evidence was received at a time when not per-
4 mitted under section 7113 of this title; and

5 “(B) noting such options as may be avail-
6 able for having the evidence considered by the
7 Department; and”.

8 (3) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 71 of such title is
10 amended by inserting after the item relating to sec-
11 tion 7112 the following new item:

“7113. Evidentiary record before the Board of Veterans’ Appeals.”.

12 (x) APPLICABILITY.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided in this subsection, the amendments made by
15 this section shall apply to all claims for which notice
16 of a decision under section 5104 of title 38, United
17 States Code, is provided by the Secretary of Vet-
18 erans Affairs on or after the later of—

19 (A) the date that is 540 days after the
20 date of the enactment of this Act; and

21 (B) the date that is 30 days after the date
22 on which the Secretary of Veterans Affairs sub-
23 mits to the Committee on Veterans’ Affairs of
24 the Senate and the Committee on Veterans’ Af-
25 fairs of the House of Representatives—

1 (i) a certification that the Secretary
2 confirms, without delegation, that the De-
3 partment of Veterans Affairs has the re-
4 sources, personnel, office space, proce-
5 dures, and information technology re-
6 quired—

7 (I) to carry out the modernized
8 appeals system; and

9 (II) to timely address both ap-
10 peals of decisions on legacy claims
11 and appeals under the modernized ap-
12 peals system; and

13 (ii) a description of the collaboration
14 conducted under paragraph (2) in making
15 such certification, including the views of
16 the organizations and stakeholders speci-
17 fied in such paragraph.

18 (2) COLLABORATION.—In determining whether
19 and when to make a certification under paragraph
20 (1)(B)(i), the Secretary shall collaborate with, part-
21 ner with, and give weight to the advice of the three
22 veterans service organizations with the most mem-
23 bers and such other stakeholders as the Secretary
24 considers appropriate.

1 (3) EARLY APPLICABILITY.—The Secretary
2 may apply the modernized appeals system to a claim
3 with respect to which the claimant—

4 (A) receives a notice of a decision under
5 section 5104 of such title after the date of the
6 enactment of this Act and before the applica-
7 bility date set forth in paragraph (1); and

8 (B) elects to subject the claim to the mod-
9 ernized appeals system.

10 (4) PHASED ROLLOUT.—The Secretary may
11 begin implementation of the modernized appeals sys-
12 tem in phases, with the first phase of such phased
13 implementation beginning on the applicability date
14 set forth in paragraph (1).

15 (5) LEGACY CLAIMS.—With respect to legacy
16 claims, upon the issuance to a claimant of a state-
17 ment of the case or a supplemental statement of the
18 case occurring on or after the applicability date
19 specified in paragraph (1), a claimant may elect to
20 participate in the modernized appeals system.

21 (6) PUBLICATION OF APPLICABILITY DATE.—
22 Not later than the date on which the modernized ap-
23 peals system goes into effect (or the first phase of
24 the modernized appeals system goes into effect
25 under paragraph (4), as the case may be), the Sec-

1 retary shall publish in the Federal Register such
2 date.

3 **SEC. 3. COMPREHENSIVE PLAN AND REPORTS FOR PROC-**
4 **ESSING OF LEGACY APPEALS AND IMPLE-**
5 **MENTING MODERNIZED APPEALS SYSTEM.**

6 (a) PLAN REQUIRED.—Not later than 90 days after
7 the date of the enactment of this Act, the Secretary of
8 Veterans Affairs shall submit to the Committee on Vet-
9 erans' Affairs of the Senate, the Committee on Veterans'
10 Affairs of the House of Representatives, and the Comp-
11 troller General of the United States a comprehensive plan
12 for—

13 (1) the number of resolutions for appeals of de-
14 cisions on legacy claims that the Secretary considers
15 pending;

16 (2) implementing the modernized appeals sys-
17 tem; and

18 (3) timely processing, under the modernized ap-
19 peals system, of—

20 (A) supplemental claims under section
21 5108 of title 38, United States Code, as amend-
22 ed by section 2(i);

23 (B) requests for higher level review under
24 section 5104B of such title, as added by section
25 2(g); and

1 (C) appeals on any docket maintained
2 under section 7107 of such title, as amended by
3 section 2(t).

