

115TH CONGRESS
1ST SESSION

H. R. 2288

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

5 (3) by adding at the end the following new
6 paragraph:

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

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

15 (1) by striking “reopen” and inserting “readju-
16 dicate”; and

17 (2) by striking “material” and inserting “rel-
18 evant”.

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

21 (1) by redesignating subsections (e) through (g)
22 as subsections (g) through (i), respectively; and

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

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

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

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

23 “(2)(A) If the Board of Veterans’ Appeals, during re-
24 view on appeal of an agency of original jurisdiction deci-
25 sion, identifies or learns of an error on the part of the

1 agency of original jurisdiction to satisfy its duties under
2 this section, and that error occurred prior to the agency
3 of original jurisdiction decision on appeal, unless the claim
4 can be granted in full, the Board shall remand the claim
5 to the agency of original jurisdiction for correction of such
6 error and readjudication.

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

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

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

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

22 “(1) Identification of the issues adjudicated.

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

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

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

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

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

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

13 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

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

17 **“§ 5104A. Binding nature of favorable findings**

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

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

1 amended by inserting after the item relating to sec-
 2 tion 5104 the following new item:

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

3 (g) HIGHER LEVEL REVIEW BY AGENCY OF ORIGI-
 4 NAL JURISDICTION.—

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

9 **“§ 5104B. Higher level review by the agency of origi-
 10 nal jurisdiction**

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

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

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

20 “(A) in writing in such form as the Secretary
 21 may prescribe; and

22 “(B) made within 1 year of the notice of the
 23 agency of original jurisdiction’s decision.

24 “(2) Such request may specifically indicate whether
 25 such review is requested by a higher level adjudicator at

1 the same office within the agency of original jurisdiction
2 or by an adjudicator at a different office of the agency
3 of original jurisdiction. The Secretary shall not deny such
4 a request for review by an adjudicator at a different office
5 of the agency of original jurisdiction without good cause.

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

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

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

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

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

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of chapter 51 of such title, as
24 amended by subsection (f), is further amended by in-

1 serting after the item relating to section 5104A, as
 2 added by such subsection, the following new item:

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

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

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

9 **“§ 5104C. Options following decision by agency of**
 10 **original jurisdiction**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(b) MORE THAN 1 YEAR AFTER DECISION.—In any
25 case in which the Secretary renders a decision on a claim

1 and more than 1 year has passed since the date on which
 2 the agency of original jurisdiction issues a decision with
 3 respect to that claim, the claimant may file a supplemental
 4 claim under section 5108 of this title.

5 “(c) BOARD OF VETERANS’ APPEALS AND COURT OF
 6 APPEALS FOR VETERANS CLAIMS.—Nothing in subsection
 7 (a) or (b) may be construed to limit the options available
 8 to a claimant pursuant to chapter 71 or 72 of this title.”.

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

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

14 (i) SUPPLEMENTAL CLAIMS.—

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

17 **“§ 5108. Supplemental claims**

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

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

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

“5108. Supplemental claims.”.

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

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

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

15 (k) RESTATEMENT OF REQUIREMENT FOR EXPE-
16 DITED TREATMENT OF REMANDED CLAIMS.—Section
17 5109B of such title is amended to read as follows:

18 **“§ 5109B. Expedited treatment of remanded claims**

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

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

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

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

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

16 “(A) A request for higher level review under
17 section 5104B of this title on or before the date that
18 is 1 year after the date on which the agency of origi-
19 nal jurisdiction issues a decision.

20 “(B) A supplemental claim under section 5108
21 of this title on or before the date that is 1 year after
22 the date on which the agency of original jurisdiction
23 issues a decision.

1 “(C) A notice of disagreement on or before the
2 date that is 1 year after the date on which the agen-
3 cy of original jurisdiction issues a decision.

4 “(D) A supplemental claim under section 5108
5 of this title on or before the date that is 1 year after
6 the date on which the Board of Veterans’ Appeals
7 issues a decision.

8 “(E) A supplemental claim under section 5108
9 of this title on or before the date that is 1 year after
10 the date on which the Court of Appeals for Veterans
11 Claims issues a decision.

12 “(3) Except as otherwise provided in this section, for
13 supplemental claims received more than 1 year after the
14 date on which the agency of original jurisdiction issued
15 a decision or the Board of Veterans’ Appeals issued a deci-
16 sion, the effective date shall be fixed in accordance with
17 the facts found, but shall not be earlier than the date of
18 receipt of the supplemental claim.”; and

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

20 (A) by striking “reopened” and inserting
21 “readjudicated”;

22 (B) by striking “material” and inserting
23 “relevant”; and

24 (C) by striking “reopening” and inserting
25 “readjudication”.

