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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. _____

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

Mr. BOST introduced the following bill; which was referred to the Committee
on _____

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”.

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 fol-
7 lowing new paragraphs:

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

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

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

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

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

24 (2) in paragraph (2)(B)(i) by striking “, a
25 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
4 paragraph:

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
9 title.”.

10 (c) MODIFICATION OF RULE REGARDING DIS-
11 ALLOWED CLAIMS.—Section 5103A(f) of such title is
12 amended—

13 (1) by striking “reopen” and inserting “readju-
14 dicate”; and

15 (2) by striking “material” and inserting “rel-
16 evant”.

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

19 (1) by redesignating subsections (e) through (g)
20 as subsections (g) through (i), respectively; and

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

23 “(e) APPLICABILITY OF DUTY TO ASSIST.—(1) The
24 Secretary’s duty to assist under this section shall apply
25 only to a claim, or supplemental claim, for a benefit under

1 a law administered by the Secretary until the time that
2 a claimant is provided notice of the agency of original ju-
3 risdiction's decision with respect to such claim, or supple-
4 mental claim, under section 5104 of this title.

5 “(2) The Secretary's duty to assist under this section
6 shall not apply to higher-level review by the agency of
7 original jurisdiction, pursuant to section 5104B of this
8 title, or to review on appeal by the Board of Veterans'
9 Appeals.

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

20 “(2)(A) If the Board of Veterans' Appeals, during re-
21 view on appeal of an agency of original jurisdiction deci-
22 sion, identifies or learns of an error on the part of the
23 agency of original jurisdiction to satisfy its duties under
24 this section, and that error occurred prior to the agency
25 of original jurisdiction decision on appeal, unless the claim

1 can be granted in full, the Board shall remand the claim
2 to the agency of original jurisdiction for correction of such
3 error and readjudication.

4 “(B) Remand for correction of such error may in-
5 clude directing the agency of original jurisdiction to obtain
6 an advisory medical opinion under section 5109 of this
7 title.

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

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

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

19 “(1) Identification of the issues adjudicated.

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

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

24 “(4) Identification of findings favorable to the
25 claimant.

1 “(5) In the case of a denial of a claim, identi-
2 fication of elements not satisfied leading to the de-
3 nial.

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

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

9 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

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

13 **“§ 5104A. Binding nature of favorable findings**

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

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

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

23 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-
24 NAL JURISDICTION.—

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

5 **“§ 5104B. Higher-level review by the agency of origi-**
6 **nal jurisdiction**

7 “(a) IN GENERAL.—(1) A claimant may request a
8 review of the decision of the agency of original jurisdiction
9 by a higher-level adjudicator within the agency of original
10 jurisdiction.

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

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

16 “(A) in writing in such form as the Secretary
17 may prescribe; and

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

20 “(2) Such request may specifically indicate whether
21 such review is requested by a higher-level adjudicator at
22 the same office within the agency of original jurisdiction
23 or by an adjudicator at a different office of the agency
24 of original jurisdiction. The Secretary shall not deny such

1 a request for review by an adjudicator at a different office
2 of the agency of original jurisdiction without good cause.

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

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

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

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

15 “(e) DE NOVO REVIEW.—A review of the decision of
16 the agency of original jurisdiction by a higher-level adjudi-
17 cator within the agency of original jurisdiction shall be de
18 novo.”.

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

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

24 (h) OPTIONS FOLLOWING DECISION BY AGENCY OF
25 ORIGINAL JURISDICTION.—

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

5 **“§ 5104C. Options following decision by agency of**
6 **original jurisdiction**

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

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

15 “(B) File a supplemental claim under section
16 5108 of this title.

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

19 “(2)(A) Once a claimant takes an action set forth in
20 paragraph (1), the claimant may not take another action
21 set forth in that paragraph with respect to such claim
22 until—

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

1 “(ii) the request for higher-level review, supple-
2 mental claim, or notice of disagreement is with-
3 drawn.

