

[DISCUSSION DRAFT]

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 re-
13 viewer identifies an error on the part of the agency of
14 original jurisdiction to satisfy its duties under this section,
15 and that error occurred prior to the agency of original ju-
16 risdiction decision being reviewed, unless the claim can be
17 granted in full, the higher-level reviewer shall return the
18 claim for correction of such error and readjudication.

19 “(2)(A) If the Board of Veterans' Appeals, during re-
20 view on appeal of an agency of original jurisdiction deci-
21 sion, identifies an error on the part of the agency of origi-
22 nal jurisdiction to satisfy its duties under this section, and
23 that error occurred prior to the agency of original jurisdic-
24 tion decision on appeal, unless the claim can be granted
25 in full, the Board shall remand the claim to the agency

1 of original jurisdiction for correction of such error and re-
2 adjudication.

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

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

10 “(b) In any case where the Secretary denies a benefit
11 sought, the notice required by subsection (a) shall also in-
12 clude all of the following:

13 “(1) Identification of the issues adjudicated.

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

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

18 “(4) Identification of findings favorable to the
19 claimant.

20 “(5) Identification of elements not satisfied
21 leading to the denial.

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

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

4 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

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

8 **“§ 5104A. Binding nature of favorable findings**

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

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

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

18 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-
19 NAL JURISDICTION.—

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

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

3 “(a) IN GENERAL.—A claimant may request a review
4 of the decision of the agency of original jurisdiction by
5 a higher-level adjudicator within the agency of original ju-
6 risdiction. The Secretary shall approve each such request,
7 including with respect to the selection of the high-level ad-
8 judicator under subsection (b)(2).

9 “(b) TIME AND MANNER OF REQUEST.—(1) A re-
10 quest for higher-level review by the agency of original ju-
11 risdiction 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
18 the same office within the agency of original jurisdiction
19 or by an adjudicator at a different office of the agency
20 of original jurisdiction.

21 “(c) DECISION.—Notice of a higher-level review deci-
22 sion under this section shall be provided in writing. Such
23 notice shall include—

24 “(1) whether the claimant submitted any evi-
25 dence that was untimely or otherwise submitted in

1 a manner that did not allow the evidence to be con-
2 sidered; and

3 “(2) an explanation of options for the claimant
4 to have such evidence considered.

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

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

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

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

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

20 (1) IN GENERAL.—Chapter 51 of such title, as
21 amended by subsection (g), is further amended by
22 inserting after section 5104B, as added by such sub-
23 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
4 to paragraph (2), in any case in which the Secretary de-
5 nies a claim, the claimant may take any of the following
6 actions on or before the date that is one year after the
7 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
10 under 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 sec-
14 tion 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 such claim
18 until—

19 “(i) the higher-level review, supplemental claim,
20 or appeal in connection with the notice of disagree-
21 ment is adjudicated; or

22 “(ii) the request for higher-level review, supple-
23 mental claim, or notice of disagreement is with-
24 drawn.

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

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

7 “(b) MORE THAN ONE YEAR AFTER DECISION.—In
8 any case in which the Secretary denies a claim and more
9 than one year has passed since the date on which the
10 agency of original jurisdiction issues a decision with re-
11 spect to that claim, the claimant may file a supplemental
12 claim under section 5108 of this title.”.

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

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

18 (i) SUPPLEMENTAL CLAIMS.—

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

21 **“§ 5108. Supplemental claims**

22 “If new and relevant evidence is presented or secured
23 with respect to a supplemental claim, the Secretary shall
24 readjudicate the claim taking into consideration any evi-

1 dence added to the record prior to the former disposition
2 of the claim.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions at the beginning of chapter 51 of such title is
5 amended by striking the item relating to section
6 5108 and inserting the following new item:

“5108. Supplemental claims.”.

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

10 “(d)(1) The Board of Veterans’ Appeals may remand
11 a claim to direct the agency of original jurisdiction to ob-
12 tain an advisory medical opinion from an independent
13 medical expert under this section to correct an error on
14 the part of the agency of original jurisdiction to satisfy
15 its duties under section 5103A of this title when such
16 error occurred prior to the agency of original jurisdiction
17 decision on appeal.

