

***In the Senate of the United States,***

*August 1, 2017.*

*Resolved*, That the bill from the House of Representatives (H.R. 2288) entitled “An Act 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.”, do pass with the following

**AMENDMENT:**

Strike all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE.***

2       *This Act may be cited as the “Veterans Appeals Im-*  
3 *provement and Modernization Act of 2017”.*

1 **SEC. 2. REFORM OF RIGHTS AND PROCESSES RELATING TO**  
2 **APPEALS OF DECISIONS REGARDING CLAIMS**  
3 **FOR BENEFITS UNDER LAWS ADMINISTERED**  
4 **BY SECRETARY OF VETERANS AFFAIRS.**

5 (a) *DEFINITIONS.*—Section 101 of title 38, United  
6 States Code, is amended by adding at the end the following  
7 new paragraphs:

8 “(34) The term ‘agency of original jurisdiction’  
9 means the activity which entered the original deter-  
10 mination with regard to a claim for benefits under  
11 laws administered by the Secretary.

12 “(35) The term ‘relevant evidence’ means evi-  
13 dence that tends to prove or disprove a matter in  
14 issue.

15 “(36) The term ‘supplemental claim’ means a  
16 claim for benefits under laws administered by the  
17 Secretary filed by a claimant who had previously  
18 filed a claim for the same or similar benefits on the  
19 same or similar basis.”.

20 (b) *NOTICE REGARDING CLAIMS.*—Section 5103(a) of  
21 such title is amended—

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

25 (2) in paragraph (2)(B)(i) by striking “, a  
26 claim for reopening a prior decision on a claim, or

1       *a claim for an increase in benefits;” and inserting*  
 2       *“or a supplemental claim;”; and*

3               *(3) by adding at the end the following new para-*  
 4       *graph:*

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

9       *(c) MODIFICATION OF RULE REGARDING DISALLOWED*  
 10       *CLAIMS.—Section 5103A(f) of such title is amended—*

11               *(1) by striking “reopen” and inserting “readju-*  
 12       *dicate”; and*

13               *(2) by striking “material” and inserting “rel-*  
 14       *evant”.*

15       *(d) MODIFICATION OF DUTY TO ASSIST CLAIMANTS.—*  
 16       *Section 5103A of such title is amended—*

17               *(1) by redesignating subsections (e) through (g)*  
 18       *as subsections (g) through (i), respectively; and*

19               *(2) by inserting after subsection (d) the following*  
 20       *new subsections:*

21       *“(e) APPLICABILITY OF DUTY TO ASSIST.—(1) The*  
 22       *Secretary’s duty to assist under this section shall apply*  
 23       *only to a claim, or supplemental claim, for a benefit under*  
 24       *a law administered by the Secretary until the time that*  
 25       *a claimant is provided notice of the agency of original juris-*

1 *diction’s decision with respect to such claim, or supple-*  
 2 *mental claim, under section 5104 of this title.*

3       “(2) *The Secretary’s duty to assist under this section*  
 4 *shall not apply to higher-level review by the agency of origi-*  
 5 *nal jurisdiction, pursuant to section 5104B of this title, or*  
 6 *to review on appeal by the Board of Veterans’ Appeals.*

7       “(f) *CORRECTION OF DUTY TO ASSIST ERRORS.—(1)*  
 8 *If, during review of the agency of original jurisdiction deci-*  
 9 *sion under section 5104B of this title, the higher-level adju-*  
 10 *dicator identifies or learns of an error on the part of the*  
 11 *agency of original jurisdiction to satisfy its duties under*  
 12 *this section, and that error occurred prior to the agency*  
 13 *of original jurisdiction decision being reviewed, unless the*  
 14 *Secretary may award the maximum benefit in accordance*  
 15 *with this title based on the evidence of record, the higher-*  
 16 *level adjudicator shall return the claim for correction of*  
 17 *such error and readjudication.*

18       “(2)(A) *If the Board of Veterans’ Appeals, during re-*  
 19 *view on appeal of an agency of original jurisdiction deci-*  
 20 *sion, identifies or learns of an error on the part of the agen-*  
 21 *cy of original jurisdiction to satisfy its duties under this*  
 22 *section, and that error occurred prior to the agency of origi-*  
 23 *nal jurisdiction decision on appeal, unless the Secretary*  
 24 *may award the maximum benefit in accordance with this*  
 25 *title based on the evidence of record, the Board shall remand*

1 *the claim to the agency of original jurisdiction for correc-*  
 2 *tion of such error and readjudication.*

3       “(B) *Remand for correction of such error may include*  
 4 *directing the agency of original jurisdiction to obtain an*  
 5 *advisory medical opinion under section 5109 of this title.*

6       “(3) *Nothing in this subsection shall be construed to*  
 7 *imply that the Secretary, during the consideration of a*  
 8 *claim, does not have a duty to correct an error described*  
 9 *in paragraph (1) or (2) that was erroneously not identified*  
 10 *during higher-level review or during review on appeal with*  
 11 *respect to the claim.”.*

12       (e) *DECISIONS AND NOTICES OF DECISIONS.*—Sub-  
 13 *section (b) of section 5104 of such title is amended to read*  
 14 *as follows:*

15       “(b) *Each notice provided under subsection (a) shall*  
 16 *also include all of the following:*

17               “(1) *Identification of the issues adjudicated.*

18               “(2) *A summary of the evidence considered by*  
 19 *the Secretary.*

20               “(3) *A summary of the applicable laws and reg-*  
 21 *ulations.*

22               “(4) *Identification of findings favorable to the*  
 23 *claimant.*

24               “(5) *In the case of a denial, identification of ele-*  
 25 *ments not satisfied leading to the denial.*

1           “(6) *An explanation of how to obtain or access*  
 2           *evidence used in making the decision.*

3           “(7) *If applicable, identification of the criteria*  
 4           *that must be satisfied to grant service connection or*  
 5           *the next higher level of compensation.”.*

6           (f) *BINDING NATURE OF FAVORABLE FINDINGS.—*

7           (1) *IN GENERAL.—Chapter 51 of such title is*  
 8           *amended by inserting after section 5104 the following*  
 9           *new section:*

10    **“§5104A. Binding nature of favorable findings**

11           *“Any finding favorable to the claimant as described*  
 12           *in section 5104(b)(4) of this title shall be binding on all*  
 13           *subsequent adjudicators within the Department, unless*  
 14           *clear and convincing evidence is shown to the contrary to*  
 15           *rebut such favorable finding.”.*

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

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

20           (g) *HIGHER-LEVEL REVIEW BY AGENCY OF ORIGINAL*  
 21           *JURISDICTION.—*

22           (1) *IN GENERAL.—Chapter 51 of such title, as*  
 23           *amended by subsection (f), is further amended by in-*  
 24           *serting after section 5104A, as added by such sub-*  
 25           *section, the following new section:*

1   **“§ 5104B. Higher-level review by the agency of original**  
2                           **jurisdiction**

3           “(a) *IN GENERAL.*—(1) *A claimant may request a re-*  
4 *view of the decision of the agency of original jurisdiction*  
5 *by a higher-level adjudicator within the agency of original*  
6 *jurisdiction.*

7           “(2) *The Secretary shall approve each request for re-*  
8 *view under paragraph (1).*

9           “(b) *TIME AND MANNER OF REQUEST.*—(1) *A request*  
10 *for higher-level review by the agency of original jurisdiction*  
11 *shall be—*

12                   “(A) *in writing in such form as the Secretary*  
13 *may prescribe; and*

14                   “(B) *made within one year of the notice of the*  
15 *agency of original jurisdiction’s decision.*

16           “(2) *Such request may specifically indicate whether*  
17 *such review is requested by a higher-level adjudicator at the*  
18 *same office within the agency of original jurisdiction or by*  
19 *an adjudicator at a different office of the agency of original*  
20 *jurisdiction. The Secretary shall not deny such request for*  
21 *review by an adjudicator at a different office of the agency*  
22 *of original jurisdiction without good cause.*

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

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

3           “(2) noting the options available to the claimant  
4           to have the evidence described in paragraph (1), if  
5           any, considered by the Department.

6           “(d) *EVIDENTIARY RECORD FOR REVIEW.*—The evi-  
7           dentiary record before the higher-level adjudicator shall be  
8           limited to the evidence of record in the agency of original  
9           jurisdiction decision being reviewed.