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

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

10 “(D) The Secretary may, as the Secretary considers
11 appropriate, develop and implement a policy for claimants
12 who—

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

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

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

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

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

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

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

9 (i) SUPPLEMENTAL CLAIMS.—

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

12 **“§ 5108. Supplemental claims**

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

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

“5108. Supplemental claims.”.

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

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

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

10 (k) RESTATEMENT OF REQUIREMENT FOR EXPE-
11 DITED TREATMENT OF REMANDED CLAIMS.—Section
12 5109B of such title is amended to read as follows:

13 **“§ 5109B. Expedited treatment of remanded claims**

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

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

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

24 “(a)(1) Unless specifically provided otherwise in this
25 chapter, the effective date of an award based on an initial

1 claim, or a supplemental claim, of compensation, depend-
2 ency and indemnity compensation, or pension, shall be
3 fixed in accordance with the facts found, but shall not be
4 earlier than the date of receipt of application therefor.

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

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

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

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

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

1 “(E) 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 Court of Appeals for
4 Veterans Claims issues a decision.

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

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

13 (A) by striking “reopened” and inserting
14 “readjudicated”;

15 (B) by striking “material” and inserting
16 “relevant”; and

17 (C) by striking “reopening” and inserting
18 “readjudication”.

19 (m) DEFINITION OF AWARD OR INCREASED AWARD
20 FOR PURPOSES OF PROVISIONS RELATING TO COM-
21 MENCEMENT OF PERIOD OF PAYMENT.—Section
22 5111(d)(1) of such title is amended by striking “or re-
23 opened award” and inserting “award or award based on
24 a supplemental claim”.

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

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

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

16 (q) MODIFICATION OF PROCEDURES FOR APPEALS
17 TO BOARD OF VETERANS’ APPEALS.—

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

20 (A) in subsection (a), by striking the first
21 sentence and inserting “Appellate review shall
22 be initiated by the filing of a notice of disagree-
23 ment in the form prescribed by the Secretary.”;
24 and

1 (B) by amending subsection (b) to read as
2 follows:

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

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

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

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

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

22 “(C) Notices of disagreement shall be filed with the
23 Board.

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

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

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

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

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

15 (C) by amending subsection (c) to read as
16 follows:

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

24 (D) by striking subsection (d) and insert-
25 ing the following new subsection (d):

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

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

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

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

“7105. Filing of appeal.”.

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

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

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

22 (s) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
23 APPEALS.—

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

1 (2) 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
4 7106.

5 (t) MODIFICATIONS RELATING TO APPEALS: DOCK-
6 ETS; HEARINGS.—

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

9 **“§ 7107. Appeals: dockets; hearings**

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

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

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

24 “(B) Cases described in this subparagraph are the
25 following:

1 “(i) Cases in which no Board hearing is re-
2 requested and no additional evidence will be sub-
3 mitted.

4 “(ii) Cases in which a Board hearing is re-
5 requested in the notice of disagreement.

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

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

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

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

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

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

21 “(C) for other sufficient cause shown.

22 “(c) MANNER AND SCHEDULING OF HEARINGS FOR
23 CASES ON DOCKET THAT MAY INCLUDE HEARING.—(1)
24 For cases on a docket maintained by the Board under sub-
25 section (a) that may include a hearing, in which a hearing

1 is requested in the notice of disagreement, the Board shall
2 notify the appellant whether a Board hearing will be
3 held—

4 “(A) at its principal location, or

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

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

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

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

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

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

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

8 (2) REPORT.—Not later than the date that is
9 90 days before the date set forth in subsection (x),
10 the Secretary shall submit to the Committee on Vet-
11 erans’ Affairs of the Senate and the Committee on
12 Veterans’ Affairs of the House of Representatives a
13 report setting forth a description of the docket that
14 will be maintained under section 7107 of title 38,
15 United States Code, as amended by paragraph (1),
16 for cases in which no hearing before the Board of
17 Veterans’ Appeals is requested in the notice of dis-
18 agreement but the appellant requests, in the notice
19 of disagreement, an opportunity to submit additional
20 evidence.