4 (b) ELEMENTS.—The plan required by subsection (a)
5 shall include, at a minimum, the following:

6 (1) An estimate (including a detailed descrip-
7 tion of the bases the Secretary uses to develop such
8 estimate) of the—

9 (A) numbers of appeals and the timeliness
10 of deciding appeals under the modernized ap-
11 peals system, including such number under
12 each docket described in section 7107 of title
13 38, United States Code, as amended by section
14 2; and

15 (B) numbers of appeals of decisions on leg-
16 acy claims and the timeliness of deciding such
17 appeals.

18 (2) Delineation of the total resource require-
19 ments of the Veterans Benefits Administration and
20 the Board of Veterans' Appeals, disaggregated by
21 resources required to implement and administer the
22 modernized appeals system and resources required
23 to address the appeals of decisions on legacy claims.

1 (3) Delineation of the personnel requirements
2 of the Administration and the Board, including
3 staffing levels during the—

4 (A) period in which the Administration and
5 the Board are concurrently processing—

6 (i) appeals of decisions on legacy
7 claims; and

8 (ii) appeals of decisions on non-legacy
9 claims under the modernized appeals sys-
10 tem; and

11 (B) the period during which the Adminis-
12 tration and the Board are no longer processing
13 any appeals of decisions on legacy claims.

14 (4) Identification of the legal authorities under
15 which the Administration or the Board may—

16 (A) hire additional employees to conduct
17 the concurrent processing described in para-
18 graph (2)(A); and

19 (B) remove employees who are no longer
20 required by the Administration or the Board
21 once the Administration and the Board are no
22 longer processing any appeals of decisions on
23 legacy claims.

24 (5) An estimate of the amount of time the Ad-
25 ministration and the Board will require to hire addi-

1 tional employees as described in paragraph (3)(A)
2 once funding has been made available for such pur-
3 pose, including a comparison of such estimate and
4 the historical average time required by the Adminis-
5 tration and the Board to hire additional employees.

6 (6) A description of the modifications to the in-
7 formation technology systems of the Administration
8 and the Board that the Administration and the
9 Board require to carry out the modernized appeals
10 system, including cost estimates and a timeline for
11 making the modifications.

12 (7) An estimate of the office space the Adminis-
13 tration and the Board will require during each of the
14 periods described in paragraph (2), including—

15 (A) an estimate of the amount of time the
16 Administration and the Board will require to
17 acquire any additional office space to carry out
18 processing of appeals of decisions on legacy
19 claims and processing of appeals under the
20 modernized appeals system;

21 (B) a comparison of the estimate under
22 subparagraph (A) and the historical average
23 time required by the Administration and the
24 Board to acquire new office space; and

1 (C) a plan for using telework to accommo-
2 date staff exceeding available office space, in-
3 cluding how the Administration and the Board
4 will provide training and oversight with respect
5 to such teleworking.

6 (8) Projections for the productivity of individual
7 employees at the Administration and the Board in
8 carrying out tasks relating to the processing of ap-
9 peals of decisions on legacy claims and appeals
10 under the modernized appeals system, taking into
11 account the experience level of new employees and
12 the enhanced notice requirements under section
13 5104(b) of title 38, United States Code, as amended
14 by section 2(e).

15 (9) An outline of the outreach the Secretary ex-
16 pects to conduct to inform veterans, families of vet-
17 erans, survivors of veterans, veterans service organi-
18 zations, military service organizations, congressional
19 caseworkers, advocates for veterans, and such other
20 stakeholders as the Secretary considers appropriate
21 about the modernized appeals system, including—

22 (A) a description of the resources required
23 to conduct such outreach; and

24 (B) timelines for such outreach.

25 (10) Identification of and a timeline for—

1 (A) any training that may be required as
2 a result of hiring new employees to carry out
3 the modernized appeals system or to process
4 appeals of decisions on legacy claims; and

5 (B) any re-training of existing employees
6 that may be required to carry out such system
7 or to process such claims.

8 (11) Identification of—

9 (A) the costs to the Department of the
10 training identified under paragraph (10) and
11 any additional training staff and any additional
12 training facilities that will be required to pro-
13 vide such training; and

14 (B) any issues relating to how the hiring
15 and training procedures of the Department may
16 change because of unplanned circumstances (in-
17 cluding with respect to delays in developing an
18 information technology system to process ap-
19 peals under the modernized appeals system) re-
20 lating to carrying out the modernized appeals
21 system or to process appeals of decisions on leg-
22 acy claims.