10          “(e) *DE NOVO REVIEW.*—A review of the decision of  
11          the agency of original jurisdiction by a higher-level adjudi-  
12          cator within the agency of original jurisdiction shall be *de*  
13          *nov.*”.

14               (2) *CLERICAL AMENDMENT.*—The table of sec-  
15          tions at the beginning of chapter 51 of such title, as  
16          amended by subsection (f), is further amended by in-  
17          serting after the item relating to section 5104A, as  
18          added by such subsection, the following new item:

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

19          (h) *OPTIONS FOLLOWING DECISION BY AGENCY OF*  
20          *ORIGINAL JURISDICTION.*—

21               (1) *IN GENERAL.*—Chapter 51 of such title, as  
22          amended by subsection (g), is further amended by in-  
23          serting after section 5104B, as added by such sub-  
24          section, the following new section:



1   **“§5104C. Options following decision by agency of**  
 2                   **original jurisdiction**

3           “(a) *WITHIN ONE YEAR OF DECISION.*—(1) *Subject to*  
 4   *paragraph (2), in any case in which the Secretary renders*  
 5   *a decision on a claim, the claimant may take any of the*  
 6   *following actions on or before the date that is one year after*  
 7   *the date on which the agency of original jurisdiction issues*  
 8   *a decision with respect to that claim:*

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

11          “(B) *File a supplemental claim under section*  
 12   *5108 of this title.*

13          “(C) *File a notice of disagreement under section*  
 14   *7105 of this title.*

15          “(2)(A) *Once a claimant takes an action set forth in*  
 16   *paragraph (1), the claimant may not take another action*  
 17   *set forth in that paragraph with respect to the same claim*  
 18   *or same issue contained within the claim until—*

19           “(i) *the higher-level review, supplemental claim,*  
 20   *or notice of disagreement is adjudicated; or*

21           “(ii) *the request for higher-level review, supple-*  
 22   *mental claim, or notice of disagreement is withdrawn.*

23          “(B) *Nothing in this subsection shall prohibit a claim-*  
 24   *ant from taking any of the actions set forth in paragraph*  
 25   *(1) in succession with respect to a claim or an issue con-*  
 26   *tained within the claim.*

1       “(C) *Nothing in this subsection shall prohibit a claim-*  
 2 *ant from taking different actions set forth in paragraph (1)*  
 3 *with respect to different claims or different issues contained*  
 4 *within a claim.*

5       “(D) *The Secretary may, as the Secretary considers*  
 6 *appropriate, develop and implement a policy for claimants*  
 7 *who—*

8               “(i) *take an action under paragraph (1);*

9               “(ii) *wish to withdraw the action before the high-*  
 10 *er-level review, supplemental claim, or notice of dis-*  
 11 *agreement is adjudicated; and*

12               “(iii) *in lieu of such action take a different ac-*  
 13 *tion under paragraph (1).*

14       “(b) *MORE THAN ONE YEAR AFTER DECISION.—In*  
 15 *any case in which the Secretary renders a decision on a*  
 16 *claim and more than one year has passed since the date*  
 17 *on which the agency of original jurisdiction issues a deci-*  
 18 *sion with respect to that claim, the claimant may file a*  
 19 *supplemental claim under section 5108 of this title.”.*

20               “(2) *CLERICAL AMENDMENT.—The table of sec-*  
 21 *tions at the beginning of chapter 51 of such title, as*  
 22 *amended by subsection (g), is further amended by in-*  
 23 *serting after the item relating to section 5104B, as*  
 24 *added by such subsection, the following new item:*

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

25       “(i) *SUPPLEMENTAL CLAIMS.—*

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

3       **“§ 5108. Supplemental claims**

4           “(a) *IN GENERAL.*—If new and relevant evidence is  
5       *presented or secured with respect to a supplemental claim,*  
6       *the Secretary shall readjudicate the claim taking into con-*  
7       *sideration all of the evidence of record.*

8           “(b) *DUTY TO ASSIST.*—(1) *If a claimant, in connec-*  
9       *tion with a supplemental claim, reasonably identifies exist-*  
10      *ing records, whether or not in the custody of a Federal de-*  
11      *partment or agency, the Secretary shall assist the claimant*  
12      *in obtaining the records in accordance with section 5103A*  
13      *of this title.*

14          “(2) *Assistance under paragraph (1) shall not be*  
15      *predicated upon a finding that new and relevant evidence*  
16      *has been presented or secured.”.*

17          (2) *RULE OF CONSTRUCTION.*—Section 5108 of  
18      *such title, as amended by paragraph (1), shall not be*  
19      *construed to impose a higher evidentiary threshold*  
20      *than the new and material evidence standard that*  
21      *was in effect pursuant to such section on the day be-*  
22      *fore the date of the enactment of this Act.*

23          (3) *CLERICAL AMENDMENT.*—The table of sec-  
24      *tions at the beginning of chapter 51 of such title is*

1        *amended by striking the item relating to section 5108*  
 2        *and inserting the following new item:*

*“5108. Supplemental claims.”.*

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

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

12       *“(2) The Board’s remand instructions shall include the*  
 13       *questions to be posed to the independent medical expert pro-*  
 14       *viding the advisory medical opinion.”.*

15       *(k) RESTATEMENT OF REQUIREMENT FOR EXPEDITED*  
 16       *TREATMENT OF RETURNED AND REMANDED CLAIMS.—*

17                *(1) IN GENERAL.—Section 5109B of such title is*  
 18        *amended to read as follows:*

19        **“§5109B. Expedited treatment of returned and re-**  
 20                **manded claims**

21        *“The Secretary shall take such actions as may be nec-*  
 22        *essary to provide for the expeditious treatment by the Vet-*  
 23        *erans Benefits Administration of any claim that is returned*  
 24        *by a higher-level adjudicator under section 5104B of this*  
 25        *title or remanded by the Board of Veterans’ Appeals.”.*

1           (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
 2           *tions at the beginning of chapter 51 of such title is*  
 3           *amended by striking the item relating to section*  
 4           *5109B and inserting the following new item:*

*“5109B. Expedited treatment of returned and remanded claims.”.*

5           (1) *EFFECTIVE DATES OF AWARDS.*—*Section 5110 of*  
 6           *title 38, United States Code, is amended—*

7           (1) *by amending subsection (a) to read as fol-*  
 8           *lows:*

9           “(a)(1) *Unless specifically provided otherwise in this*  
 10          *chapter, the effective date of an award based on an initial*  
 11          *claim, or a supplemental claim, of compensation, depend-*  
 12          *ency and indemnity compensation, or pension, shall be*  
 13          *fixed in accordance with the facts found, but shall not be*  
 14          *earlier than the date of receipt of application therefor.*

15          “(2) *For purposes of determining the effective date of*  
 16          *an award under this section, the date of application shall*  
 17          *be considered the date of the filing of the initial application*  
 18          *for a benefit if the claim is continuously pursued by filing*  
 19          *any of the following, either alone or in succession:*

20               “(A) *A request for higher-level review under sec-*  
 21               *tion 5104B of this title on or before the date that is*  
 22               *one year after the date on which the agency of origi-*  
 23               *nal jurisdiction issues a decision.*

24               “(B) *A supplemental claim under section 5108 of*  
 25               *this title on or before the date that is one year after*

1     *the date on which the agency of original jurisdiction*  
2     *issues a decision.*

3             “(C) *A notice of disagreement on or before the*  
4     *date that is one year after the date on which the agen-*  
5     *cy of original jurisdiction issues a decision.*

6             “(D) *A supplemental claim under section 5108*  
7     *of this title on or before the date that is one year after*  
8     *the date on which the Board of Veterans’ Appeals*  
9     *issues a decision.*

10            “(E) *A supplemental claim under section 5108*  
11     *of this title on or before the date that is one year after*  
12     *the date on which the Court of Appeals for Veterans*  
13     *Claims issues a decision.*

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

21            *(2) in subsection (i), in the first sentence—*

22                    *(A) by striking “reopened” and inserting*  
23                    *“readjudicated”;*

24                    *(B) by striking “material” and inserting*  
25                    *“relevant”; and*

1                   (C) by striking “reopening” and inserting  
2                   “readjudication”.

3           (m) *DEFINITION OF AWARD OR INCREASED AWARD*  
4 *FOR PURPOSES OF PROVISIONS RELATING TO COMMENCE-*  
5 *MENT OF PERIOD OF PAYMENT.*—Section 5111(d)(1) of  
6 such title is amended by striking “or reopened award” and  
7 inserting “award or award based on a supplemental  
8 claim”.