21 (u) REPEAL OF CERTAIN AUTHORITY FOR INDE-
22 PENDENT MEDICAL OPINIONS.—

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

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

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

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

13 (w) EVIDENTIARY RECORD BEFORE BOARD OF VET-
14 ERANS’ APPEALS.—

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

18 **“§ 7113. Evidentiary record before the Board of Vet-**
19 **erans’ Appeals**

20 “(a) CASES WITH NO REQUEST FOR A HEARING OR
21 ADDITIONAL EVIDENCE.—For cases in which a hearing
22 before the Board of Veterans’ Appeals is not requested
23 in the notice of disagreement and no request was made
24 to submit evidence, the evidentiary record before the
25 Board shall be limited to the evidence of record at the

1 time of the decision of the agency of original jurisdiction
2 on appeal.

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

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

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

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

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

1 evidence considered by the agency of original jurisdiction
2 in the decision on appeal.

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

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

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

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

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

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

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

23 “(2) a general statement—

24 “(A) reflecting whether evidence was not
25 considered in making the decision because the

1 evidence was received at a time when not per-
2 mitted under section 7113 of this title; and

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

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

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

10 (x) APPLICABILITY.—

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

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

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

24 (i) a certification that the Secretary
25 confirms, without delegation, that the De-

1 department of Veterans Affairs has the re-
2 sources, personnel, office space, proce-
3 dures, and information technology re-
4 quired—

5 (I) to carry out the modernized
6 appeals system; and

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

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

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

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

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

5 (B) elects to subject the claim to the mod-
6 ernized appeals system.

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

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

18 (6) PUBLICATION OF APPLICABILITY DATE.—
19 Not later than the date on which the modernized ap-
20 peals system goes into effect (or the first phase of
21 the modernized appeals system goes into effect
22 under paragraph (4), as the case may be), the Sec-
23 retary shall publish in the Federal Register such
24 date.

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

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

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

14 (2) implementing the modernized appeals sys-
15 tem; and

16 (3) timely processing, under the modernized ap-
17 peals system, of—

18 (A) supplemental claims under section
19 5108 of title 38, United States Code, as amend-
20 ed by section 2(i);

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

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

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

3 (1) An estimate (including a detailed descrip-
4 tion of the bases the Secretary uses to develop such
5 estimate) of the—

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

12 (B) numbers of appeals of decisions on leg-
13 acy claims and the timeliness of deciding such
14 appeals.

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

21 (3) Delineation of the personnel requirements
22 of the Administration and the Board, including
23 staffing levels during the—

24 (A) period in which the Administration and
25 the Board are concurrently processing—

1 (i) appeals of decisions on legacy
2 claims; and

3 (ii) appeals of decisions on non-legacy
4 claims under the modernized appeals sys-
5 tem; and

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

9 (4) Identification of the legal authorities under
10 which the Administration or the Board may—

11 (A) hire additional employees to conduct
12 the concurrent processing described in para-
13 graph (2)(A); and

14 (B) remove employees who are no longer
15 required by the Administration or the Board
16 once the Administration and the Board are no
17 longer processing any appeals of decisions on
18 legacy claims.

19 (5) An estimate of the amount of time the Ad-
20 ministration and the Board will require to hire addi-
21 tional employees as described in paragraph (3)(A)
22 once funding has been made available for such pur-
23 pose, including a comparison of such estimate and
24 the historical average time required by the Adminis-
25 tration and the Board to hire additional employees.

1 (6) A description of the modifications to the in-
2 formation technology systems of the Administration
3 and the Board that the Administration and the
4 Board require to carry out the modernized appeals
5 system, including cost estimates and a timeline for
6 making the modifications.

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

10 (A) an estimate of the amount of time the
11 Administration and the Board will require to
12 acquire any additional office space to carry out
13 processing of appeals of decisions on legacy
14 claims and processing of appeals under the
15 modernized appeals system;

16 (B) a comparison of the estimate under
17 subparagraph (A) and the historical average
18 time required by the Administration and the
19 Board to acquire new office space; and

20 (C) a plan for using telework to accommo-
21 date staff exceeding available office space, in-
22 cluding how the Administration and the Board
23 will provide training and oversight with respect
24 to such teleworking.