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

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

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

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

22 (q) MODIFICATION OF PROCEDURES FOR APPEALS
23 TO BOARD OF VETERANS’ APPEALS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 action or decision of the agency of original jurisdiction
 2 shall become final and the claim shall not thereafter be
 3 readjudicated or allowed, except as may otherwise be pro-
 4 vided by section 5104B or 5108 of this title or such regu-
 5 lations as are consistent with this title.”;

6 (D) by striking subsection (d) and insert-
 7 ing the following new subsection (d):

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

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

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

14 (2) CLERICAL AMENDMENT.—The table of sec-
 15 tions at the beginning of chapter 71 of such title is
 16 amended by striking the item relating to section
 17 7105 and inserting the following new item:

“7105. Filing of appeal.”.

18 (r) MODIFICATION OF PROCEDURES AND REQUIRE-
 19 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—
 20 Subsection (b) of section 7105A of such title is amended
 21 to read as follows:

22 “(b)(1) The substance of the notice of disagreement
 23 shall be communicated to the other party or parties in in-
 24 terest and a period of 30 days shall be allowed for filing
 25 a brief or argument in response thereto.

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

4 (s) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
5 APPEALS.—

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

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 71 of such title is
10 amended by striking the item relating to section
11 7106.

12 (t) MODIFICATIONS RELATING TO APPEALS: DOCK-
13 ETS; HEARINGS.—

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

16 **“§ 7107. Appeals: dockets; hearings**

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

19 “(2) The Board may not maintain more than two
20 separate dockets unless the Board notifies the Committee
21 on Veterans’ Affairs of the Senate and the Committee on
22 Veterans’ Affairs of the House of Representatives of any
23 additional docket, including a justification for maintaining
24 such additional docket.

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

7 “(B) Cases described in this subparagraph are the
8 following:

9 “(i) Cases in which no Board hearing is re-
10 quested and no additional evidence will be sub-
11 mitted.

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

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

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

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

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

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

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

5 “(C) for other sufficient cause shown.

6 “(c) MANNER AND SCHEDULING OF HEARINGS FOR
7 CASES ON DOCKET THAT MAY INCLUDE HEARING.—(1)
8 For cases on a docket maintained by the Board under sub-
9 section (a) that may include a hearing, in which a hearing
10 is requested in the notice of disagreement, the Board shall
11 notify the appellant whether a Board hearing will be
12 held—

13 “(A) at its principal location; or

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

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

24 “(B) Upon notification of a Board hearing by picture
25 and voice transmission as described in subparagraph (B)

1 of paragraph (1), the appellant may alternatively request
2 a hearing as described in subparagraph (A) of such para-
3 graph. If so requested, the Board shall grant such request.

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

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

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

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

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

1 agreement but the appellant requests, in the notice
2 of disagreement, an opportunity to submit additional
3 evidence.

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

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

8 (2) CONFORMING AMENDMENT.—Section
9 5701(b)(1) of such title is amended by striking “or
10 7109”.

11 (3) CLERICAL AMENDMENT.—The table of sec-
12 tions at the beginning of chapter 71 of such title is
13 amended by striking the item relating to section
14 7109.

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

20 (w) EVIDENTIARY RECORD BEFORE BOARD OF VET-
21 ERANS’ APPEALS.—

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

1 **“§ 7113. Evidentiary record before the Board of Vet-**
2 **erans’ Appeals**

3 “(a) CASES WITH NO REQUEST FOR A HEARING OR
4 ADDITIONAL EVIDENCE.—For cases in which a hearing
5 before the Board of Veterans’ Appeals is not requested
6 in the notice of disagreement and no request was made
7 to submit evidence, the evidentiary record before the
8 Board shall be limited to the evidence of record at the
9 time of the decision of the agency of original jurisdiction
10 on appeal.

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

17 “(2) The evidentiary record before the Board for
18 cases described in paragraph (1) shall include each of the
19 following, which the Board shall consider in the first in-
20 stance:

21 “(A) Evidence submitted by the appellant and
22 the representative of the appellant, if any, at the
23 Board hearing.

24 “(B) Evidence submitted by the appellant and
25 the representative of the appellant, if any, within 90
26 days following the Board hearing.