18 “(2) The Board’s remand instructions under para-
19 graph (1) shall include the questions to be posed to the
20 independent medical expert providing the advisory medical
21 opinion.”.

22 (k) RESTATEMENT OF REQUIREMENT FOR EXPE-
23 DITED TREATMENT OF REMANDED CLAIMS.—Section
24 5109B of such title is amended to read as follows:

1 **“§ 5109B. Expedited treatment of remanded claims**

2 “The Secretary shall take such actions as may be
3 necessary to provide for the expeditious treatment by the
4 agency of original jurisdiction of any claim that is re-
5 manded by the Board of Veterans’ Appeals.”.

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

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

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

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

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

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

1 after the date on which the agency of original juris-
2 diction 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
5 agency 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
8 after the date on which the Board of Veterans’ Ap-
9 peals issues a decision.

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

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

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

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

1 (B) by striking “material” and inserting
2 “relevant”; and

3 (C) by striking “reopening” and inserting
4 “readjudication”.

5 (m) DEFINITION OF AWARD OR INCREASED AWARD
6 FOR PURPOSES OF PROVISIONS RELATING TO COM-
7 MENCEMENT OF PERIOD OF PAYMENT.—Section
8 5111(d)(1) of such title is amended by striking “or re-
9 opened award” and inserting “award or award based on
10 a supplemental claim”.

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

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

23 (p) DECISIONS OF BOARD OF VETERANS’ APPEALS’;
24 CONFORMING AMENDMENT RELATING TO READJUDICA-
25 TION.—Section 7104 of such title is amended—

1 (1) in subsection (b), by striking “reopened”
2 and inserting “readjudicated”; and

3 (2) in subsection (d)(1), by inserting “, includ-
4 ing the information specified in paragraphs (1) and
5 (2) of section 5104B(c) of this title” before the
6 semicolon.

7 (q) MODIFICATION OF PROCEDURES FOR APPEALS
8 TO BOARD OF VETERANS’ APPEALS.—

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

11 (A) in subsection (a)—

12 (i) by striking the first sentence and
13 inserting “Appellate review shall be initi-
14 ated by the filing of a notice of disagree-
15 ment in the form prescribed by the Sec-
16 retary.”; and

17 (ii) by striking “hearing and”;

18 (B) by amending subsection (b) to read as
19 follows:

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

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

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

6 “(2)(A) Notices of disagreement shall be in writing,
7 shall identify the specific determination with which the
8 claimant disagrees, and may be filed by the claimant, the
9 claimant’s legal guardian, or such accredited representa-
10 tive, attorney, or authorized agent as may be selected by
11 the claimant or legal guardian.

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

15 “(C) Notices of disagreement shall be filed with the
16 Board.

17 “(3)(A) The notice of disagreement shall indicate
18 whether the claimant requests—

19 “(i) a hearing before the Board;

20 “(ii) an opportunity to submit additional evi-
21 dence without a hearing before the Board; or

22 “(iii) a review by the Board without a hearing
23 or submission of additional evidence.

1 “(B) If the claimant does not expressly request a
2 hearing before the Board in the notice of disagreement,
3 no hearing before the Board shall be held.”;

4 (C) by amending subsection (c) to read as
5 follows:

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

13 (D) by striking subsection (d) and insert-
14 ing the following new subsection (d):

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

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

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

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 71 of such title is
23 amended by striking the item relating to section
24 7105 and inserting the following new item:

“7105. Filing of appeal.”.

1 (r) MODIFICATION OF PROCEDURES AND REQUIRE-
2 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—

3 Subsection (b) of section 7105A of such title is amended
4 to read as follows:

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

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

12 (s) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
13 APPEALS.—

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

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 71 of such title is
18 amended by striking the item relating to section
19 7106.

20 (t) MODIFICATIONS RELATING TO APPEALS: DOCK-
21 ETS; HEARINGS.—

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

1 **“§ 7107. Appeals: dockets; hearings**

2 “(a) DOCKETS.—(1) The Board shall maintain at
3 least two separate dockets as follows:

4 “(A) A non-hearing option docket shall be
5 maintained for cases in which no Board hearing is
6 requested and no additional evidence will be sub-
7 mitted.