23 (12) Estimated timelines for updating any pol-
24 icy guidance, internet websites, and official forms

1 that may be necessary to carry out the modernized
2 appeals system, including—

3 (A) identification of which offices and enti-
4 ties will be involved in efforts relating to such
5 updating; and

6 (B) historical information about how long
7 similar update efforts have taken.

8 (13) A timeline, including interim milestones,
9 for promulgating such regulations as may be nec-
10 essary to carry out the modernized appeals system
11 and a comparison with historical averages for time
12 required to promulgate regulations of similar com-
13 plexity and scope.

14 (14) An outline of the circumstances under
15 which claimants with pending appeals of decisions
16 on legacy claims would be authorized to have their
17 appeals reviewed under the modernized appeals sys-
18 tem.

19 (15) A delineation of the key goals and mile-
20 stones for reducing the number of pending appeals
21 that are not processed under the modernized appeals
22 system, including the expected number for each of
23 appeals, remands, and hearing requests at the Ad-
24 ministration and the Board each year, beginning
25 with the one year period beginning on the date of

1 the enactment of this Act, until there are no longer
2 any appeals pending before the Administration or
3 the Board for a decision on a legacy claim.

4 (16) The metrics and goals used by the Sec-
5 retary to monitor the implementation of the modern-
6 ized appeals system, including with respect to—

7 (A) tracking progress of such implementa-
8 tion;

9 (B) evaluating the efficiency and effective-
10 ness of such implementation; and

11 (C) identifying potential issues with re-
12 spect to such implementation.

13 (17) A description of each risk factor associated
14 with each element of the plan and a contingency
15 plan to minimize each such risk.

16 (c) REVIEW BY COMPTROLLER GENERAL OF THE
17 UNITED STATES.—

18 (1) IN GENERAL.—Not later than 90 days after
19 the Comptroller General of the United States re-
20 ceives the plan required by subsection (a), the
21 Comptroller General shall—

22 (A) assess such plan in writing; and

23 (B) submit to the Committee on Veterans'
24 Affairs of the Senate and the Committee on
25 Veterans' Affairs of the House of Representa-

1 tives the findings of the Comptroller General
2 with respect to the assessment conducted under
3 subparagraph (A).

4 (2) ELEMENTS.—The assessment conducted
5 under paragraph (1)(A) shall include the following:

6 (A) An assessment of whether the plan
7 comports with sound planning practices.

8 (B) Identification of any improvements the
9 Comptroller considers appropriate for the plan.

10 (C) Formulation of such recommendations
11 as the Comptroller General considers appro-
12 priate.

13 (d) PERIODIC REPORTS.—On a quarterly basis dur-
14 ing the period beginning 90 days after the date on which
15 the Secretary submits the plan under subsection (a) and
16 ending on the date that the Secretary implements the
17 modernized appeals system, and on a semiannual basis
18 during the 10-year period following such date of imple-
19 mentation, the Secretary shall submit to the Committee
20 on Veterans' Affairs of the Senate, the Committee on Vet-
21 erans' Affairs of the House of Representatives, and the
22 Comptroller General a report on the modernized appeals
23 system. Each such report shall include, with respect to the
24 period covered by the report—

1 (1) Any updates to the plan under subsection
2 (a).

3 (2) As applicable, the number of appeals con-
4 sidered under the modernized appeals system, in-
5 cluding—

6 (A) the number of such appeals, both with
7 respect to pending appeals and completed ap-
8 peals, under each docket described in section
9 7107 of title 38, United States Code, as amend-
10 ed by section 2;

11 (B) the average wait time for each such
12 docket and the extent to which such wait times
13 compare with the established goals of the Sec-
14 retary for such wait times; and

15 (C) the average age of such appeals.

16 (3) The number of appeals considered with re-
17 spect to legacy claims, including—

18 (A) the number of pending appeals and the
19 number of completed appeals;

20 (B) the average wait time and the extent
21 to which such wait times compare with the es-
22 tablished goals of the Secretary for such wait
23 times; and

24 (C) the average age of such appeals.

1 (4) The efficacy of the information systems of
 2 the Department of Veterans Affairs to implement
 3 the modernized appeals system.