9           (n) *MODIFICATION OF LIMITATION ON FEES ALLOW-*  
10 *ABLE FOR REPRESENTATION.*—Section 5904(c) of such title  
11 is amended, in paragraphs (1) and (2), by striking “notice  
12 of disagreement is filed” both places it appears and insert-  
13 ing “claimant is provided notice of the agency of original  
14 jurisdiction’s initial decision under section 5104 of this  
15 title”.

16           (o) *CLARIFICATION OF BOARD OF VETERANS’ APPEALS*  
17 *REFERRAL REQUIREMENTS AFTER ORDER FOR RECONSID-*  
18 *ERATION OF DECISIONS.*—Section 7103(b)(1) of title 38,  
19 United States Code, is amended by striking “heard” both  
20 places it appears and inserting “decided”.

21           (p) *CONFORMING AMENDMENT RELATING TO READJU-*  
22 *DICATION.*—Section 7104(b) of such title is amended by  
23 striking “reopened” and inserting “readjudicated”.

24           (q) *MODIFICATION OF PROCEDURES FOR APPEALS TO*  
25 *BOARD OF VETERANS’ APPEALS.*—

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

3           (A) *in subsection (a), by striking the first*  
4       *sentence and inserting “Appellate review shall be*  
5       *initiated by the filing of a notice of disagreement*  
6       *in the form prescribed by the Secretary.”;*

7           (B) *by amending subsection (b) to read as*  
8       *follows:*

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

14       “(B) *A notice of disagreement postmarked before the*  
15   *expiration of the one-year period shall be accepted as timely*  
16   *filed.*

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

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



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

4       “(C) Notices of disagreement shall be filed with the  
5   Board.

6       “(3) The notice of disagreement shall indicate whether  
7   the claimant requests—

8               “(A) a hearing before the Board, which shall in-  
9   clude an opportunity to submit evidence in accord-  
10   ance with section 7113(b) of this title;

11              “(B) an opportunity to submit additional evi-  
12   dence without a hearing before the Board, which shall  
13   include an opportunity to submit evidence in accord-  
14   ance with section 7113(c) of this title; or

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

17       “(4) The Secretary shall develop a policy to permit  
18   a claimant to modify the information identified in the no-  
19   tice of disagreement after the notice of disagreement has  
20   been filed under this section pursuant to such requirements  
21   as the Secretary may prescribe.”;

22              (C) by amending subsection (c) to read as  
23   follows:

24       “(c) If no notice of disagreement is filed in accordance  
25   with this chapter within the prescribed period, the action

1 or decision of the agency of original jurisdiction shall be-  
 2 come final and the claim shall not thereafter be readjudi-  
 3 cated or allowed, except—

4 “(1) in the case of a readjudication or allowance  
 5 pursuant to a higher-level review that was requested  
 6 in accordance with section 5104B of this title;

7 “(2) as may otherwise be provided by section  
 8 5108 of this title; or

9 “(3) as may otherwise be provided in such regu-  
 10 lations as are consistent with this title.”;

11 (D) by striking subsection (d) and inserting  
 12 the following new subsection (d):

13 “(d) The Board may dismiss any appeal which fails  
 14 to identify the specific determination with which the claim-  
 15 ant disagrees.”;

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

17 (F) in the section heading, by striking “**no-**  
 18 **tice of disagreement and**”.

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

“7105. Filing of appeal.”.

23 (r) MODIFICATION OF PROCEDURES AND REQUIRE-  
 24 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—Sub-

1 *section (b) of section 7105A of such title is amended to read*  
 2 *as follows:*

3 “(b)(1) *The substance of the notice of disagreement*  
 4 *shall be communicated to the other party or parties in in-*  
 5 *terest and a period of thirty days shall be allowed for filing*  
 6 *a brief or argument in response thereto.*

7 “(2) *Such notice shall be forwarded to the last known*  
 8 *address of record of the parties concerned, and such action*  
 9 *shall constitute sufficient evidence of notice.”.*

10 (s) *REPEAL OF PROCEDURES FOR ADMINISTRATIVE*  
 11 *APPEALS.—*

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

14 (2) *CLERICAL AMENDMENT.—The table of sec-*  
 15 *tions at the beginning of chapter 71 of such title is*  
 16 *amended by striking the item relating to section 7106.*

17 (t) *MODIFICATIONS RELATING TO APPEALS: DOCKETS;*  
 18 *HEARINGS.—Section 7107 of such title is amended to read*  
 19 *as follows:*

20 **“§ 7107. Appeals: dockets; hearings**

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

23 “(2) *The Board may not maintain more than two sep-*  
 24 *arate dockets unless the Board notifies the Committee on*  
 25 *Veterans’ Affairs of the Senate and the Committee on Vet-*

1 *erans' Affairs of the House of Representatives of any addi-*  
 2 *tional docket, including a justification for maintaining*  
 3 *such additional docket.*

4 “(3)(A) *The Board may assign to each docket main-*  
 5 *tained under paragraph (1) such cases as the Board con-*  
 6 *siders appropriate, except that cases described in clause (i)*  
 7 *of subparagraph (B) may not be assigned to any docket to*  
 8 *which cases described in clause (ii) of such paragraph are*  
 9 *assigned.*

10 “(B) *Cases described in this paragraph are the fol-*  
 11 *lowing:*

12 “(i) *Cases in which no Board hearing is re-*  
 13 *quested.*

14 “(ii) *Cases in which a Board hearing is re-*  
 15 *quested in the notice of disagreement.*

16 “(4) *Except as provided in subsection (b), each case*  
 17 *before the Board will be decided in regular order according*  
 18 *to its respective place on the docket to which it is assigned*  
 19 *by the Board.*

20 “(b) *ADVANCEMENT ON THE DOCKET.—(1) A case on*  
 21 *one of the dockets of the Board maintained under subsection*  
 22 *(a) may, for cause shown, be advanced on motion for earlier*  
 23 *consideration and determination.*

24 “(2) *Any such motion shall set forth succinctly the*  
 25 *grounds upon which the motion is based.*

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

2               “(A) *if the case involves interpretation of law of*  
3       *general application affecting other claims;*

4               “(B) *if the appellant is seriously ill or is under*  
5       *severe financial hardship; or*

6               “(C) *for other sufficient cause shown.*

7       “(c) *MANNER AND SCHEDULING OF HEARINGS FOR*  
8       *CASES ON A DOCKET THAT MAY INCLUDE A HEARING.—*

9       “(1) *For cases on a docket maintained by the Board under*  
10       *subsection (a) that may include a hearing, in which a hear-*  
11       *ing is requested in the notice of disagreement, the Board*  
12       *shall notify the appellant whether a Board hearing will be*  
13       *held—*

14               “(A) *at its principal location; or*

15               “(B) *by picture and voice transmission at a fa-*  
16       *cility of the Department where the Secretary has pro-*  
17       *vided suitable facilities and equipment to conduct*  
18       *such hearings.*

19       “(2)(A) *Upon notification of a Board hearing at the*  
20       *Board’s principal location as described in subparagraph*  
21       *(A) of paragraph (1), the appellant may alternatively re-*  
22       *quest a hearing as described in subparagraph (B) of such*  
23       *paragraph. If so requested, the Board shall grant such re-*  
24       *quest.*

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

6       “(d) SCREENING OF CASES.—Nothing in this section  
 7 shall be construed to preclude the screening of cases for pur-  
 8 poses of—

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

11              “(2) the development, or attempted development,  
 12 of a record found to be inadequate for decisional pur-  
 13 poses.

14       “(e) POLICY ON CHANGING DOCKETS.—The Secretary  
 15 shall develop and implement a policy allowing an appellant  
 16 to move the appellant’s case from one docket to another  
 17 docket.”.

18       (u) REPEAL OF CERTAIN AUTHORITY FOR INDE-  
 19 PENDENT MEDICAL OPINIONS.—

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

22              (2) CONFORMING AMENDMENT.—Section  
 23 5701(b)(1) of such title is amended by striking “or  
 24 7109”.