8 “(B) A separate and distinct hearing option
9 docket shall be maintained for cases in which a
10 Board hearing is requested in the notice of disagree-
11 ment.

12 “(2) Except as provided in subsection (b), each case
13 before the Board will be decided in regular order according
14 to its respective place on the Board’s respective docket.

15 “(3) The Board may not maintain more than the two
16 dockets specified in subparagraphs (A) and (B) of para-
17 graph (1) unless the Board notifies the Committees on
18 Veterans’ Affairs of the House of Representatives and the
19 Senate of any additional docket, including the justifica-
20 tions for maintaining such additional docket.

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

25 “(2) Any such motion shall set forth succinctly the
26 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 BOARD HEARING OPTION DOCKET.—(1) For
9 cases on the Board hearing option docket, or such other
10 docket as the Board may maintain under subsection (a)
11 that may include a hearing, in which a hearing is re-
12 quested in the notice of disagreement, the Board shall no-
13 tify the appellant whether a Board hearing will be 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
17 provided 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
8 purposes of—

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

11 “(2) the development, or attempted develop-
12 ment, of a record found to be inadequate for
13 decisional purposes.”.

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

1 the notice of disagreement, an opportunity to submit
2 additional evidence.

3 (u) REPEAL OF CERTAIN AUTHORITY FOR INDE-
4 PENDENT MEDICAL OPINIONS.—

5 (1) IN GENERAL.—Section 7109 of such title is
6 hereby repealed.

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 7109.

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

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

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

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

23 **“(a) NON-HEARING OPTION DOCKET.—**For cases in
24 which a hearing before the Board of Veterans’ Appeals
25 is not requested in the notice of disagreement, the evi-

1 dentiary 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 “(b) HEARING OPTION DOCKET.—(1)(A) Except as
5 provided in subparagraph (B), for cases on the hearing
6 option docket in which a hearing is requested in the notice
7 of disagreement, the evidentiary record before the Board
8 shall be limited to the evidence of record at the time of
9 the decision of the agency of original jurisdiction on ap-
10 peal.

11 “(B) The evidentiary record before the Board for
12 cases on the hearing option docket in which a hearing is
13 requested, shall include each of the following, which the
14 Board shall consider in the first instance:

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

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

21 “(2)(A) Except as provided in subparagraph (B), for
22 cases on the hearing option docket in which a hearing is
23 not requested in the notice of disagreement, the evi-
24 dentiary record before the Board shall be limited to the

1 evidence of record at the time of the decision of the agency
2 of original jurisdiction on appeal

3 “(B) The evidentiary record before the Board for
4 cases on the hearing option docket in which a hearing is
5 not requested, shall include each of the following, which
6 the Board shall consider in the first instance:

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

10 “(ii) 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) CLERICAL AMENDMENT.—The table of sec-
15 tions at the beginning of chapter 71 of such title is
16 amended by inserting after the item relating to sec-
17 tion 7112 the following new item:

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

18 (x) APPLICABILITY.—

19 (1) IN GENERAL.—Except as provided by para-
20 graph (2), the amendments made by this section
21 shall apply to all claims for which notice of a deci-
22 sion under section 5104 of title 38, United States
23 Code, is provided by the Secretary of Veterans Af-
24 fairs—

25 (A) on or after the later of—

1 (i) the date that is 540 days after the
2 date of the enactment of this Act; and

3 (ii) the date that is 30 days after the
4 date on which the Secretary of Veterans
5 Affairs submits to the Committee on Vet-
6 erans' Affairs of the Senate and the Com-
7 mittee on Veterans' Affairs of the House
8 of Representatives—

9 (I) a certification that the Sec-
10 retary is confident that the Depart-
11 ment of Veterans Affairs has the re-
12 sources, personnel, office space, proce-
13 dures, and information technology re-
14 quired—

15 (aa) to carry out the mod-
16 ernized appeals system; and

17 (bb) to timely address both
18 appeals of decisions on legacy
19 claims and appeals under the
20 modernized appeals system; and