1 “(c) CASES WITH NO REQUEST FOR A HEARING AND
2 WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Ex-
3 cept as provided in paragraph (2), for cases in which a
4 hearing is not requested in the notice of disagreement but
5 an opportunity to submit evidence is requested, the evi-
6 dentiary record before the Board shall be limited to the
7 evidence considered by the agency of original jurisdiction
8 in the decision 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, with the
15 notice of disagreement.

16 “(B) Evidence submitted by the appellant and
17 the representative of the appellant, if any, within 90
18 days following receipt of the notice of disagree-
19 ment.”.

20 (2) NOTIFICATION WHEN EVIDENCE NOT CON-
21 sidered.—Section 7104(d) of such title is amend-
22 ed—

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

1 (B) by redesignating paragraph (2) as
2 paragraph (3); and

3 (C) by inserting after paragraph (1) the
4 following new paragraph (2):

5 “(2) a general statement—

6 “(A) reflecting whether evidence was not
7 considered in making the decision because the
8 evidence was received at a time when not per-
9 mitted under section 7113 of this title; and

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

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

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

17 (x) APPLICABILITY.—

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

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

1 (B) the date that is 30 days after the date
2 on which the Secretary of Veterans Affairs sub-
3 mits to the Committee on Veterans' Affairs of
4 the Senate and the Committee on Veterans' Af-
5 fairs of the House of Representatives—

6 (i) a certification that the Secretary
7 confirms, without delegation, that the De-
8 partment of Veterans Affairs has the re-
9 sources, personnel, office space, proce-
10 dures, and information technology re-
11 quired—

12 (I) to carry out the modernized
13 appeals system; and

14 (II) to timely address both ap-
15 peals of decisions on legacy claims
16 and appeals under the modernized ap-
17 peals system; and

18 (ii) a description of the collaboration
19 conducted under paragraph (2) in making
20 such certification, including the views of
21 the organizations and stakeholders speci-
22 fied in such paragraph.

23 (2) COLLABORATION.—In determining whether
24 and when to make a certification under paragraph
25 (1)(B)(i), the Secretary shall collaborate with, part-

1 ner with, and give weight to the advice of the three
2 veterans service organizations with the most mem-
3 bers and such other stakeholders as the Secretary
4 considers appropriate.

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

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

12 (B) elects to subject the claim to the mod-
13 ernized appeals system.

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

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

1 (6) PUBLICATION OF APPLICABILITY DATE.—
2 Not later than the date on which the modernized ap-
3 peals system goes into effect (or the first phase of
4 the modernized appeals system goes into effect
5 under paragraph (4), as the case may be), the Sec-
6 retary shall publish in the Federal Register such
7 date.

8 **SEC. 3. COMPREHENSIVE PLAN AND REPORTS FOR PROC-**
9 **ESSING OF LEGACY APPEALS AND IMPLE-**
10 **MENTING MODERNIZED APPEALS SYSTEM.**

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

18 (1) the number of resolutions for appeals of de-
19 cisions on legacy claims that the Secretary considers
20 pending;

21 (2) implementing the modernized appeals sys-
22 tem; and

23 (3) timely processing, under the modernized ap-
24 peals system, of—

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

4 (B) requests for higher level review under
5 section 5104B of such title, as added by section
6 2(g); and

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

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

12 (1) An estimate (including a detailed descrip-
13 tion of the bases the Secretary uses to develop such
14 estimate) of the—

15 (A) numbers of appeals and the timeliness
16 of deciding appeals under the modernized ap-
17 peals system, including such number under
18 each docket described in section 7107 of title
19 38, United States Code, as amended by section
20 2; and

21 (B) numbers of appeals of decisions on leg-
22 acy claims and the timeliness of deciding such
23 appeals.

24 (2) Delineation of the total resource require-
25 ments of the Veterans Benefits Administration and

1 the Board of Veterans' Appeals, disaggregated by
2 resources required to implement and administer the
3 modernized appeals system and resources required
4 to address the appeals of decisions on legacy claims.

5 (3) Delineation of the personnel requirements
6 of the Administration and the Board, including
7 staffing levels during the—

8 (A) period in which the Administration and
9 the Board are concurrently processing—

10 (i) appeals of decisions on legacy
11 claims; and

12 (ii) appeals of decisions on nonlegacy
13 claims under the modernized appeals sys-
14 tem; and

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

18 (4) Identification of the legal authorities under
19 which the Administration or the Board may—

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

23 (B) remove employees who are no longer
24 required by the Administration or the Board
25 once the Administration and the Board are no

1 longer processing any appeals of decisions on
2 legacy claims.