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

4           (v) *CLARIFICATION OF PROCEDURES FOR REVIEW OF*  
 5           *DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE*  
 6           *ERROR.*—*Section 7111(e) of such title is amended by strik-*  
 7           *ing “, without referral to any adjudicative or hearing offi-*  
 8           *cial acting on behalf of the Secretary”.*

9           (w) *EVIDENTIARY RECORD BEFORE BOARD OF VET-*  
 10          *ERANS’ APPEALS.*—

11           (1) *IN GENERAL.*—*Chapter 71 of such title is*  
 12          *amended by adding at the end the following new sec-*  
 13          *tion:*

14          **“§ 7113. Evidentiary record before the Board of Vet-**  
 15                 **erans’ Appeals**

16          “(a) *CASES WITH NO REQUEST FOR A HEARING OR*  
 17          *ADDITIONAL EVIDENCE.*—*For cases in which a hearing be-*  
 18          *fore the Board of Veterans’ Appeals is not requested in the*  
 19          *notice of disagreement and no request was made to submit*  
 20          *evidence, the evidentiary record before the Board shall be*  
 21          *limited to the evidence of record at the time of the decision*  
 22          *of the agency of original jurisdiction on appeal.*

23          “(b) *CASES WITH A REQUEST FOR A HEARING.*—(1)  
 24          *Except as provided in paragraph (2), for cases in which*  
 25          *a hearing is requested in the notice of disagreement, the*

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

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

7 “(A) *Evidence submitted by the appellant and*  
 8 *his or her representative, if any, at the Board hear-*  
 9 *ing.*

10 “(B) *Evidence submitted by the appellant and*  
 11 *his or her representative, if any, within 90 days fol-*  
 12 *lowing the Board hearing.*

13 “(c) *CASES WITH NO REQUEST FOR A HEARING AND*  
 14 *WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Ex-*  
 15 *cept as provided in paragraph (2), for cases in which a*  
 16 *hearing is not requested in the notice of disagreement but*  
 17 *an opportunity to submit evidence is requested, the evi-*  
 18 *dentiary record before the Board shall be limited to the evi-*  
 19 *dence considered by the agency of original jurisdiction in*  
 20 *the decision on appeal.*

21 “(2) *The evidentiary record before the Board for cases*  
 22 *described in paragraph (1) shall include each of the fol-*  
 23 *lowing, which the Board shall consider in the first instance:*



1           “(A) Evidence submitted by the appellant and  
2           his or her representative, if any, with the notice of  
3           disagreement.

4           “(B) Evidence submitted by the appellant and  
5           his or her representative, if any, within 90 days fol-  
6           lowing receipt of the notice of disagreement.”.

7           (2) NOTIFICATION WHEN EVIDENCE NOT CONSID-  
8           ERED.—Section 7104(d) of such title is amended—

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

11                   (B) by redesignating paragraph (2) as  
12           paragraph (3); and

13                   (C) by inserting after paragraph (1) the fol-  
14           lowing new paragraph (2):

15           “(2) a general statement—

16                   “(A) reflecting whether evidence was not  
17           considered in making the decision because the  
18           evidence was received at a time when not per-  
19           mitted under section 7113 of this title; and

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

23           (3) CLERICAL AMENDMENT.—The table of sec-  
24           tions at the beginning of chapter 71 of such title is

1       amended by inserting after the item relating to sec-  
 2       tion 7112 the following new item:

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

3       (x) *APPLICABILITY.*—

4           (1) *IN GENERAL.*—*Except as otherwise provided*  
 5       *in this subsection, the amendments made by this sec-*  
 6       *tion shall apply to all claims for which notice of a*  
 7       *decision under section 5104 of title 38, United States*  
 8       *Code, is provided by the Secretary of Veterans Affairs*  
 9       *on or after the later of—*

10           (A) *the date that is 540 days after the date*  
 11       *of the enactment of this Act; and*

12           (B) *the date that is 30 days after the date*  
 13       *on which the Secretary of Veterans Affairs sub-*  
 14       *mits to the appropriate committees of Con-*  
 15       *gress—*

16           (i) *a certification that the Secretary*  
 17       *confirms, without delegation, that the De-*  
 18       *partment of Veterans Affairs has the re-*  
 19       *sources, personnel, office space, procedures,*  
 20       *and information technology required—*

21           (I) *to carry out the new appeals*  
 22       *system;*

23           (II) *to timely address appeals*  
 24       *under the new appeals system; and*

1                   (III) to timely address appeals of  
2                   decisions on legacy claims; and

3                   (ii) a summary of the expectations for  
4                   performance outcomes that the Secretary  
5                   used in making the certification under  
6                   clause (i)(III) and a comparison of such ex-  
7                   pected performance outcomes with actual  
8                   performance outcomes with respect to ap-  
9                   peals of legacy claims before the effective  
10                  date of the new appeals system.

11               (2) *COLLABORATION.*—In determining whether  
12               and when to make a certification under paragraph  
13               (1)(B), the Secretary shall collaborate with, partner  
14               with, and give weight to the advice of veterans service  
15               organizations and such other stakeholders as the Sec-  
16               retary considers appropriate.

17               (3) *EARLY APPLICABILITY.*—The Secretary may  
18               apply the new appeals system to a claim with respect  
19               to which the claimant—

20                   (A) receives a notice of a decision under sec-  
21                   tion 5104 of such title after the date of the enact-  
22                   ment of this Act and before the applicability date  
23                   set forth in paragraph (1); and

24                   (B) elects to subject the claim to the new ap-  
25                   peals system.

1           (4) *PHASED ROLLOUT.*—*The Secretary may*  
 2           *begin implementation of the new appeals system in*  
 3           *phases, with the first phase of such phased implemen-*  
 4           *tation beginning on the applicability date set forth in*  
 5           *paragraph (1).*

6           (5) *TREATMENT OF LEGACY CLAIMS.*—*With re-*  
 7           *spect to legacy claims, upon the issuance to a claim-*  
 8           *ant of a statement of the case or supplemental state-*  
 9           *ment of the case occurring on or after the applica-*  
 10          *bility date specified in paragraph (1), a claimant*  
 11          *may elect to participate in the new appeals system.*

12          (6) *PUBLICATION OF APPLICABILITY DATE.*—*Not*  
 13          *later than the date on which the new appeals system*  
 14          *goes into effect (or the first phase of the new appeals*  
 15          *system goes into effect under paragraph (4), as the*  
 16          *case may be), the Secretary shall publish in the Fed-*  
 17          *eral Register such date.*

18          (7) *DEFINITIONS.*—*In this subsection:*

19                (A) *APPROPRIATE COMMITTEES OF CON-*  
 20                *GRESS.*—*The term “appropriate committees of*  
 21                *Congress” means—*

22                       (i) *the Committee on Veterans’ Affairs*  
 23                       *and the Committee on Appropriations of the*  
 24                       *Senate; and*

1                   (ii) the Committee on Veterans' Affairs  
 2                   and the Committee on Appropriations of the  
 3                   House of Representatives.

4                   (B) VETERANS SERVICE ORGANIZATION.—  
 5                   The term “veterans service organization” means  
 6                   any organization recognized by the Secretary for  
 7                   the representation of veterans under section 5902  
 8                   of title 38, United States Code.

9                   (y) RULE OF CONSTRUCTION.—Nothing in this section  
 10                  or any of the amendments made by this section shall be  
 11                  construed to limit the ability of a claimant to request a  
 12                  revision of a decision under section 5109A or 7111 of title  
 13                  38, United States Code.

14   **SEC. 3. COMPREHENSIVE PLAN FOR PROCESSING OF LEG-**  
 15                   **ACY APPEALS AND IMPLEMENTING NEW AP-**  
 16                   **PEALS SYSTEM.**

17                  (a) PLAN REQUIRED.—Not later than 90 days after  
 18                  the date of the enactment of this Act, the Secretary of Vet-  
 19                  erans Affairs shall submit to the appropriate committees  
 20                  of Congress and the Comptroller General of the United  
 21                  States a comprehensive plan for—

- 22                   (1) the processing of appeals of decisions on leg-  
 23                  acy claims that the Secretary considers pending;  
 24                   (2) implementing the new appeals system;

1           (3) *timely processing, under the new appeals sys-*  
2 *tem, of—*

3                 (A) *supplemental claims under section 5108*  
4 *of title 38, United States Code, as amended by*  
5 *section 2(i);*

6                 (B) *requests for higher-level review under*  
7 *section 5104B of such title, as added by section*  
8 *2(g); and*

9                 (C) *appeals on any docket maintained*  
10 *under section 7107 of such title, as amended by*  
11 *section 2(t); and*

12           (4) *monitoring the implementation of the new*  
13 *appeals system, including metrics and goals—*

14                 (A) *to track the progress of the implementa-*  
15 *tion;*

16                 (B) *to evaluate the efficiency and effective-*  
17 *ness of the implementation; and*