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

10 (9) An outline of the outreach the Secretary ex-
11 pects to conduct to inform veterans, families of vet-
12 erans, survivors of veterans, veterans service organi-
13 zations, military service organizations, Congressional
14 caseworkers, advocates for veterans, and such other
15 stakeholders as the Secretary considers appropriate
16 about the modernized appeals system, including—

17 (A) a description of the resources required
18 to conduct such outreach; and

19 (B) timelines for such outreach.

20 (10) Identification of and a timeline for—

21 (A) any training that may be required as
22 a result of hiring new employees to carry out
23 the modernized appeals system or to process
24 appeals of decisions on legacy claims; and

1 (B) any re-training of existing employees
2 that may be required to carry out such system
3 or to process such claims.

4 (11) Identification of—

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

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

19 (12) Estimated timelines for updating any pol-
20 icy guidance, internet websites, and official forms
21 that may be necessary to carry out the modernized
22 appeals system, including—

23 (A) identification of which offices and enti-
24 ties will be involved in efforts relating to such
25 updating; and

1 (B) historical information about how long
2 similar update efforts have taken.

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

9 (14) An outline of the circumstances under
10 which claimants with pending appeals of decisions
11 on legacy claims would be authorized to have their
12 appeals reviewed under the modernized appeals sys-
13 tem.

14 (15) A delineation of the key goals and mile-
15 stones for reducing the number of pending appeals
16 that are not processed under the modernized appeals
17 system, including the expected number for each of
18 appeals, remands, and hearing requests at the Ad-
19 ministration and the Board each year, beginning
20 with the one year period beginning on the date of
21 the enactment of this Act, until there are no longer
22 any appeals pending before the Administration or
23 the Board for a decision on a legacy claim.

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

4 (A) tracking progress of such implementa-
5 tion;

6 (B) evaluating the efficiency and effective-
7 ness of such implementation; and

8 (C) identifying potential issues with re-
9 spect to such implementation.

10 (17) A description of each risk factor associated
11 with each element of the plan and a contingency
12 plan to minimize each such risk.

13 (c) REVIEW BY COMPTROLLER GENERAL OF THE
14 UNITED STATES.—

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

19 (A) assess such plan in writing; and

20 (B) submit to the Committee on Veterans'
21 Affairs of the Senate and the Committee on
22 Veterans' Affairs of the House of Representa-
23 tives the findings of the Comptroller General
24 with respect to the assessment conducted under
25 subparagraph (A).

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

3 (A) An assessment of whether the plan
4 comports with sound planning practices.

5 (B) Identification of any improvements the
6 Comptroller considers appropriate for the plan.

7 (C) Formulation of such recommendations
8 as the Comptroller General considers appro-
9 priate.

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

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

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

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

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

13 (C) the average age of such appeals.

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

16 (A) the number of pending appeals and the
17 number of completed appeals;

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

22 (C) the average age of such appeals.

23 (4) The efficacy of the information systems of
24 the Department of Veterans Affairs to implement
25 the modernized appeals system.

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

3 (e) REPORT ON CERTAIN DOCKET.—Not later than
4 the date that is 90 days before the date set forth in section
5 2(x)(1), the Secretary shall submit to the Committee on
6 Veterans' Affairs of the Senate and the Committee on Vet-
7 erans' Affairs of the House of Representatives a report
8 setting forth a description of the docket that will be main-
9 tained under section 7107 of title 38, United States Code,
10 as amended by section 2, for cases in which no hearing
11 before the Board of Veterans' Appeals is requested in the
12 notice of disagreement but the appellant requests, in the
13 notice of disagreement, an opportunity to submit addi-
14 tional evidence.