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

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

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

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

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

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

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

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

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

3 (B) timelines for such outreach.

4 (10) Identification of and a timeline for—

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

9 (B) any retraining of existing employees
10 that may be required to carry out such system
11 or to process such claims.

12 (11) Identification of—

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

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

1 system or to process appeals of decisions on leg-
2 acy claims.

3 (12) Estimated timelines for updating any pol-
4 icy guidance, internet websites, and official forms
5 that may be necessary to carry out the modernized
6 appeals system, including—

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

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

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

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

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

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

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

11 (A) tracking progress of such implementa-
12 tion;

13 (B) evaluating the efficiency and effective-
14 ness of such implementation; and

15 (C) identifying potential issues with re-
16 spect to such implementation.

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

20 (18) A detailed description of which employees
21 of the Department will conduct higher level reviews
22 under section 5104B of title 38, United States Code,
23 as added by section 2(g).

24 (c) REVIEW BY COMPTROLLER GENERAL OF THE
25 UNITED STATES.—

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

5 (A) assess such plan in writing; and

6 (B) submit to the Committee on Veterans'
7 Affairs of the Senate and the Committee on
8 Veterans' Affairs of the House of Representa-
9 tives the findings of the Comptroller General
10 with respect to the assessment conducted under
11 subparagraph (A).

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

14 (A) An assessment of whether the plan
15 comports with sound planning practices.

16 (B) Identification of any improvements the
17 Comptroller General considers appropriate for
18 the plan.

19 (C) Formulation of such recommendations
20 as the Comptroller General considers appro-
21 priate.

22 (d) PERIODIC REPORTS.—On a quarterly basis dur-
23 ing the period beginning 90 days after the date on which
24 the Secretary submits the plan under subsection (a) and
25 ending on the date that the Secretary implements the

1 modernized appeals system, and on a semiannual basis
2 during the 7-year period following such date of implemen-
3 tation, the Secretary shall submit to the Committee on
4 Veterans' Affairs of the Senate, the Committee on Vet-
5 erans' Affairs of the House of Representatives, and the
6 Comptroller General a report on the modernized appeals
7 system. Each such report shall include, with respect to the
8 period covered by the report, the following:

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

11 (2) As applicable, the number of appeals con-
12 sidered under the modernized appeals system, in-
13 cluding—

14 (A) the number of such appeals, both with
15 respect to pending appeals and completed ap-
16 peals, under each docket described in section
17 7107 of title 38, United States Code, as amend-
18 ed by section 2;

19 (B) the average wait time for each such
20 docket and the extent to which such wait times
21 compare with the established goals of the Sec-
22 retary for such wait times; and

23 (C) the average age of such appeals.

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

1 (A) the number of pending appeals and the
2 number of completed appeals;

3 (B) the average wait time and the extent
4 to which such wait times compare with the es-
5 tablished goals of the Secretary for such wait
6 times; and

7 (C) the average age of such appeals.

8 (4) The efficacy of the information systems of
9 the Department of Veterans Affairs to implement
10 the modernized appeals system.

11 (5) With respect to the Veterans Benefits Ad-
12 ministration and the Board of Veterans' Appeals—

13 (A) the number of supplemental claims
14 under section 5108 of such title, as added by
15 section 2(i), that were denied because the sup-
16 plemental claims did not include new and rel-
17 evant evidence;

18 (B) the number of higher level reviews
19 filed under section 5104B of such title, as
20 added by section 2(g), that did not include new
21 and relevant evidence, listed by the disposition
22 of the higher level review; and

23 (C) the number of appeals filed that did
24 not include new and relevant evidence, listed by
25 each docket described in section 7107 of such

1 title, as amended by section 2, and the deter-
 2 mination of the Board.

3 (6) With respect to any average wait time relat-
 4 ing to appeals not otherwise specified in this sub-
 5 section—

6 (A) whether the Secretary is meeting any
 7 established wait-time goals of the Secretary;
 8 and

9 (B) if so, the percentage of appeals meet-
 10 ing such goals.

11 (7) An identification of any changes that are
 12 necessary to improve the modernized appeals system.