18                 (C) *to identify potential issues relating to*  
19 *the implementation.*

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

22                 (1) *Delineation of the total resource requirements*  
23 *of the Veterans Benefits Administration and the*  
24 *Board of Veterans' Appeals, disaggregated by re-*  
25 *sources required to implement and administer the*

1     *new appeals system and resources required to address*  
2     *the appeals of decisions on legacy claims.*

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

6                     *(A) period in which the Administration and*  
7     *the Board are concurrently processing—*

8                             *(i) appeals of decisions on legacy*  
9     *claims; and*

10                            *(ii) appeals of decisions on non-legacy*  
11     *claims under the new appeals system; and*

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

15             *(3) Identification of the legal authorities under*  
16     *which the Administration or the Board may—*

17                     *(A) hire additional employees to conduct the*  
18     *concurrent processing described in paragraph*  
19     *(2)(A); and*

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

1           (4) *An estimate of the amount of time the Ad-*  
2           *ministration and the Board will require to hire addi-*  
3           *tional employees as described in paragraph (3)(A)*  
4           *once funding has been made available for such pur-*  
5           *pose, including a comparison of such estimate and the*  
6           *historical average time required by the Administra-*  
7           *tion and the Board to hire additional employees.*

8           (5) *A description of the amount of training and*  
9           *experience that will be required of individuals con-*  
10          *ducting higher-level reviews under section 5104B of*  
11          *title 38, United States Code, as added by section 2(g).*

12          (6) *An estimate of the percentage of higher-level*  
13          *adjudicators who will be employees of the Department*  
14          *of Veterans Affairs who were Decision Review Officers*  
15          *on the day before the new appeals system takes effect*  
16          *or had experience, as of such date, comparable to that*  
17          *of one who was a Decision Review Officer.*

18          (7) *A description of the functions that will be*  
19          *performed after the date on which the new appeals*  
20          *system takes effect by Decision Review Officers who*  
21          *were Decision Review Officers on the day before the*  
22          *date the new appeals system takes effect.*

23          (8) *Identification of and a timeline for—*

24                (A) *any training that may be required as*  
25                *a result of hiring new employees to carry out the*



1        *new appeals system or to process appeals of deci-*  
2        *sions on legacy claims; and*

3                *(B) any retraining of existing employees*  
4        *that may be required to carry out such system*  
5        *or to process such claims.*

6                *(9) Identification of the costs to the Department*  
7        *of Veterans Affairs of the training identified under*  
8        *paragraph (8) and any additional training staff and*  
9        *any additional training facilities that will be re-*  
10       *quired to provide such training.*

11               *(10) A description of the modifications to the in-*  
12       *formation technology systems of the Administration*  
13       *and the Board that the Administration and the Board*  
14       *require to carry out the new appeals system, includ-*  
15       *ing cost estimates and a timeline for making the*  
16       *modifications.*

17               *(11) An estimate of the office space the Adminis-*  
18       *tration and the Board will require during each of the*  
19       *periods described in paragraph (2), including—*

20               *(A) an estimate of the amount of time the*  
21       *Administration and the Board will require to*  
22       *acquire any additional office space to carry out*  
23       *processing of appeals of decisions on legacy*  
24       *claims and processing of appeals under the new*  
25       *appeals system;*

1           (B) a comparison of the estimate under sub-  
2           paragraph (A) and the historical average time  
3           required by the Administration and the Board to  
4           acquire new office space; and

5           (C) a plan for using telework to accommo-  
6           date staff exceeding available office space, includ-  
7           ing how the Administration and the Board will  
8           provide training and oversight with respect to  
9           such teleworking.

10          (12) Projections for the productivity of indi-  
11          vidual employees at the Administration and the  
12          Board in carrying out tasks relating to the processing  
13          of appeals of decisions on legacy claims and appeals  
14          under the new appeals system, taking into account  
15          the experience level of new employees and the en-  
16          hanced notice requirements under section 5104(b) of  
17          title 38, United States Code, as amended by section  
18          2(e).

19          (13) An outline of the outreach the Secretary ex-  
20          pects to conduct to inform veterans, families of vet-  
21          erans, survivors of veterans, veterans service organiza-  
22          tions, military service organizations, congressional  
23          caseworkers, advocates for veterans, and such other  
24          stakeholders as the Secretary considers appropriate  
25          about the new appeals system, including—

1                   (A) a description of the resources required  
2                   to conduct such outreach; and

3                   (B) timelines for conducting such outreach.

4                   (14) Timelines for updating any policy guid-  
5                   ance, Internet websites, and official forms that may  
6                   be necessary to carry out the new appeals system, in-  
7                   cluding—

8                   (A) identification of which offices and enti-  
9                   ties will be involved in efforts relating to such  
10                  updating; and

11                  (B) historical information about how long  
12                  similar update efforts have taken.

13                  (15) A timeline, including interim milestones,  
14                  for promulgating such regulations as may be nec-  
15                  essary to carry out the new appeals system and a  
16                  comparison with historical averages for time required  
17                  to promulgate regulations of similar complexity and  
18                  scope.

19                  (16) An outline of the circumstances under which  
20                  claimants with pending appeals of decisions on legacy  
21                  claims would be authorized to have their appeals re-  
22                  viewed under the new appeals system.

23                  (17) A delineation of the key goals and mile-  
24                  stones for reducing the number of pending appeals  
25                  that are not processed under the new appeals system,

1 *including the expected number of appeals, remands,*  
 2 *and hearing requests at the Administration and the*  
 3 *Board each year, beginning with the one year period*  
 4 *beginning on the date of the enactment of this Act,*  
 5 *until there are no longer any appeals pending before*  
 6 *the Administration or the Board for a decision on a*  
 7 *legacy claim.*

8 *(18) A description of each risk factor associated*  
 9 *with each element of the plan and a contingency plan*  
 10 *to minimize each such risk.*

11 *(c) REVIEW BY COMPTROLLER GENERAL OF THE*  
 12 *UNITED STATES.—*

13 *(1) IN GENERAL.—Not later than 90 days after*  
 14 *the Comptroller General of the United States receives*  
 15 *the plan required by subsection (a), the Comptroller*  
 16 *General shall—*

17 *(A) assess such plan; and*

18 *(B) notify the appropriate committees of*  
 19 *Congress of the findings of the Comptroller Gen-*  
 20 *eral with respect to the assessment conducted*  
 21 *under subparagraph (A).*

22 *(2) ELEMENTS.—The assessment conducted*  
 23 *under paragraph (1)(A) shall include the following:*

24 *(A) An assessment of whether the plan com-*  
 25 *ports with sound planning practices.*

1                   (B) *Identification of any gaps in the plan.*

2                   (C) *Formulation of such recommendations*  
 3                   *as the Comptroller General considers appro-*  
 4                   *priate.*

5           (d) *PERIODIC PROGRESS REPORTS.*—*Not later than*  
 6 *90 days after the date on which the Secretary submits the*  
 7 *plan under subsection (a), not less frequently than once*  
 8 *every 90 days thereafter until the applicability date set*  
 9 *forth in section 2(x)(1), and not less frequently than once*  
 10 *every 180 days thereafter for the seven-year period following*  
 11 *such applicability date, the Secretary shall submit to the*  
 12 *appropriate committees of Congress and the Comptroller*  
 13 *General a report on the progress of the Secretary in car-*  
 14 *rying out the plan and what steps, if any, the Secretary*  
 15 *has taken to address any recommendations formulated by*  
 16 *the Comptroller General pursuant to subsection (c)(2)(C).*

17           (e) *PUBLICATION.*—*The Secretary shall make available*  
 18 *to the public on an Internet website of the Department of*  
 19 *Veterans Affairs—*

20                   (1) *the plan required by subsection (a); and*

21                   (2) *the periodic progress reports required by sub-*  
 22                   *section (d).*

23           (f) *APPROPRIATE COMMITTEES OF CONGRESS DE-*  
 24 *FINED.*—*In this section, the term “appropriate committees*  
 25 *of Congress” means—*

1           (1) *the Committee on Veterans' Affairs and the*  
 2           *Committee on Appropriations of the Senate; and*

3           (2) *the Committee on Veterans' Affairs and the*  
 4           *Committee on Appropriations of the House of Rep-*  
 5           *resentatives.*