4 (5) An identification of any changes are nec-
 5 essary to improve the modernized appeals system.

6 (e) REPORT ON CERTAIN DOCKET.—Not later than
 7 the date that is 90 days before the date set forth in section
 8 2(x)(1), the Secretary shall submit to the Committee on
 9 Veterans' Affairs of the Senate and the Committee on Vet-
 10 erans' Affairs of the House of Representatives a report
 11 setting forth a description of the docket that will be main-
 12 tained under section 7107 of title 38, United States Code,
 13 as amended by section 2, for cases in which no hearing
 14 before the Board of Veterans' Appeals is requested in the
 15 notice of disagreement but the appellant requests, in the
 16 notice of disagreement, an opportunity to submit addi-
 17 tional evidence.

18 **SEC. 4. PROGRAMS TO TEST ASSUMPTIONS RELIED ON IN**
 19 **DEVELOPMENT OF COMPREHENSIVE PLAN**
 20 **FOR PROCESSING OF LEGACY APPEALS AND**
 21 **SUPPORTING MODERNIZED APPEALS SYS-**
 22 **TEM.**

23 (a) AUTHORIZATION.—

24 (1) IN GENERAL.—The Secretary of Veterans
 25 Affairs may carry out such programs as the Sec-

1 retary considers appropriate to test any assumptions
2 relied upon in developing the comprehensive plan re-
3 quired by section 3(a) and to test the feasibility and
4 advisability of any facet of the modernized appeals
5 system. The Secretary may not carry out such a pro-
6 gram until the Secretary notifies the Committee on
7 Veterans' Affairs of the Senate and the Committee
8 on Veterans' Affairs of the House of Representatives
9 of the program, including the reasons for carrying
10 out the program.

11 (2) REPORTING REQUIRED.—Whenever the Sec-
12 retary determines, based on the conduct of a pro-
13 gram under paragraph (1), that legislative changes
14 to the modernized appeals system are necessary, the
15 Secretary shall submit to the Committee on Vet-
16 erans' Affairs of the Senate and the Committee on
17 Veterans' Affairs of the House of Representatives
18 notice of such determination.

19 (b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM
20 ON FULLY DEVELOPED APPEALS.—

21 (1) IN GENERAL.—The Secretary of Veterans
22 Affairs may, under subsection (a)(1), carry out a
23 program to provide the option of an alternative ap-
24 peals process that shall more quickly determine such
25 appeals in accordance with this subsection.

1 (2) ELECTION.—

2 (A) FILING.—In accordance with subpara-
3 graph (B), a claimant may elect to file a fully
4 developed appeal under the program by filing
5 with the Secretary all of the following:

6 (i) The notice of disagreement under
7 chapter 71 of title 38, United States Code,
8 along with the written election of the
9 claimant to have the appeal determined
10 under the program.

11 (ii) All evidence that the claimant be-
12 lieves is needed for the appeal as of the
13 date of the filing.

14 (iii) A statement of the argument in
15 support of the claim, if any.

16 (B) TIMING.—A claimant shall make an
17 election under subparagraph (A) as part of the
18 notice of disagreement filed by the claimant in
19 accordance with subparagraph (A)(i).

20 (C) TRIAGE.—The Secretary shall, upon
21 expiration of the period specified in paragraph
22 (3)(C)(iii), ensure that an assessment is under-
23 taken of whether an appeal filed under subpara-
24 graph (A) of this paragraph satisfies the re-
25 quirements for appeal under the program and

1 provide appropriate notification to the claimant
2 of the results of that assessment.

3 (D) REVERSION.—

4 (i) ELECTED REVERSION.—At any
5 time, a claimant who makes an election
6 under subparagraph (A) may elect to re-
7 vert to the standard appeals process. Such
8 a reversion shall be final.

9 (ii) AUTOMATIC REVERSION.—A
10 claimant described in clause (i), or a claim-
11 ant who makes an election under subpara-
12 graph (A) but is later determined to be in-
13 eligible for the program under paragraph
14 (1), shall revert to the standard appeals
15 process without any penalty to the claim-
16 ant other than the loss of the docket num-
17 ber associated with the fully developed ap-
18 peal.