21 (II) a description of the collabo-
22 ration conducted under paragraph (4)
23 in making such certification, including
24 the views of the organizations and

1 stakeholders specified in such para-
2 graph; and

3 (B) on or after the date that is one year
4 before the date specified in subparagraph (A)
5 with respect to a claimant who elects to partici-
6 pate in the modernized appeals system by sub-
7 mitting a request for higher-level review under
8 section 5104B of title 38, United States Code,
9 a supplemental claim under section 5108 of
10 such title, or a notice of disagreement under
11 section 7105 of such title, as such sections are
12 amended by this section.

13 (2) LEGACY CLAIMS.—With respect to legacy
14 claims, upon the issuing of a statement of the case
15 or a supplemental statement of the case occurring
16 on or after the date specified in paragraph (1)(A),
17 a claimant may elect to participate in the modern-
18 ized appeals system.

19 (3) PUBLICATION OF APPLICABILITY DATE.—
20 Not later than the date on which the modernized ap-
21 peals system goes into effect, the Secretary shall
22 publish in the Federal Register such date.

23 (4) COLLABORATION.—In making the certifi-
24 cation under paragraph (1)(A)(ii), the Secretary
25 shall collaborate, partner with, and give weight to

1 the advice of the three veterans service organizations
2 with the most members and such other stakeholders
3 as the Secretary considers appropriate.

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

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

14 (1) the processing of appeals of decisions on
15 legacy claims that the Secretary considers pending;

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

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

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

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

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

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

6 (1) For the 10-year period beginning on the
7 date on which the Secretary commences the modern-
8 ized appeals system, an estimate (including a de-
9 tailed description of the bases the Secretary uses to
10 develop such estimate) of the—

11 (A) numbers of appeals and the timeliness
12 of deciding appeals under the modernized ap-
13 peals system, including such number under the
14 hearing option docket and the non-hearing op-
15 tion docket described in section 7113 of title
16 38, United States Code, as amended by section
17 2; and

18 (B) numbers of appeals of decisions on leg-
19 acy claims and the timeliness of deciding such
20 appeals.

21 (2) Delineation of the total resource require-
22 ments of the Veterans Benefits Administration and
23 the Board of Veterans' Appeals, disaggregated by
24 resources required to implement and administer the

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

3 (3) Delineation of the personnel requirements
4 of the Administration and the Board, including
5 staffing 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 modernized appeals sys-
12 tem; and

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

16 (4) Identification of the legal authorities under
17 which the Administration or the Board may—

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

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

1 (5) 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
6 the historical average time required by the Adminis-
7 tration and the Board to hire additional employees.

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

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

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

23 (B) a comparison of the estimate under
24 subparagraph (A) and the historical average

1 time required by the Administration and the
2 Board to acquire new office space; and

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

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

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

24 (A) a description of the resources required
25 to conduct such outreach; and

1 (B) timelines for completing such outreach.

2 (10) Identification of and a timeline for—

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

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

10 (11) Identification of—

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

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

1 (12) Timelines for updating any policy guid-
2 ance, internet websites, and official forms that may
3 be necessary to carry out the modernized appeals
4 system, including—

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

8 (B) historical information about how long
9 similar update efforts have taken.

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

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

21 (15) A delineation of the key goals and mile-
22 stones for reducing the number of pending appeals
23 that are not processed under the modernized appeals
24 system, including the expected number of appeals,
25 remands, and hearing requests at the Administration

1 and the Board each year, beginning with the one
2 year period beginning on the date of the enactment
3 of this Act, until there are no longer any appeals
4 pending before the Administration or the Board for
5 a decision on a legacy claim.

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

9 (A) tracking progress of such implementa-
10 tion;

11 (B) evaluating the efficiency and effective-
12 ness of such implementation; and

13 (C) identifying potential issues with re-
14 spect to such implementation.

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

18 (c) REVIEW BY COMPTROLLER GENERAL OF THE
19 UNITED STATES.—

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

24 (A) assess such plan in writing; and

1 (B) submit to the Committee on Veterans'
2 Affairs of the Senate and the Committee on
3 Veterans' Affairs of the House of Representa-
4 tives the findings of the Comptroller General
5 with respect to the assessment conducted under
6 subparagraph (A).