6 **SEC. 4. PROGRAMS TO TEST ASSUMPTIONS RELIED ON IN**  
 7                   **DEVELOPMENT OF COMPREHENSIVE PLAN**  
 8                   **FOR PROCESSING OF LEGACY APPEALS AND**  
 9                   **SUPPORTING NEW APPEALS SYSTEM.**

10       (a) *AUTHORIZATION.—*

11           (1) *IN GENERAL.—The Secretary of Veterans Af-*  
 12           *fairs may carry out such programs as the Secretary*  
 13           *considers appropriate to test any assumptions relied*  
 14           *upon in developing the comprehensive plan required*  
 15           *by section 3(a) and to test the feasibility and advis-*  
 16           *ability of any facet of the new appeals system.*

17           (2) *REPORTING REQUIRED.—Whenever the Sec-*  
 18           *retary determines, based on the conduct of a program*  
 19           *under paragraph (1), that legislative changes to the*  
 20           *new appeals system are necessary, the Secretary shall*  
 21           *submit to the Committee on Veterans' Affairs of the*  
 22           *Senate and the Committee on Veterans' Affairs of the*  
 23           *House of Representatives notice of such determina-*  
 24           *tion.*

1       **(b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM ON**  
2 **FULLY DEVELOPED APPEALS.—**

3           **(1) IN GENERAL.—***The Secretary of Veterans Af-*  
4 *fairs may, under subsection (a)(1), carry out a pro-*  
5 *gram to provide the option of an alternative appeals*  
6 *process that shall more quickly determine such ap-*  
7 *peals in accordance with this subsection.*

8           **(2) ELECTION.—**

9           **(A) FILING.—***In accordance with subpara-*  
10 *graph (B), a claimant may elect to file a fully*  
11 *developed appeal under the program by filing*  
12 *with the Secretary all of the following:*

13                   **(i)** *The notice of disagreement under*  
14 *chapter 71 of title 38, United States Code,*  
15 *along with the written election of the claim-*  
16 *ant to have the appeal determined under the*  
17 *program.*

18                   **(ii)** *All evidence that the claimant be-*  
19 *lieves is needed for the appeal as of the date*  
20 *of the filing.*

21                   **(iii)** *A statement of the argument in*  
22 *support of the claim, if any.*

23           **(B) TIMING.—***A claimant shall make an*  
24 *election under subparagraph (A) as part of the*

1        *notice of disagreement filed by the claimant in*  
 2        *accordance with subparagraph (A)(i).*

3            (C) *TRIAGE.*—*The Secretary shall, upon ex-*  
 4        *piration of the period specified in paragraph*  
 5        *(3)(C)(iii), ensure that an assessment is under-*  
 6        *taken of whether an appeal filed under subpara-*  
 7        *graph (A) of this paragraph satisfies the require-*  
 8        *ments for appeal under the program and provide*  
 9        *appropriate notification to the claimant of the*  
 10       *results of that assessment.*

11           (D) *REVERSION.*—

12            (i) *ELECTED REVERSION.*—*At any*  
 13        *time, a claimant who makes an election*  
 14        *under subparagraph (A) may elect to revert*  
 15        *to the standard appeals process. Such a re-*  
 16        *version shall be final.*

17            (ii) *AUTOMATIC REVERSION.*—*A claim-*  
 18        *ant described in clause (i), or a claimant*  
 19        *who makes an election under subparagraph*  
 20        *(A) but is later determined to be ineligible*  
 21        *for the program under paragraph (1), shall*  
 22        *revert to the standard appeals process with-*  
 23        *out any penalty to the claimant other than*  
 24        *the loss of the docket number associated with*  
 25        *the fully developed appeal.*



1           (E) *OUTREACH.*—*In providing claimants*  
2           *with notices of the determination of a claim dur-*  
3           *ing the period in which the program under para-*  
4           *graph (1) is carried out, the Secretary shall con-*  
5           *duct outreach as follows:*

6                   (i) *The Secretary shall provide to the*  
7                   *claimant (and to the representative of*  
8                   *record of the claimant, if any) information*  
9                   *regarding—*

10                   (I) *the program, including the ad-*  
11                   *vantages and disadvantages of the pro-*  
12                   *gram;*

13                   (II) *how to make an election*  
14                   *under subparagraph (A);*

15                   (III) *the limitation on the use of*  
16                   *new evidence described in subpara-*  
17                   *graph (C) of paragraph (3) and the de-*  
18                   *velopment of information under sub-*  
19                   *paragraph (D) of such paragraph;*

20                   (IV) *the ability of the claimant to*  
21                   *seek advice and education regarding*  
22                   *such process from veterans service or-*  
23                   *ganizations, attorneys, and claims*  
24                   *agents recognized under chapter 59 of*  
25                   *title 38, United States Code; and*

1                   (V) *the circumstances under which*  
2                   *the appeal will automatically revert to*  
3                   *the standard appeals process, including*  
4                   *by making a request for a hearing.*

5                   (ii) *The Secretary shall collaborate,*  
6                   *partner with, and give weight to the advice*  
7                   *of the three veterans service organizations*  
8                   *with the most members and such other*  
9                   *stakeholders as the Secretary considers ap-*  
10                  *propriate to publish on the Internet website*  
11                  *of the Department of Veterans Affairs an*  
12                  *online tutorial explaining the advantages*  
13                  *and disadvantages of the program.*

14               (3) *TREATMENT BY DEPARTMENT AND BOARD.—*

15               (A) *PROCESS.—Upon the election of a*  
16               *claimant to file a fully developed appeal pursu-*  
17               *ant to paragraph (2)(A), the Secretary shall—*

18                   (i) *not provide the claimant with a*  
19                   *statement of the case nor require the claim-*  
20                   *ant to file a substantive appeal; and*

21                   (ii) *transfer jurisdiction over the fully*  
22                   *developed appeal directly to the Board of*  
23                   *Veterans' Appeals.*

24               (B) *DOCKET.—*

1                   (i) *IN GENERAL.*—*The Board of Vet-*  
2                   *erans' Appeals shall—*

3                   (I) *maintain fully developed ap-*  
4                   *peals on a separate docket than stand-*  
5                   *ard appeals;*

6                   (II) *decide fully developed appeals*  
7                   *in the order that the fully developed*  
8                   *appeals are received on the fully devel-*  
9                   *oped appeal docket;*

10                  (III) *except as provided by clause*  
11                  *(ii), decide not more than one fully de-*  
12                  *veloped appeal for each four standard*  
13                  *appeals decided; and*

14                  (IV) *to the extent practicable, de-*  
15                  *cide each fully developed appeal by the*  
16                  *date that is one year following the date*  
17                  *on which the claimant files the notice*  
18                  *of disagreement.*

19                  (ii) *ADJUSTMENT.*—*Beginning one*  
20                  *year after the date on which the program*  
21                  *commences, the Board may adjust the num-*  
22                  *ber of standard appeals decided for each*  
23                  *fully developed appeal under clause (i)(III)*  
24                  *if the Board determines that such adjust-*

1           *ment is fair for both standard appeals and*  
2           *fully developed appeals.*

3           (C) *LIMITATION ON USE OF NEW EVI-*  
4           *DENCE.—*

5           (i) *IN GENERAL.—Except as provided*  
6           *by clauses (ii) and (iii)—*

7                   (I) *a claimant may not submit or*  
8                   *identify to the Board of Veterans' Ap-*  
9                   *peals any new evidence relating to a*  
10                  *fully developed appeal after filing such*  
11                  *appeal unless the claimant reverts to*  
12                  *the standard appeals process pursuant*  
13                  *to paragraph (2)(D); and*

14                  (II) *if a claimant submits or*  
15                  *identifies any such new evidence, such*  
16                  *submission or identification shall be*  
17                  *deemed to be an election to make such*  
18                  *a reversion pursuant to paragraph*  
19                  *(2)(D).*

20           (ii) *EVIDENCE GATHERED BY*  
21           *BOARD.—Clause (i) shall not apply to evi-*  
22           *dence developed pursuant to subparagraphs*  
23           *(D) and (E). The Board shall consider such*  
24           *evidence in the first instance without con-*

1            *sideration by the Veterans Benefits Admin-*  
2            *istration.*

3            *(iii) REPRESENTATIVE OF RECORD.—*

4            *The representative of record of a claimant*  
5            *for appeals purposes, if any, shall be pro-*  
6            *vided an opportunity to review the fully de-*  
7            *veloped appeal of the claimant and submit*  
8            *any additional arguments or evidence that*  
9            *the representative determines necessary dur-*  
10           *ing a period specified by the Board for pur-*  
11           *poses of this subparagraph.*