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

18 (a) AUTHORIZATION.—

19 (1) IN GENERAL.—The Secretary of Veterans
 20 Affairs may carry out such programs as the Sec-
 21 retary considers appropriate to test any assumptions
 22 relied upon in developing the comprehensive plan re-
 23 quired by section 3(a) and to test the feasibility and
 24 advisability of any facet of the modernized appeals
 25 system. The Secretary may not carry out such a pro-

1 gram until the Secretary notifies the Committee on
2 Veterans' Affairs of the Senate and the Committee
3 on Veterans' Affairs of the House of Representatives
4 of the program, including the reasons for carrying
5 out the program.

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

14 (b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM
15 ON FULLY DEVELOPED APPEALS.—

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

21 (2) ELECTION.—

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

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

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

9 (iii) A statement of the argument in
10 support of the claim, if any.

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

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

23 (D) REVERSION.—

24 (i) ELECTED REVERSION.—At any
25 time, a claimant who makes an election

1 under subparagraph (A) may elect to re-
2 vert to the standard appeals process. Such
3 a reversion shall be final.

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

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

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

23 (I) the program, including the
24 advantages and disadvantages of the
25 program;

1 (II) how to make an election
2 under subparagraph (A);

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

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

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

19 (ii) The Secretary shall collaborate,
20 partner with, and give weight to the advice
21 of the three veterans service organizations
22 with the most members and such other
23 stakeholders as the Secretary considers ap-
24 propriate to publish on the internet website
25 of the Department of Veterans Affairs an

1 online tutorial explaining the advantages
2 and disadvantages of the program.

3 (3) TREATMENT BY DEPARTMENT AND
4 BOARD.—

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

8 (i) not provide the claimant with a
9 statement of the case nor require the
10 claimant to file a substantive appeal; and

11 (ii) transfer jurisdiction over the fully
12 developed appeal directly to the Board of
13 Veterans' Appeals.

14 (B) DOCKET.—

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

17 (I) maintain fully developed ap-
18 peals on a separate docket than
19 standard appeals;

20 (II) decide fully developed ap-
21 peals in the order that the fully devel-
22 oped appeals are received on the fully
23 developed appeal docket;

24 (III) except as provided by clause
25 (ii), decide not more than one fully

1 developed appeal for each four stand-
2 ard appeals decided; and

3 (IV) to the extent practicable, de-
4 cide each fully developed appeal by
5 the date that is 1 year following the
6 date on which the claimant files the
7 notice of disagreement.

8 (ii) ADJUSTMENT.—Beginning 1 year
9 after the date on which the program com-
10 mences, the Board may adjust the number
11 of standard appeals decided for each fully
12 developed appeal under clause (i)(III) if
13 the Board determines that such adjust-
14 ment is fair for both standard appeals and
15 fully developed appeals.

16 (C) LIMITATION ON USE OF NEW EVI-
17 DENCE.—

18 (i) IN GENERAL.—Except as provided
19 by clauses (ii) and (iii)—

20 (I) a claimant may not submit or
21 identify to the Board of Veterans' Ap-
22 peals any new evidence relating to a
23 fully developed appeal after filing such
24 appeal unless the claimant reverts to

1 the standard appeals process pursuant
2 to paragraph (2)(D); and

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

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

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

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

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

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

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

21 (iv) provide the claimant a period of
22 90 days after the date of mailing such
23 records, opinions, or examinations during
24 which the claimant may provide the Board
25 any additional evidence without requiring

1 the claimant to make a reversion pursuant
2 to paragraph (2)(D).

3 (E) DEVELOPMENT UNIT.—

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

11 (ii) REQUIREMENTS.—The Secretary
12 shall—

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

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

1 determines sufficient to carry out
2 such subparagraph.

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

11 (4) DURATION; APPLICABILITY.—

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

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

20 (5) DEFINITIONS.—In this subsection:

21 (A) COMPENSATION.—The term “com-
22 pensation” has the meaning given that term in
23 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 (c) 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 nonhearing, 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 1 year to protect an effective date under section
22 5110(a)(2) of such title, as so added, leads to
23 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 appeals 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-

quired to adjudicate such legacy claims on average after opting in—

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

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

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

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

SEC. 6. DEFINITIONS.

In this Act:

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

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

(A) that was submitted to the Secretary of Veterans Affairs for a benefit under a law administered 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.

Passed the House of Representatives May 23, 2017.

Attest:

Clerk.

115TH CONGRESS
1ST SESSION

H. R. 2288

AN ACT

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