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

9 (A) An assessment of whether the plan
10 comports with sound planning practices.

11 (B) Identification of any improvements the
12 Comptroller considers appropriate for the plan.

13 (C) Formulation of such recommendations
14 as the Comptroller General considers appro-
15 priate.

16 (d) SEMIANNUAL REPORTS.—On a semiannual basis
17 during the period beginning 90 days after the date on
18 which the Secretary submits the plan under subsection (a)
19 and ending on the date that is six years after the date
20 set forth in section 2(x)(1)(A), the Secretary shall submit
21 to the Committee on Veterans' Affairs of the Senate, the
22 Committee on Veterans' Affairs of the House of Rep-
23 resentatives, and the Comptroller General a report on the
24 modernized appeals system. Each such report shall in-
25 clude, with respect to the period covered by the report—

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

3 (2) The number of appeals considered under
4 the modernized appeals system, including—

5 (A) the number of such appeals, both with
6 respect to pending appeals and completed ap-
7 peals, under the hearing option docket and the
8 non-hearing option docket described in section
9 7113 of title 38, United States Code, as amend-
10 ed by section 2;

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

15 (C) the average age of such appeals.

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

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

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

24 (C) the average age of such appeals.

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

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

6 **SEC. 4. PROGRAMS TO TEST ASSUMPTIONS RELIED ON IN**
7 **DEVELOPMENT OF COMPREHENSIVE PLAN**
8 **FOR PROCESSING OF LEGACY APPEALS AND**
9 **SUPPORTING MODERNIZED APPEALS SYS-**
10 **TEM.**

11 (a) AUTHORIZATION.—

12 (1) IN GENERAL.—The Secretary of Veterans
13 Affairs may carry out such programs as the Sec-
14 retary considers appropriate to test any assumptions
15 relied upon in developing the comprehensive plan re-
16 quired by section 3(a) and to test the feasibility and
17 advisability of any facet of the modernized appeals
18 system. The Secretary may not carry out such a pro-
19 gram until the Secretary notifies the Committee on
20 Veterans' Affairs of the Senate and the Committee
21 on Veterans' Affairs of the House of Representatives
22 of the program, including the reasons for carrying
23 out the program.

24 (2) REPORTING REQUIRED.—Whenever the Sec-
25 retary determines, based on the conduct of a pro-

1 gram under paragraph (1), that legislative changes
2 to the modernized appeals system are necessary, the
3 Secretary shall submit to the Committee on Vet-
4 erans' Affairs of the Senate and the Committee on
5 Veterans' Affairs of the House of Representatives
6 notice of such determination.

7 (b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM
8 ON FULLY DEVELOPED APPEALS.—

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

14 (2) ELECTION.—

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

19 (i) The notice of disagreement under
20 chapter 71 of title 38, United States Code,
21 along with the written election of the
22 claimant to have the appeal determined
23 under the program.

1 (ii) All evidence that the claimant be-
2 lieves is needed for the appeal as of the
3 date of the filing.

4 (iii) A statement of the argument in
5 support of the claim, if any.

6 (B) TIMING.—A claimant shall make an
7 election under subparagraph (A) as part of the
8 notice of disagreement filed by the claimant in
9 accordance with subparagraph (A)(i).

10 (C) TRIAGE.—The Secretary shall, upon
11 expiration of the period specified in paragraph
12 (3)(C)(iii), ensure that an assessment is under-
13 taken of whether an appeal filed under subpara-
14 graph (A) of this paragraph satisfies the re-
15 quirements for appeal under the program and
16 provide appropriate notification to the claimant
17 of the results of that assessment.

18 (D) REVERSION.—

19 (i) ELECTED REVERSION.—At any
20 time, a claimant who makes an election
21 under subparagraph (A) may elect to re-
22 vert to the standard appeals process. Such
23 a reversion shall be final.