19 (E) OUTREACH.—In providing claimants
20 with notices of the determination of a claim
21 during the period in which the program under
22 paragraph (1) is carried out, the Secretary shall
23 conduct outreach as follows:

24 (i) The Secretary shall provide to the
25 claimant (and to the representative of

1 record of the claimant, if any) information
2 regarding—

3 (I) the program, including the
4 advantages and disadvantages of the
5 program;

6 (II) how to make an election
7 under subparagraph (A);

8 (III) the limitation on the use of
9 new evidence described in subpara-
10 graph (C) of paragraph (3) and the
11 development of information under
12 subparagraph (D) of such paragraph;

13 (IV) the ability of the claimant to
14 seek advice and education regarding
15 such process from veterans service or-
16 ganizations, attorneys, and claims
17 agents recognized under chapter 59 of
18 title 38, United States Code; and

19 (V) the circumstances under
20 which the appeal will automatically re-
21 vert to the standard appeals process,
22 including by making a request for a
23 hearing.

24 (ii) The Secretary shall collaborate,
25 partner with, and give weight to the advice

1 of the three veterans service organizations
2 with the most members and such other
3 stakeholders as the Secretary considers ap-
4 propriate to publish on the Internet
5 website of the Department of Veterans Af-
6 fairs an online tutorial explaining the ad-
7 vantages and disadvantages of the pro-
8 gram.

9 (3) TREATMENT BY DEPARTMENT AND
10 BOARD.—

11 (A) PROCESS.—Upon the election of a
12 claimant to file a fully developed appeal pursu-
13 ant to paragraph (2)(A), the Secretary shall—

14 (i) not provide the claimant with a
15 statement of the case nor require the
16 claimant to file a substantive appeal; and

17 (ii) transfer jurisdiction over the fully
18 developed appeal directly to the Board of
19 Veterans' Appeals.

20 (B) DOCKET.—

21 (i) IN GENERAL.—The Board of Vet-
22 erans' Appeals shall—

23 (I) maintain fully developed ap-
24 peals on a separate docket than
25 standard appeals;

1 (II) decide fully developed ap-
2 peals in the order that the fully devel-
3 oped appeals are received on the fully
4 developed appeal docket;

5 (III) except as provided by clause
6 (ii), decide not more than one fully
7 developed appeal for each four stand-
8 ard appeals decided; and

9 (IV) to the extent practicable, de-
10 cide each fully developed appeal by
11 the date that is one year following the
12 date on which the claimant files the
13 notice of disagreement.

14 (ii) ADJUSTMENT.—Beginning one
15 year after the date on which the program
16 commences, the Board may adjust the
17 number of standard appeals decided for
18 each fully developed appeal under clause
19 (i)(III) if the Board determines that such
20 adjustment is fair for both standard ap-
21 peals and fully developed appeals.

22 (C) LIMITATION ON USE OF NEW EVI-
23 DENCE.—

24 (i) IN GENERAL.—Except as provided
25 by clauses (ii) and (iii)—

1 (I) a claimant may not submit or
2 identify to the Board of Veterans' Ap-
3 peals any new evidence relating to a
4 fully developed appeal after filing such
5 appeal unless the claimant reverts to
6 the standard appeals process pursuant
7 to paragraph (2)(D); and

8 (II) if a claimant submits or
9 identifies any such new evidence, such
10 submission or identification shall be
11 deemed to be an election to make such
12 a reversion pursuant to paragraph
13 (2)(D).

14 (ii) EVIDENCE GATHERED BY
15 BOARD.—Clause (i) shall not apply to evi-
16 dence developed pursuant to subpara-
17 graphs (D) and (E). The Board shall con-
18 sider such evidence in the first instance
19 without consideration by the Veterans Ben-
20 efits Administration.

21 (iii) REPRESENTATIVE OF RECORD.—
22 The representative of record of a claimant
23 for appeals purposes, if any, shall be pro-
24 vided an opportunity to review the fully de-
25 veloped appeal of the claimant and submit

1 any additional arguments or evidence that
2 the representative determines necessary
3 during a period specified by the Board for
4 purposes of this subparagraph.