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

20 (a) AUTHORIZATION.—

21 (1) IN GENERAL.—The Secretary of Veterans
22 Affairs may carry out such programs as the Sec-
23 retary considers appropriate to test any assumptions
24 relied upon in developing the comprehensive plan re-
25 quired by section 3(a) and to test the feasibility and

1 advisability of any facet of the modernized appeals
2 system. The Secretary may not carry out such a pro-
3 gram until the Secretary notifies the Committee on
4 Veterans' Affairs of the Senate and the Committee
5 on Veterans' Affairs of the House of Representatives
6 of the program, including the reasons for carrying
7 out the program.

8 (2) REPORTING REQUIRED.—Whenever the Sec-
9 retary determines, based on the conduct of a pro-
10 gram under paragraph (1), that legislative changes
11 to the modernized appeals system are necessary, the
12 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
15 notice of such determination.

16 (b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM
17 ON FULLY DEVELOPED APPEALS.—

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

23 (2) ELECTION.—

24 (A) FILING.—In accordance with subpara-
25 graph (B), a claimant may elect to file a fully

1 developed appeal under the program by filing
2 with the Secretary all of the following:

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

8 (ii) All evidence that the claimant be-
9 lieves is needed for the appeal as of the
10 date of the filing.

11 (iii) A statement of the argument in
12 support of the claim, if any.

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

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

25 (D) REVERSION.—

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

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

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

21 (i) The Secretary shall provide to the
22 claimant (and to the representative of
23 record of the claimant, if any) information
24 regarding—

1 (I) the program, including the
2 advantages and disadvantages of the
3 program;

4 (II) how to make an election
5 under subparagraph (A);

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

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

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

22 (ii) The Secretary shall collaborate,
23 partner with, and give weight to the advice
24 of the three veterans service organizations
25 with the most members and such other

1 stakeholders as the Secretary considers ap-
2 propriate to publish on the Internet
3 website of the Department of Veterans Af-
4 fairs an online tutorial explaining the ad-
5 vantages and disadvantages of the pro-
6 gram.

7 (3) TREATMENT BY DEPARTMENT AND
8 BOARD.—

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

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

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

18 (B) DOCKET.—

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

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

24 (II) decide fully developed ap-
25 peals in the order that the fully devel-

1 oped appeals are received on the fully
2 developed appeal docket;

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

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

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

20 (C) LIMITATION ON USE OF NEW EVI-
21 DENCE.—

22 (i) IN GENERAL.—Except as provided
23 by clauses (ii) and (iii)—

24 (I) a claimant may not submit or
25 identify to the Board of Veterans' Ap-

1 peals any new evidence relating to a
2 fully developed appeal after filing such
3 appeal unless the claimant reverts to
4 the standard appeals process pursuant
5 to paragraph (2)(D); and

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

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

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

1 during a period specified by the Board for
2 purposes of this subparagraph.

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

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

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

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

23 (iv) provide the claimant a period of
24 90 days after the date of mailing such
25 records, opinions, or examinations during

1 which the claimant may provide the Board
2 any additional evidence without requiring
3 the claimant to make a reversion pursuant
4 to paragraph (2)(D).

5 (E) DEVELOPMENT UNIT.—

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

13 (ii) REQUIREMENTS.—The Secretary
14 shall—

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

19 (II) transfer employees of the
20 Veterans Benefits Administration
21 who, prior to the enactment of this
22 Act, were responsible for processing
23 claims remanded by the Board of Vet-
24 erans' Appeals to positions within the
25 office of the Board established under

1 clause (i) in a number the Secretary
2 determines sufficient to carry out
3 such subparagraph.

4 (F) HEARINGS.—Notwithstanding section
5 7107 of title 38, United States Code, the Sec-
6 retary may not provide hearings with respect to
7 fully developed appeals under the program. If a
8 claimant requests to hold a hearing pursuant to
9 such section 7107, such request shall be deemed
10 to be an election to revert to the standard ap-
11 peals process pursuant to paragraph (2)(E).

12 (4) DURATION; APPLICABILITY.—

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

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

21 (5) DEFINITIONS.—In this subsection:

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

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

4 (i) filed by a claimant in accordance
5 with paragraph (2)(A); and

6 (ii) considered in accordance with this
7 subsection.