12           *(D) PROHIBITION ON REMAND FOR ADDI-*  
13           *TIONAL DEVELOPMENT.—If the Board of Vet-*  
14           *erans' Appeals determines that a fully developed*  
15           *appeal requires Federal records, independent*  
16           *medical opinions, or new medical examinations,*  
17           *the Board shall—*

18           *(i) in accordance with subparagraph*  
19           *(E), take such actions as may be necessary*  
20           *to develop such records, opinions, or exami-*  
21           *nations in accordance with section 5103A of*  
22           *title 38, United States Code;*

23           *(ii) retain jurisdiction of the fully de-*  
24           *veloped appeal without requiring a deter-*  
25           *mination by the Veterans Benefits Adminis-*

1            *tration based on such records, opinions, or*  
2            *examinations;*

3            *(iii) ensure the claimant, and the rep-*  
4            *resentative of record of a claimant, if any,*  
5            *receives a copy of such records, opinions, or*  
6            *examinations; and*

7            *(iv) provide the claimant a period of*  
8            *90 days after the date of mailing such*  
9            *records, opinions, or examinations during*  
10           *which the claimant may provide the Board*  
11           *any additional evidence without requiring*  
12           *the claimant to make a reversion pursuant*  
13           *to paragraph (2)(D).*

14           *(E) DEVELOPMENT UNIT.—*

15           *(i) ESTABLISHMENT.—The Board of*  
16           *Veterans' Appeals shall establish an office to*  
17           *develop Federal records, independent med-*  
18           *ical opinions, and new medical examina-*  
19           *tions pursuant to subparagraph (D)(i) that*  
20           *the Board determines necessary to decide a*  
21           *fully developed appeal.*

22           *(ii) REQUIREMENTS.—The Secretary*  
23           *shall—*

24           *(I) ensure that the Veterans Bene-*  
25           *fits Administration cooperates with the*

1           *Board of Veterans' Appeals in carrying*  
2           *out clause (i); and*

3                     *(II) transfer employees of the Vet-*  
4           *erans Benefits Administration who,*  
5           *prior to the enactment of this Act, were*  
6           *responsible for processing claims re-*  
7           *manded by the Board of Veterans' Ap-*  
8           *peals to positions within the office of*  
9           *the Board established under clause (i)*  
10          *in a number the Secretary determines*  
11          *sufficient to carry out such subpara-*  
12          *graph.*

13           *(F) HEARINGS.—Notwithstanding section*  
14          *7107 of title 38, United States Code, the Sec-*  
15          *retary may not provide hearings with respect to*  
16          *fully developed appeals under the program. If a*  
17          *claimant requests to hold a hearing pursuant to*  
18          *such section 7107, such request shall be deemed*  
19          *to be an election to revert to the standard ap-*  
20          *peals process pursuant to paragraph (2)(D).*

21          *(4) DURATION; APPLICABILITY.—*

22                     *(A) DURATION.—Subject to subsection (c),*  
23          *the Secretary may carry out the program during*  
24          *such period as the Secretary considers appro-*  
25          *priate.*

1           (B) *APPLICABILITY.*—*This section shall*  
 2           *apply only to fully developed appeals that are*  
 3           *filed during the period in which the program is*  
 4           *carried out pursuant to subparagraph (A).*

5           (5) *DEFINITIONS.*—*In this subsection:*

6           (A) *COMPENSATION.*—*The term “compensa-*  
 7           *tion” has the meaning given that term in section*  
 8           *101 of title 38, United States Code.*

9           (B) *FULLY DEVELOPED APPEAL.*—*The term*  
 10          *“fully developed appeal” means an appeal of a*  
 11          *claim for disability compensation that is—*

12               (i) *filed by a claimant in accordance*  
 13               *with paragraph (2)(A); and*

14               (ii) *considered in accordance with this*  
 15               *subsection.*

16          (C) *STANDARD APPEAL.*—*The term “stand-*  
 17          *ard appeal” means an appeal of a claim for dis-*  
 18          *ability compensation that is not a fully devel-*  
 19          *oped appeal.*

20          (c) *TERMINATION OF AUTHORITY.*—*The Secretary of*  
 21          *Veterans Affairs may not carry out a program under this*  
 22          *section after the applicability date set forth in section*  
 23          *2(x)(1).*



1 **SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO**  
2 **PROCESSING OF APPEALS BY DEPARTMENT**  
3 **OF VETERANS AFFAIRS.**

4 *The Secretary of Veterans Affairs shall periodically*  
5 *publish on an Internet website of the Department of Vet-*  
6 *erans Affairs the following:*

7 *(1) With respect to the processing by the Sec-*  
8 *retary of appeals under the new appeals system of de-*  
9 *cisions regarding claims for benefits under laws ad-*  
10 *ministered by the Secretary, the following:*

11 *(A) For the Veterans Benefits Administra-*  
12 *tion and, to the extent practicable, each regional*  
13 *office of the Department of Veterans Affairs, the*  
14 *number of—*

15 *(i) supplemental claims under section*  
16 *5108 of title 38, United States Code, as*  
17 *amended by section 2(i), that are pending;*  
18 *and*

19 *(ii) requests for higher-level review*  
20 *under section 5104B of such title, as added*  
21 *by section 2(g), that are pending.*

22 *(B) The number of appeals on any docket*  
23 *maintained under section 7107 of such title, as*  
24 *amended by section 2(t), that are pending.*

1           (C) *The average duration for processing*  
2           *claims and supplemental claims, disaggregated*  
3           *by regional office.*

4           (D) *The average duration for processing re-*  
5           *quests for higher-level review under section*  
6           *5104B of such title, as added by section 2(g),*  
7           *disaggregated by regional office.*

8           (E) *The average number of days that ap-*  
9           *peals are pending on a docket of the Board of*  
10          *Veterans' Appeals maintained pursuant to sec-*  
11          *tion 7107 of such title, as amended by section*  
12          *2(t), disaggregated by—*

13               (i) *appeals that include a request for a*  
14               *hearing;*

15               (ii) *appeals that do not include a re-*  
16               *quest for a hearing and do include sub-*  
17               *mittal of evidence; and*

18               (iii) *appeals that do not include a re-*  
19               *quest for a hearing and do not include sub-*  
20               *mittal of evidence.*

21           (F) *With respect to the policy developed and*  
22           *implemented under section 7107(e) of such title,*  
23           *as amended by section 2(t)—*

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

1                   (ii) the average time cases were pend-  
2                   ing prior to moving from one docket to an-  
3                   other; and

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

6                   (G) The total number of remands to obtain  
7                   advisory medical opinions under section 5109(d)  
8                   of title 38, United States Code, as added by sec-  
9                   tion 2(j).

10                  (H) The average number of days between  
11                  the date on which the Board remands a claim to  
12                  obtain an advisory medical opinion under sec-  
13                  tion 5109(d) of such title, as so added, and the  
14                  date on which the advisory medical opinion is  
15                  obtained.

16                  (I) The average number of days between the  
17                  date on which the Board remands a claim to ob-  
18                  tain an advisory medical opinion under section  
19                  5109(d) of such title, as so added, and the date  
20                  on which the agency of original jurisdiction  
21                  issues a decision taking that advisory opinion  
22                  into account.

23                  (J) The number of appeals that are granted,  
24                  the number of appeals that are remanded, and

1        *the number of appeals that are denied by the*  
2        *Board disaggregated by docket.*

3            *(K) The number of claimants each year that*  
4        *take action within the period set forth in section*  
5        *5110(a)(2) of such title, as added by section 2(l),*  
6        *to protect their effective date under such section*  
7        *5110(a)(2), disaggregated by the status of the*  
8        *claimants taking the actions, such as whether the*  
9        *claimant is represented by a veterans service or-*  
10       *ganization, the claimant is represented by an at-*  
11       *torney, or the claimant is taking such action pro*  
12       *se.*

13           *(L) The total number of times on average*  
14       *each claimant files under section 5110(a)(2) of*  
15       *such title, as so added, to protect their effective*  
16       *date under such section, disaggregated by the*  
17       *subparagraph of such section under which they*  
18       *file.*

19           *(M) The average duration, from the filing of*  
20       *an initial claim until the claim is resolved and*  
21       *claimants no longer take any action to protect*  
22       *their effective date under section 5110(a)(2) of*  
23       *such title, as so added—*

1                   (i) of claims under the new appeals  
2                   system, excluding legacy claims that opt in  
3                   to the new appeals system; and

4                   (ii) of legacy claims that opt in to the  
5                   new appeals system.