5 (D) PROHIBITION ON REMAND FOR ADDI-
6 TIONAL DEVELOPMENT.—If the Board of Vet-
7 erans' Appeals determines that a fully devel-
8 oped appeal requires Federal records, inde-
9 pendent medical opinions, or new medical ex-
10 aminations, the Board shall—

11 (i) in accordance with subparagraph
12 (E), take such actions as may be necessary
13 to develop such records, opinions, or ex-
14 aminations in accordance with section
15 5103A of title 38, United States Code;

16 (ii) retain jurisdiction of the fully de-
17 veloped appeal without requiring a deter-
18 mination by the Veterans Benefits Admin-
19 istration based on such records, opinions,
20 or examinations;

21 (iii) ensure the claimant, and the rep-
22 resentative of record of a claimant, if any,
23 receives a copy of such records, opinions,
24 or examinations; and

1 (iv) provide the claimant a period of
2 90 days after the date of mailing such
3 records, opinions, or examinations during
4 which the claimant may provide the Board
5 any additional evidence without requiring
6 the claimant to make a reversion pursuant
7 to paragraph (2)(D).

8 (E) DEVELOPMENT UNIT.—

9 (i) ESTABLISHMENT.—The Board of
10 Veterans' Appeals shall establish an office
11 to develop Federal records, independent
12 medical opinions, and new medical exami-
13 nations pursuant to subparagraph (D)(i)
14 that the Board determines necessary to de-
15 cide a fully developed appeal.

16 (ii) REQUIREMENTS.—The Secretary
17 shall—

18 (I) ensure that the Veterans Ben-
19 efits Administration cooperates with
20 the Board of Veterans' Appeals in
21 carrying out clause (i); and

22 (II) transfer employees of the
23 Veterans Benefits Administration
24 who, prior to the enactment of this
25 Act, were responsible for processing

1 claims remanded by the Board of Vet-
2 erans' Appeals to positions within the
3 office of the Board established under
4 clause (i) in a number the Secretary
5 determines sufficient to carry out
6 such subparagraph.

7 (F) HEARINGS.—Notwithstanding section
8 7107 of title 38, United States Code, the Sec-
9 retary may not provide hearings with respect to
10 fully developed appeals under the program. If a
11 claimant requests to hold a hearing pursuant to
12 such section 7107, such request shall be deemed
13 to be an election to revert to the standard ap-
14 peals process pursuant to paragraph (2)(E).

15 (4) DURATION; APPLICABILITY.—

16 (A) DURATION.—Subject to subsection (c),
17 the Secretary may carry out the program dur-
18 ing such period as the Secretary considers ap-
19 propriate.

20 (B) APPLICABILITY.—This section shall
21 apply only to fully developed appeals that are
22 filed during the period in which the program is
23 carried out pursuant to subparagraph (A).

24 (5) DEFINITIONS.—In this subsection:

1 (A) COMPENSATION.—The term “com-
 2 pensation” has the meaning given that term in
 3 section 101 of title 38, United States Code.

4 (B) FULLY DEVELOPED APPEAL.—The
 5 term “fully developed appeal” means an appeal
 6 of a claim for disability compensation that is—

7 (i) filed by a claimant in accordance
 8 with paragraph (2)(A); and

9 (ii) considered in accordance with this
 10 subsection.

11 (C) STANDARD APPEAL.—The term
 12 “standard appeal” means an appeal of a claim
 13 for disability compensation that is not a fully
 14 developed appeal.

15 (c) TERMINATION.—The Secretary may not carry out
 16 any program under this section after the date on the which
 17 the Secretary implements the modernized appeals system.

18 **SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO**
 19 **PROCESSING OF APPEALS BY DEPARTMENT**
 20 **OF VETERANS AFFAIRS.**

21 On the first business day of each month the Secretary
 22 of Veterans Affairs shall publish on an internet website
 23 of the Department of Veterans Affairs the following:

24 (1) As applicable, with respect to the processing
 25 by the Secretary of appeals under the modernized

1 appeals system of decisions regarding claims for ben-
2 efits under laws administered by the Secretary:

3 (A) For the Veterans Benefits Administra-
4 tion, the number of—

5 (i) supplemental claims under section
6 5108 of title 38, United States Code, as
7 amended by section 2(i), that are pending;
8 and

9 (ii) requests for higher level review
10 under section 5104B of such title, as
11 added by section 2(g), that are pending.

12 (B) The number of appeals on any docket
13 maintained under section 7107 of such title, as
14 amended by section 2(t), that are pending.

15 (C) The average duration for processing
16 claims and supplemental claims, disaggregated
17 by regional office.