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

12 (e) TERMINATION.—The Secretary may not carry out
13 any program under this section after the date on the which
14 the Secretary implements the modernized appeals system.

15 **SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO**
16 **PROCESSING OF APPEALS BY DEPARTMENT**
17 **OF VETERANS AFFAIRS.**

18 On the first business day of each month the Secretary
19 of Veterans Affairs shall publish on an internet website
20 of the Department of Veterans Affairs the following:

21 (1) As applicable, with respect to the processing
22 by the Secretary of appeals under the modernized
23 appeals system of decisions regarding claims for ben-
24 efits under laws administered by the Secretary:

1 (A) For the Veterans Benefits Administra-
2 tion, the number of—

3 (i) supplemental claims under section
4 5108 of title 38, United States Code, as
5 amended by section 2(i), that are pending;
6 and

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

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

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

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

20 (E) The average number of days that ap-
21 peals are pending on the non-hearing, no-addi-
22 tional evidence option docket of the Board of
23 Veterans' Appeals maintained pursuant to sec-
24 tion 7107 of such title, as amended by section
25 2(t), and any other docket maintained by the

1 Board under such section that prohibits the
2 submittal of additional evidence.

3 (F) The average number of days that ap-
4 peals are pending on dockets maintained under
5 such section in which hearings are requested or
6 submittal of additional evidence is allowed.

7 (G) The average number of days that an
8 appeal is pending on any other docket main-
9 tained by the Board under such section.

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

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

16 (ii) the average time cases were pend-
17 ing prior to moving from one docket to an-
18 other; and

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

21 (I) The total number of remands to obtain
22 advisory medical opinions under section
23 5109(d) of title 38, United States Code, as
24 added by section 2(i)(1).

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

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

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

18 (M) The number of claimants each year
19 that take action within the period set forth in
20 section 5110(a)(2) of such title, as added by
21 section 2(l), to protect their effective date under
22 such section 5110(a)(2), disaggregated by the
23 status of the claimants taking the actions, such
24 as whether the claimant is represented by a vet-
25 erans service organization, the claimant is rep-

1 resented by an attorney or accredited agent, or
2 the claimant is taking such action pro se.

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

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

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

18 (ii) of legacy claims that opt in to the
19 modernized appeals system.

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

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

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

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

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

24 (U) In the case that the Secretary develops
25 and implements a policy under section

1 5104C(a)(2)(D) of such title, as amended by
2 section 2(h)(1), the number of actions with-
3 drawn and new actions taken pursuant to such
4 policy.

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

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

23 (X) An assessment of the productivity of
24 employees at the regional offices and at the

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

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

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

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

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

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

23 (E) The average number of times claim-
24 ants submit to the Secretary different claims
25 with respect to same condition, such as an ini-

1 tial claim, new and material evidence, or a
2 claim for an increase in benefits.

3 (F) An assessment of the productivity of
4 employees at the regional offices and at the
5 Board, disaggregated by level of experience of
6 the employees.

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

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 modernized appeals system, the fol-
17 lowing:

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

20 (B) The portion of work in the modernized
21 appeals system attributable to appeals of deci-
22 sions on such legacy claims.

23 (C) The average period such legacy claims
24 were pending before opting in to the modern-
25 ized appeals system and the average period re-

1 required to adjudicate such legacy claims on aver-
2 age after opting in—

3 (i) with respect to claims at a regional
4 office of the Department of Veterans Af-
5 fairs, 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
11 title, as added by section 2(g); and

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

16 **SEC. 6. DEFINITIONS.**

17 In this Act:

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

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

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

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

5 (3) The term “opt in” means, with respect to
6 a legacy claim of a claimant, that the claimant elects
7 to subject the claim to the modernized 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) The term “modernized appeals system”
14 means the set of processes and mechanisms by
15 which the Secretary processes, pursuant to the au-
16 thorities and requirements modified by section 2,
17 claims for benefits under laws administered by the
18 Secretary.