24 (ii) AUTOMATIC REVERSION.—A
25 claimant described in clause (i), or a claim-

1 ant who makes an election under subpara-
2 graph (A) but is later determined to be in-
3 eligible for the program under paragraph
4 (1), shall revert to the standard appeals
5 process without any penalty to the claim-
6 ant other than the loss of the docket num-
7 ber associated with the fully developed ap-
8 peal.

9 (E) OUTREACH.—In providing claimants
10 with notices of the determination of a claim
11 during the period in which the program under
12 paragraph (1) is carried out, the Secretary shall
13 conduct outreach as follows:

14 (i) The Secretary shall provide to the
15 claimant (and to the representative of
16 record of the claimant, if any) information
17 regarding—

18 (I) the program, including the
19 advantages and disadvantages of the
20 program;

21 (II) how to make an election
22 under subparagraph (A);

23 (III) the limitation on the use of
24 new evidence described in subpara-
25 graph (C) of paragraph (3) and the

1 development of information under
2 subparagraph (D) of such paragraph;

3 (IV) the ability of the claimant to
4 seek advice and education regarding
5 such process from veterans service or-
6 ganizations, attorneys, and claims
7 agents recognized under chapter 59 of
8 title 38, United States Code; and

9 (V) the circumstances under
10 which the appeal will automatically re-
11 vert to the standard appeals process,
12 including by making a request for a
13 hearing.

14 (ii) The Secretary shall collaborate,
15 partner with, and give weight to the advice
16 of the three veterans service organizations
17 with the most members and such other
18 stakeholders as the Secretary considers ap-
19 propriate to publish on the Internet
20 website of the Department of Veterans Af-
21 fairs an online tutorial explaining the ad-
22 vantages and disadvantages of the pro-
23 gram.

24 (3) TREATMENT BY DEPARTMENT AND
25 BOARD.—

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

4 (i) not provide the claimant with a
5 statement of the case nor require the
6 claimant to file a substantive appeal; and

7 (ii) transfer jurisdiction over the fully
8 developed appeal directly to the Board of
9 Veterans' Appeals.

10 (B) DOCKET.—

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

13 (I) maintain fully developed ap-
14 peals on a separate docket than
15 standard appeals;

16 (II) decide fully developed ap-
17 peals in the order that the fully devel-
18 oped appeals are received on the fully
19 developed appeal docket;

20 (III) except as provided by clause
21 (ii), decide not more than one fully
22 developed appeal for each four stand-
23 ard appeals decided; and

24 (IV) to the extent practicable, de-
25 cide each fully developed appeal by

1 the date that is one year following the
2 date on which the claimant files the
3 notice of disagreement.

4 (ii) ADJUSTMENT.—Beginning one
5 year after the date on which the program
6 commences, the Board may adjust the
7 number of standard appeals decided for
8 each fully developed appeal under clause
9 (i)(III) if the Board determines that such
10 adjustment is fair for both standard ap-
11 peals and fully developed appeals.

12 (C) LIMITATION ON USE OF NEW EVI-
13 DENCE.—

14 (i) IN GENERAL.—Except as provided
15 by clauses (ii) and (iii)—

16 (I) a claimant may not submit or
17 identify to the Board of Veterans' Ap-
18 peals any new evidence relating to a
19 fully developed appeal after filing such
20 appeal unless the claimant reverts to
21 the standard appeals process pursuant
22 to paragraph (2)(D); and

23 (II) if a claimant submits or
24 identifies any such new evidence, such
25 submission or identification shall be

1 deemed to be an election to make such
2 a reversion pursuant to paragraph
3 (2)(D).

4 (ii) EVIDENCE GATHERED BY
5 BOARD.—Clause (i) shall not apply to evi-
6 dence developed pursuant to subpara-
7 graphs (D) and (E). The Board shall con-
8 sider such evidence in the first instance
9 without consideration by the Veterans Ben-
10 efits Administration.

11 (iii) REPRESENTATIVE OF RECORD.—
12 The representative of record of a claimant
13 for appeals purposes, if any, shall be pro-
14 vided an opportunity to review the fully de-
15 veloped appeal of the claimant and submit
16 any additional arguments or evidence that
17 the representative determines necessary
18 during a period specified by the Board for
19 purposes of this subparagraph.

20 (D) PROHIBITION ON REMAND FOR ADDI-
21 TIONAL DEVELOPMENT.—If the Board of Vet-
22 erans' Appeals determines that a fully devel-
23 oped appeal requires Federal records, inde-
24 pendent medical opinions, or new medical ex-
25 aminations, the Board shall—

1 (i) in accordance with subparagraph
2 (E), take such actions as may be necessary
3 to develop such records, opinions, or ex-
4 aminations in accordance with section
5 5103A of title 38, United States Code;

6 (ii) retain jurisdiction of the fully de-
7 veloped appeal without requiring a deter-
8 mination by the Veterans Benefits Admin-
9 istration based on such records, opinions,
10 or examinations;

11 (iii) ensure the claimant, and the rep-
12 resentative of record of a claimant, if any,
13 receives a copy of such records, opinions,
14 or examinations; and

15 (iv) provide the claimant a period of
16 90 days after the date of mailing such
17 records, opinions, or examinations during
18 which the claimant may provide the Board
19 any additional evidence without requiring
20 the claimant to make a reversion pursuant
21 to paragraph (2)(D).

22 (E) DEVELOPMENT UNIT.—

23 (i) ESTABLISHMENT.—The Board of
24 Veterans' Appeals shall establish an office
25 to develop Federal records, independent

1 medical opinions, and new medical exami-
2 nations pursuant to subparagraph (D)(i)
3 that the Board determines necessary to de-
4 cide a fully developed appeal.

5 (ii) REQUIREMENTS.—The Secretary
6 shall—

7 (I) ensure that the Veterans Ben-
8 efits Administration cooperates with
9 the Board of Veterans' Appeals in
10 carrying out clause (i); and

11 (II) transfer employees of the
12 Veterans Benefits Administration
13 who, prior to the enactment of this
14 Act, were responsible for processing
15 claims remanded by the Board of Vet-
16 erans' Appeals to positions within the
17 office of the Board established under
18 clause (i) in a number the Secretary
19 determines sufficient to carry out
20 such subparagraph.

21 (F) HEARINGS.—Notwithstanding section
22 7107 of title 38, United States Code, the Sec-
23 retary may not provide hearings with respect to
24 fully developed appeals under the program. If a
25 claimant requests to hold a hearing pursuant to

1 such section 7107, such request shall be deemed
2 to be an election to revert to the standard ap-
3 peals process pursuant to paragraph (2)(E).

4 (4) DURATION; APPLICABILITY.—

5 (A) DURATION.—Subject to subsection (c),
6 the Secretary may carry out the program dur-
7 ing such period as the Secretary considers ap-
8 propriate.

9 (B) APPLICABILITY.—This section shall
10 apply only to fully developed appeals that are
11 filed during the period in which the program is
12 carried out pursuant to subparagraph (A).

13 (5) DEFINITIONS.—In this subsection:

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

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

20 (i) filed by a claimant in accordance
21 with paragraph (2)(A); and

22 (ii) considered in accordance with this
23 subsection.

24 (C) STANDARD APPEAL.—The term
25 “standard appeal” means an appeal of a claim

1 for disability compensation that is not a fully
2 developed appeal.

3 (c) TERMINATION.—The Secretary may not carry out
4 any program under this section after the date set forth
5 in section 2(x)(1)(A).

6 **SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO**
7 **PROCESSING OF APPEALS BY DEPARTMENT**
8 **OF VETERANS AFFAIRS.**

9 On the first business day of each month the Secretary
10 of Veterans Affairs shall publish on an internet website
11 of the Department of Veterans Affairs the following:

12 (1) With respect to the processing by the Sec-
13 retary of appeals under the modernized appeals sys-
14 tem of decisions regarding claims for benefits under
15 laws administered by the Secretary:

16 (A) For each regional office of the Depart-
17 ment of Veterans Affairs, the number of—

18 (i) supplemental claims under section
19 5108 of title 38, United States Code, as
20 amended by section 2(i), that are pending;
21 and

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

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

4 (C) The average duration for processing
5 claims and supplemental claims, disaggregated
6 by regional office.

7 (D) The average duration for processing
8 requests for higher level review under section
9 5104B of such title, as added by section 2(g),
10 disaggregated by regional office.

11 (E) The average number of days that ap-
12 peals are pending on the non-hearing option
13 docket of the Board of Veterans' Appeals main-
14 tained pursuant to section 7107 of such title, as
15 amended by section 2(t), and any other docket
16 maintained by the Board under such section
17 that prohibits the submittal of additional evi-
18 dence.

19 (F) The average number of days that ap-
20 peals are pending on dockets maintained under
21 such section in which hearings are requested or
22 submittal of additional evidence is allowed.

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

1 (H) The total number of remands to ob-
2 tain advisory medical opinions under section
3 5109(d) of title 38, United States Code, as
4 added by section 2(i)(1).

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

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

18 (K) The number of appeals that are grant-
19 ed, the number of appeals that are remanded,
20 and the number of appeals that are denied by
21 the Board disaggregated by docket.

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

1 such section 5110(a)(2), disaggregated by the
2 status of the claimants taking the actions, such
3 as whether the claimant is represented by a vet-
4 erans service organization, the claimant is rep-
5 resented by an attorney or accredited agent, or
6 the claimant is taking such action pro se.

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

13 (N) The average duration, from the filing
14 of an initial claim until the claim is resolved
15 and claimants no longer take any action to pro-
16 tect their effective date under section
17 5110(a)(2) of such title, as so added.

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

23 (P) The average of how long it takes to
24 complete each segment of the claims process
25 while claimants are protecting the effective date

1 under such section, disaggregated by the time
2 waiting for the claimant to take an action and
3 the time waiting for the Secretary to take an
4 action.

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

10 (R) The average number of times claim-
11 ants submit to the Secretary different claims
12 with respect to same condition, such as an ini-
13 tial claim and a supplemental claim.

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

21 (T) The number of times the Secretary re-
22 ceived evidence relating to an appeal or higher
23 level review at a time not authorized under the
24 modernized appeals system, disaggregated by
25 actions taken by the Secretary to deal with the

1 evidence and how long on average it took to
2 take those actions.

3 (U) The number of errors committed by
4 the Secretary in carrying out the Secretary's
5 duty to assist under section 5103A of title 38,
6 United States Code, that were identified by
7 higher level review and by the Board,
8 disaggregated by type of error, such as errors
9 relating to private records and inadequate ex-
10 aminations, and a comparison with errors com-
11 mitted by the Secretary in carrying out such
12 duty with respect to appeals of decisions on leg-
13 acy claims.

14 (V) An assessment of the productivity of
15 employees at the regional offices and at the
16 Board, disaggregated by level of experience of
17 the employees.

18 (2) With respect to the processing by the Sec-
19 retary of appeals of decisions on legacy claims:

20 (A) The average duration of each segment
21 of the appeals process, disaggregated by periods
22 in which the Secretary is waiting for a claimant
23 to take an action and periods in which the
24 claimant is waiting for the Secretary to take an
25 action.

1 (B) The frequency by which appeals lead
2 to additional grant of benefits by the Secretary,
3 disaggregated by whether the additional bene-
4 fits are a result of additional evidence added
5 after the initial decision.

6 (C) The number and average amount of
7 retroactive awards of benefits resulting from an
8 appeal.

9 (D) The average duration from filing a leg-
10 acy claim with the Secretary until all appeals
11 and remands relating to such legacy claim are
12 completed.

13 (E) 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, new and material evidence, or a
17 claim for an increase in benefits.

18 (F) An assessment of the productivity of
19 employees at the regional offices and at the
20 Board, disaggregated by level of experience of
21 the employees.

22 (G) The average number of days the dura-
23 tion of an appeal is extended because the Sec-
24 retary secured or attempted to secure an advi-

1 sory medical opinion under section 5109 of title
2 38, United States Code.

3 **SEC. 6. DEFINITIONS.**

4 In this Act:

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

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

9 (A) that was submitted to the Secretary
10 for a benefit under a law administered by the
11 Secretary; and

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

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