18 (D) The average duration for processing
19 requests for higher level review under section
20 5104B of such title, as added by section 2(g),
21 disaggregated by regional office.

22 (E) The average number of days that ap-
23 peals are pending on the non-hearing, no-addi-
24 tional evidence option docket of the Board of
25 Veterans' Appeals maintained pursuant to sec-

tion 7107 of such title, as amended by section 2(t), and any other docket maintained by the Board under such section that prohibits the submittal of additional evidence.

(F) The average number of days that appeals are pending on dockets maintained under such section in which hearings are requested or submittal of additional evidence is allowed.

(G) The average number of days that an appeal is pending on any other docket maintained by the Board under such section.

(H) In the case that the Secretary develops and implements a policy under section 7107(e) of such title, as amended by section 2(t)—

(i) the number of cases moved from one docket to another pursuant to such policy;

(ii) the average time cases were pending prior to moving from one docket to another; and

(iii) the average time to adjudicate the cases after so moving.

(I) The total number of remands to obtain advisory medical opinions under section

1 5109(d) of title 38, United States Code, as
2 added by section 2(i)(1).

3 (J) The average number of days between
4 the date on which the Board remands a claim
5 to obtain an advisory medical opinion under
6 section 5109(d) of such title, as so added, and
7 the date on which the advisory medical opinion
8 is obtained.

9 (K) The average number of days between
10 the date on which the Board remands a claim
11 to obtain an advisory medical opinion under
12 section 5109(d) of such title, as so added, and
13 the date on which the agency of original juris-
14 diction issues a decision taking that advisory
15 opinion into account.

16 (L) The number of appeals that are grant-
17 ed, the number of appeals that are remanded,
18 and the number of appeals that are denied by
19 the Board disaggregated by docket.

20 (M) The number of claimants each year
21 that take action within the period set forth in
22 section 5110(a)(2) of such title, as added by
23 section 2(l), to protect their effective date under
24 such section 5110(a)(2), disaggregated by the
25 status of the claimants taking the actions, such

1 as whether the claimant is represented by a vet-
2 erans service organization, the claimant is rep-
3 resented by an attorney or accredited agent, or
4 the claimant is taking such action pro se.

5 (N) The total number of times on average
6 each claimant files under section 5110(a)(2) of
7 such title, as so added, to protect their effective
8 date under such section, disaggregated by the
9 subparagraph of such section under which they
10 file.

11 (O) The average duration, from the filing
12 of an initial claim until the claim is resolved
13 and claimants no longer take any action to pro-
14 tect their effective date under section
15 5110(a)(2) of such title, as so added—

16 (i) of claims under the modernized ap-
17 peals system, excluding legacy claims that
18 opt in to the modernized appeals system;
19 and

20 (ii) of legacy claims that opt in to the
21 modernized appeals system.

22 (P) How frequently an action taken within
23 one year to protect an effective date under sec-
24 tion 5110(a)(2) of such title, as so added, leads

1 to additional grant of benefits, disaggregated by
2 action taken.

3 (Q) The average of how long it takes to
4 complete each segment of the claims process
5 while claimants are protecting the effective date
6 under such section, disaggregated by the time
7 waiting for the claimant to take an action and
8 the time waiting for the Secretary to take an
9 action.

10 (R) The number and the average amount
11 of retroactive awards of benefits from the Sec-
12 retary as a result of protected effective dates
13 under such section, disaggregated by action
14 taken.

15 (S) The average number of times claim-
16 ants submit to the Secretary different claims
17 with respect to same condition, such as an ini-
18 tial claim and a supplemental claim.

19 (T) The number of cases each year in
20 which a claimant inappropriately tried to take
21 simultaneous actions, such as filing a supple-
22 mental claim while a higher level review is
23 pending, what actions the Secretary took in re-
24 sponse, and how long it took on average to take
25 those actions.

1 (U) In the case that the Secretary develops
2 and implements a policy under section
3 5104C(a)(2)(D) of such title, as amended by
4 section 2(h)(1), the number of actions with-
5 drawn and new actions taken pursuant to such
6 policy.

7 (V) The number of times the Secretary re-
8 ceived evidence relating to an appeal or higher
9 level review at a time not authorized under the
10 modernized appeals system, disaggregated by
11 actions taken by the Secretary to deal with the
12 evidence and how long on average it took to
13 take those actions.