6                   (N) How frequently an action taken within  
7                   one year to protect an effective date under sec-  
8                   tion 5110(a)(2) of such title, as so added, leads  
9                   to additional grant of benefits, disaggregated by  
10                  action taken.

11                  (O) The average of how long it takes to com-  
12                  plete each segment of the claims process while  
13                  claimants are protecting the effective date under  
14                  such section, disaggregated by the time waiting  
15                  for the claimant to take an action and the time  
16                  waiting for the Secretary to take an action.

17                  (P) The number and the average amount of  
18                  retroactive awards of benefits from the Secretary  
19                  as a result of protected effective dates under such  
20                  section, disaggregated by action taken.

21                  (Q) The average number of times claimants  
22                  submit to the Secretary different claims with re-  
23                  spect to the same condition, such as an initial  
24                  claim and a supplemental claim.

1           (R) *The number of cases each year in which*  
2           *a claimant inappropriately tried to take simul-*  
3           *taneous actions, such as filing a supplemental*  
4           *claim while a higher-level review is pending,*  
5           *what actions the Secretary took in response, and*  
6           *how long it took on average to take those actions.*

7           (S) *In the case that the Secretary develops*  
8           *and implements a policy under section*  
9           *5104C(a)(2)(D) of such title, as amended by sec-*  
10          *tion 2(h)(1), the number of actions withdrawn*  
11          *and new actions taken pursuant to such policy.*

12          (T) *The number of times the Secretary re-*  
13          *ceived evidence relating to an appeal or higher-*  
14          *level review at a time not authorized under the*  
15          *new appeals system, disaggregated by actions*  
16          *taken by the Secretary to deal with the evidence*  
17          *and how long on average it took to take those ac-*  
18          *tions.*

19          (U) *The number of errors committed by the*  
20          *Secretary in carrying out the Secretary's duty to*  
21          *assist under section 5103A of title 38, United*  
22          *States Code, that were identified by higher-level*  
23          *review and by the Board, disaggregated by type*  
24          *of error, such as errors relating to private*  
25          *records and inadequate examinations, and a*

1        *comparison with errors committed by the Sec-*  
2        *retary in carrying out such duty with respect to*  
3        *appeals of decisions on legacy claims.*

4            (V) *An assessment of the productivity of em-*  
5        *ployees at the regional offices and at the Board,*  
6        *disaggregated by level of experience of the em-*  
7        *ployees.*

8            (W) *The percentage of cases that are decided*  
9        *within the goals established by the Secretary for*  
10       *deciding cases, disaggregated by cases that in-*  
11       *volve a supplemental claim, cases that involve*  
12       *higher-level review, and by docket maintained*  
13       *under section 7107(a) of such title, as amended*  
14       *by section 2(t), or in the case that the Secretary*  
15       *has not established goals for deciding cases, the*  
16       *percentage of cases which are decided within one*  
17       *year, two years, three years, and more than three*  
18       *years, disaggregated by docket.*

19            (X) *Of the cases that involve higher-level re-*  
20        *view, the percentage of decisions that are over-*  
21        *turned in whole or in part by the higher-level*  
22        *adjudicator, that are upheld by the higher-level*  
23        *adjudicator, and that are returned for correction*  
24        *of an error.*

1           (Y) *The frequency by which the Secretary*  
 2           *readjudicates a claim pursuant to section 5108*  
 3           *of such title, as amended by section 2(i), and the*  
 4           *frequency by which readjudication pursuant to*  
 5           *section 5108 of such title, as so amended, results*  
 6           *in an award of benefits.*

7           (Z) *In any case in which the Board decides*  
 8           *to screen cases for a purpose described in section*  
 9           *7107(d) of such title, as amended by section*  
 10          *2(t)(1)—*

11               (i) *a description of the way in which*  
 12               *the cases are screened and the purposes for*  
 13               *which they are screened;*

14               (ii) *a description of the effect such*  
 15               *screening has had on—*

16                       (I) *the timeliness of the issuance*  
 17                       *of decisions of the Board; and*

18                       (II) *the inventory of cases before*  
 19                       *the Board; and*

20               (iii) *the type and frequency of develop-*  
 21               *ment errors detected through such screening.*

22          (2) *With respect to the processing by the Sec-*  
 23          *retary of appeals of decisions on legacy claims, the*  
 24          *following:*



1           (A) *The average duration of each segment of*  
2           *the appeals process, disaggregated by periods in*  
3           *which the Secretary is waiting for a claimant to*  
4           *take an action and periods in which the claim-*  
5           *ant is waiting for the Secretary to take an ac-*  
6           *tion.*

7           (B) *The frequency by which appeals lead to*  
8           *additional grant of benefits by the Secretary,*  
9           *disaggregated by whether the additional benefits*  
10          *are a result of additional evidence added after*  
11          *the initial decision.*

12          (C) *The number and average amount of ret-*  
13          *roactive awards of benefits resulting from an ap-*  
14          *peal.*

15          (D) *The average duration from filing a leg-*  
16          *acy claim with the Secretary until all appeals*  
17          *and remands relating to such legacy claim are*  
18          *completed.*

19          (E) *The average number of times claimants*  
20          *submit to the Secretary different claims with re-*  
21          *spect to the same condition, such as an initial*  
22          *claim, new and material evidence, or a claim for*  
23          *an increase in benefits.*

24          (F) *An assessment of the productivity of*  
25          *employees at the regional offices and at the*

1        *Board, disaggregated by level of experience of the*  
2        *employees.*

3            *(G) The average number of days the dura-*  
4        *tion of an appeal is extended because the Sec-*  
5        *retary secured or attempted to secure an advi-*  
6        *sory medical opinion under section 5109 of title*  
7        *38, United States Code, or section 7109 of such*  
8        *title (as in effect on the day before the date of*  
9        *the enactment of this Act).*

10          *(H) The frequency by which claims are re-*  
11        *opened pursuant to section 5108 of such title and*  
12        *the frequency by which such reopening results in*  
13        *an award of benefits.*

14          *(3) With respect to the processing by the Sec-*  
15        *retary of appeals of decisions on legacy claims that*  
16        *opt in to the new appeals system, the following:*

17            *(A) The cumulative number of such legacy*  
18        *claims.*

19            *(B) The portion of work in the new appeals*  
20        *system attributable to appeals of decisions on*  
21        *such legacy claims.*

22            *(C) The average period such legacy claims*  
23        *were pending before opting in to the new appeals*  
24        *system and the average period required to adju-*

1        *dicate such legacy claims on average after opting*  
 2        *in—*

3                *(i) with respect to claims at a regional*  
 4                *office of the Department of Veterans Affairs,*  
 5                *disaggregated by—*

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

9                        *(II) requests for higher-level re-*  
 10                        *view under section 5104B of such title,*  
 11                        *as added by section 2(g); and*

12                *(ii) with respect to appeals,*  
 13                *disaggregated by docket of the Board main-*  
 14                *tained under section 7107 of such title, as*  
 15                *amended by section 2(t).*

16    **SEC. 6. DEFINITIONS.**

17        *In this Act:*

18                *(1) CLAIMANT.—The term “claimant” has the*  
 19                *meaning given such term in section 5100 of title 38,*  
 20                *United States Code.*

21                *(2) LEGACY CLAIMS.—The term “legacy claim”*  
 22                *means a claim—*

23                        *(A) that was submitted to the Secretary of*  
 24                        *Veterans Affairs for a benefit under a law ad-*  
 25                        *ministered by the Secretary; and*

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

5                   (3) *OPT IN*.—The term “opt in” means, with re-  
6                   spect to a legacy claim of a claimant, that the claim-  
7                   ant elects to subject the claim to the new appeals sys-  
8                   tem pursuant to—

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

10                  (B) such other mechanism as the Secretary  
11                  may prescribe for purposes of carrying out this  
12                  Act and the amendments made by this Act.

13                  (4) *NEW APPEALS SYSTEM*.—The term “new ap-  
14                  peals system” means the set of processes and mecha-  
15                  nisms by which the Secretary processes, pursuant to  
16                  the authorities and requirements modified by section  
17                  2, claims for benefits under laws administered by the  
18                  Secretary.

Attest:

Secretary.



115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H.R. 2288**

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**AMENDMENT**