14 (W) The number of errors committed by
15 the Secretary in carrying out the Secretary's
16 duty to assist under section 5103A of title 38,
17 United States Code, that were identified by
18 higher level review and by the Board,
19 disaggregated by type of error, such as errors
20 relating to private records and inadequate ex-
21 aminations, and a comparison with errors com-
22 mitted by the Secretary in carrying out such
23 duty with respect to appeals of decisions on leg-
24 acy claims.

1 (X) An assessment of the productivity of
2 employees at the regional offices and at the
3 Board, disaggregated by level of experience of
4 the employees.

5 (2) With respect to the processing by the Sec-
6 retary of appeals of decisions on legacy claims, the
7 following:

8 (A) The average duration of each segment
9 of the appeals process, disaggregated by periods
10 in which the Secretary is waiting for a claimant
11 to take an action and periods in which the
12 claimant is waiting for the Secretary to take an
13 action.

14 (B) The frequency by which appeals lead
15 to additional grant of benefits by the Secretary,
16 disaggregated by whether the additional bene-
17 fits are a result of additional evidence added
18 after the initial decision.

19 (C) The number and average amount of
20 retroactive awards of benefits resulting from an
21 appeal.

22 (D) The average duration from filing the
23 appeal with the Secretary until all appeals and
24 remands relating to such are completed.

1 (E) The average number of times claim-
2 ants submit to the Secretary different claims
3 with respect to same condition, such as an ini-
4 tial claim, new and material evidence, or a
5 claim for an increase in benefits.

6 (F) An assessment of the productivity of
7 employees at the regional offices and at the
8 Board, disaggregated by level of experience of
9 the employees.

10 (G) The average number of days the dura-
11 tion of an appeal is extended because the Sec-
12 retary secured or attempted to secure an advi-
13 sory medical opinion under section 5109 of title
14 38, United States Code, or section 7109 of such
15 title (as in effect on the day before the date of
16 the enactment of this Act).

17 (3) With respect to the processing by the Sec-
18 retary of appeals of decisions on legacy claims that
19 opt in to the modernized appeals system, the fol-
20 lowing:

21 (A) The cumulative number of such legacy
22 claims.

23 (B) The portion of work in the modernized
24 appeals system attributable to appeals of deci-
25 sions on such legacy claims.

1 (C) The average period such legacy claims
2 were pending before opting in to the modern-
3 ized appeals system and the average period re-
4 quired to adjudicate such legacy claims on aver-
5 age after opting in—

6 (i) with respect to claims at a regional
7 office of the Department of Veterans Af-
8 fairs, disaggregated by—

9 (I) supplemental claims under
10 section 5108 of title 38, United States
11 Code, as amended by section 2(i); and

12 (II) requests for higher-level re-
13 view under section 5104B of such
14 title, as added by section 2(g); and

15 (ii) with respect to appeals, disaggre-
16 gated by docket of the Board maintained
17 under section 7107 of such title, as amend-
18 ed by section 2(t).

19 **SEC. 6. DEFINITIONS.**

20 In this Act:

21 (1) The term “claimant” has the meaning given
22 such term in section 5100 of title 38, United States
23 Code.

24 (2) The term “legacy claim” means a claim—

1 (A) that was submitted to the Secretary of
2 Veterans Affairs for a benefit under a law ad-
3 ministered by the Secretary; and

4 (B) for which notice of a decision under
5 section 5104 of title 38, United States Code,
6 was provided by the Secretary before the date
7 set forth in section 2(x)(1).

8 (3) The term “opt in” means, with respect to
9 a legacy claim of a claimant, that the claimant elects
10 to subject the claim to the modernized appeals sys-
11 tem pursuant to—

12 (A) section 2(x)(3); or

13 (B) such other mechanism as the Secretary
14 may prescribe for purposes of carrying out this
15 Act and the amendments made by this Act.

16 (4) The term “modernized appeals system”
17 means the set of processes and mechanisms by
18 which the Secretary processes, pursuant to the au-
19 thorities and requirements modified by section 2,
20 claims for benefits under laws administered by the
21 Secretary.

Union Calendar No. 84

115TH CONGRESS
1ST Session

H. R. 2288

[Report No. 115-135]

A BILL

To amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

MAY 19, 2017

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed