

117TH CONGRESS
1ST SESSION

S. 3388

To amend title 38, United States Code, to improve benefits administered by the Secretary of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2021

Mr. TESTER (for himself and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve benefits 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Veterans Benefits Improvement Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—BOARD OF VETERANS' APPEALS MATTERS

Sec. 101. Board of Veterans' Appeals internship program.

- Sec. 102. Pilot program on establishment of Board of Veterans' Appeals honors program.
- Sec. 103. Report on improving access to Board of Veterans' Appeals telehearings.

TITLE II—MEDICAL DISABILITY EXAM MATTERS

- Sec. 201. Improving requirement to publish disability benefit questionnaire forms of Department of Veterans Affairs.
- Sec. 202. Report on improving medical disability examinations for veterans who live abroad.
- Sec. 203. Department of Veterans Affairs requirement for communication by contractors providing covered medical disability examinations with persons recognized by power of attorney for preparation, presentation, and prosecution of claims.
- Sec. 204. Department of Veterans Affairs outreach regarding contact information for contractors providing covered medical disability examinations.

TITLE III—OTHER MATTERS

- Sec. 301. Report on supporting governmental veterans service officers.
- Sec. 302. Electronic notification of decisions and other electronic communications.
- Sec. 303. Facilitating Department of Veterans Affairs contractor access to Federal tax return information necessary for claims processing.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) CLAIMANT.—The term “claimant” has the
4 meaning given that term in section 5100 of title 38,
5 United States Code.

6 (2) DEPARTMENT.—The term “Department”
7 means the Department of Veterans Affairs.

8 (3) SECRETARY.—The term “Secretary” means
9 the Secretary of Veterans Affairs.

1 **TITLE I—BOARD OF VETERANS’**
2 **APPEALS MATTERS**

3 **SEC. 101. BOARD OF VETERANS’ APPEALS INTERNSHIP**
4 **PROGRAM.**

5 (a) IN GENERAL.—Chapter 71 of title 38, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 7114. Internship program**

9 “The Secretary shall establish a competitive intern-
10 ship program within the Department for the purpose of
11 providing an opportunity for high-achieving students at
12 law schools accredited by the American Bar Association
13 to gain experience with the Board.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 71 of such title is amended
16 by adding at the end the following new item:

“7114. Internship program.”.

17 (c) DEADLINE.—The Secretary shall establish the in-
18 ternship program required by section 7114 of such title,
19 as added by subsection (a), not later than one year after
20 the date of the enactment of this Act.

21 **SEC. 102. PILOT PROGRAM ON ESTABLISHMENT OF BOARD**
22 **OF VETERANS’ APPEALS HONORS PROGRAM.**

23 (a) ESTABLISHMENT.—Not later than one year after
24 the date of the enactment of this Act, the Secretary shall

1 establish a pilot program to assess the feasibility and ad-
2 visability of establishing a competitive honors program
3 within the Department for the purpose of recruiting high-
4 achieving law school students, recent law school graduates,
5 and entry-level attorneys for employment with the Board.

6 (b) DURATION.—The Secretary shall carry out the
7 pilot program required by subsection (a) during the nine-
8 year period beginning on the date of the establishment of
9 the pilot program.

10 (c) HONORS PROGRAM.—

11 (1) IN GENERAL.—Under the pilot program re-
12 quired by subsection (a), the Secretary shall carry
13 out a competitive honors program as described in
14 such subsection.

15 (2) PRIORITY CONSIDERATION.—The Secretary
16 shall give priority consideration in application for
17 the honors program to individuals who successfully
18 complete the internship program established under
19 section 7114 of title 38, United States Code, as
20 added by section 101(a).

21 (3) STUDENT LOAN REPAYMENT BENEFITS.—

22 (A) IN GENERAL.—The Secretary shall
23 provide student loan repayment benefits under
24 section 5379 of title 5, United States Code, to
25 each participant in the pilot program who is eli-

1 gible for student loan repayment benefits under
2 such section.

3 (B) AGREEMENTS.—The Secretary shall
4 enter into an agreement with each participant
5 in the pilot program who will receive benefits
6 described in subparagraph (A), in accordance
7 with such section.

8 (C) COMMITMENT.—An agreement de-
9 scribed in subparagraph (B) shall include a re-
10 quirement that the participant will remain in
11 the service of the Department for a period of
12 not less than three years, unless involuntarily
13 separated, in accordance with subsection (c) of
14 such section.

15 (4) PROFESSIONAL DEVELOPMENT ACTIVI-
16 TIES.—

17 (A) ASSIGNMENT OF MENTORS.—Not later
18 than 90 days after the date on which an indi-
19 vidual begins participating in the pilot program
20 required by subsection (a), the Secretary shall
21 assign the participant a mentor who is a mana-
22 gerial employee of the Department outside the
23 participant's chain of command.

24 (B) ASSIGNMENTS TO OFFICE OF GENERAL
25 COUNSEL.—

1 (i) IN GENERAL.—The Secretary shall
2 provide each participant in the pilot pro-
3 gram at least one assignment within the
4 Office of General Counsel of the Depart-
5 ment that includes full-time legal respon-
6 sibilities in order to further the profes-
7 sional development of the participant.

8 (ii) PERIOD OF ASSIGNMENT.—An as-
9 signment provided under clause (i) shall be
10 for a period of not less than 120 days and
11 not more than 180 days, or longer at the
12 discretion of the Secretary.

13 (C) OTHER ROTATIONAL ASSIGNMENTS.—

14 (i) IN GENERAL.—The Secretary may
15 provide a participant in the pilot program
16 one or more other short-term rotational as-
17 signments.

18 (ii) PERIOD OF ASSIGNMENT.—An as-
19 signment provided under clause (i) shall be
20 for a period of not less than 30 days and
21 not more than 180 days, at the discretion
22 of the Secretary.

23 (d) PERIODIC REPORTS.—

24 (1) REPORTS REQUIRED.—Not later than three
25 years after the date on which the Secretary first ac-

1 cepts a participant into the honors program carried
2 out under subsection (c)(1) and not less frequently
3 than once every three years thereafter for the dura-
4 tion of the pilot program, the Secretary shall submit
5 to the Committee on Veterans' Affairs of the Senate
6 and the Committee on Veterans' Affairs of the
7 House of Representatives a report on the findings of
8 the Secretary with respect to the pilot program.

9 (2) CONTENTS.—Each report submitted under
10 paragraph (1) shall include the following:

11 (A) The findings of the Secretary with re-
12 spect to the feasibility and advisability of estab-
13 lishing a competitive honors program as de-
14 scribed in subsection (a).

15 (B) Such recommendations as the Sec-
16 retary may have for legislative or administrative
17 action to improve recruitment and retention of
18 staff at the Board of Veterans' Appeals.

19 **SEC. 103. REPORT ON IMPROVING ACCESS TO BOARD OF**
20 **VETERANS' APPEALS TELEHEARINGS.**

21 (a) IN GENERAL.—Not later than 180 days after the
22 date of the enactment of this Act, the Secretary shall sub-
23 mit to the Committee on Veterans' Affairs of the Senate
24 and the Committee on Veterans' Affairs of the House of
25 Representatives a report on improving access to hearings

1 before the Board of Veterans' Appeals held by picture and
2 voice transmission.

3 (b) CONTENTS.—The report required by subsection
4 (a) shall include the following:

5 (1) Recommendations on the feasibility and ad-
6 visability of reimbursing veterans for expenses in-
7 curred for travel from the home of a veteran to the
8 location at which a hearing before the Board of Vet-
9 erans' Appeals is held by picture and voice trans-
10 mission, if the Secretary determines that travel to
11 such location is reasonably necessary for such a
12 hearing.

13 (2) Recommendations on establishment of pilot
14 programs to assess the feasibility and advisability of
15 using other methods that could improve veteran ac-
16 cess to hearings before the Board of Veterans' Ap-
17 peals held by picture and voice transmission from a
18 veteran's home.

19 (3) Such other recommendations to improve ac-
20 cess to hearings before the Board of Veterans' Ap-
21 peals held by picture and voice transmission as the
22 Secretary may receive from stakeholders.

1 **TITLE II—MEDICAL DISABILITY**
2 **EXAM MATTERS**

3 **SEC. 201. IMPROVING REQUIREMENT TO PUBLISH DIS-**
4 **ABILITY BENEFIT QUESTIONNAIRE FORMS**
5 **OF DEPARTMENT OF VETERANS AFFAIRS.**

6 Section 5101(d) of title 38, United States Code, is
7 amended—

8 (1) in paragraph (1)(A), by striking “; and”
9 and inserting “, including (except as provided in
10 paragraph (4)(A))—

11 “(i) all disability benefit questionnaire
12 forms available to personnel of the Veterans
13 Health Administration and contracted per-
14 sonnel for the completion of compensation and
15 pension examinations; and

16 “(ii) all factsheets available to such per-
17 sonnel to inform completion of such examina-
18 tions; and”;

19 (2) by adding at the end the following new
20 paragraph:

21 “(4)(A) The Secretary may exclude from publication
22 under clauses (i) and (ii) of paragraph (1)(A) any form
23 described in subparagraph (B) of this paragraph that the
24 Secretary determines could not reasonably be completed

1 to a clinically acceptable standard by someone not an em-
2 ployee or a contractor of the Department.

3 “(B) A form described in this subparagraph is a form
4 that—

5 “(i) was in effect after January 1, 2020; and

6 “(ii) has not been published under paragraph
7 (1).

8 “(C) For each form excluded under subparagraph
9 (A), the Secretary shall—

10 “(i) list the form on the same internet website
11 as the forms published under paragraph (1)(A) with
12 an indication that the form has been excluded; and

13 “(ii) provide with such listing a justification for
14 such exclusion.”.

15 **SEC. 202. REPORT ON IMPROVING MEDICAL DISABILITY EX-**
16 **AMINATIONS FOR VETERANS WHO LIVE**
17 **ABROAD.**

18 Not later than one year after the date of the enact-
19 ment of this Act, the Secretary shall submit to the Com-
20 mittee on Veterans’ Affairs of the Senate and the Com-
21 mittee on Veterans’ Affairs of the House of Representa-
22 tives a report on the efforts of the Secretary to provide
23 reimbursement for a veteran’s travel to a Department fa-
24 cility or a facility of a Department-contracted provider, re-
25 gardless of whether the facility is inside or outside the

1 United States, when such travel is incident to a scheduled
2 compensation and pension examination.

3 **SEC. 203. DEPARTMENT OF VETERANS AFFAIRS REQUIRE-**
4 **MENT FOR COMMUNICATION BY CONTRAC-**
5 **TORS PROVIDING COVERED MEDICAL DIS-**
6 **ABILITY EXAMINATIONS WITH PERSONS REC-**
7 **OGNIZED BY POWER OF ATTORNEY FOR**
8 **PREPARATION, PRESENTATION, AND PROS-**
9 **ECUTION OF CLAIMS.**

10 (a) IN GENERAL.—In each contract entered into by
11 the Secretary after the date of the enactment of this Act
12 for the provision by a contractor of a covered medical dis-
13 ability examination, the Secretary shall include a require-
14 ment that every communication from a contractor to a vet-
15 eran regarding the scheduling of a covered medical dis-
16 ability examination be contemporaneously transmitted to
17 the person recognized by a power of attorney executed
18 under sections 5902, 5903, and 5904 of title 38, United
19 States Code, for the preparation, presentation, and pros-
20 ecution of claims.

21 (b) DEFINITION.—In this section, the term “covered
22 medical disability examination” means a medical examina-
23 tion that the Secretary determines necessary for the pur-
24 poses of adjudicating a benefit under chapter 11 or 15
25 of title 38, United States Code.

1 **SEC. 204. DEPARTMENT OF VETERANS AFFAIRS OUTREACH**
2 **REGARDING CONTACT INFORMATION FOR**
3 **CONTRACTORS PROVIDING COVERED MED-**
4 **ICAL DISABILITY EXAMINATIONS.**

5 Not later than 120 days after the date of enactment
6 of this Act, the Secretary of Veterans Affairs shall, in
7 partnership with veterans service organizations and such
8 other stakeholders as the Secretary considers relevant and
9 appropriate, implement an informative outreach program
10 for veterans regarding the following:

11 (1) Contact information for contractors pro-
12 viding covered medical disability examinations, in-
13 cluding the telephone numbers from which such con-
14 tractors may contact veterans.

15 (2) The requirement for veterans to provide
16 personally identifiable information when contacted
17 by such contractors in order to verify their identity.

18 **TITLE III—OTHER MATTERS**

19 **SEC. 301. REPORT ON SUPPORTING GOVERNMENTAL VET-**
20 **ERANS SERVICE OFFICERS.**

21 (a) REPORT.—Not later than one year after the date
22 of the enactment of this Act and after consulting veterans
23 service organizations and such other stakeholders as the
24 Secretary considers relevant and appropriate, the Sec-
25 retary shall submit to the Committee on Veterans' Affairs
26 of the Senate and the Committee on Veterans' Affairs of

1 the House of Representatives a report on improving the
2 support by the Department of Veterans Affairs of govern-
3 mental veterans service officers.

4 (b) ELEMENTS.—The report submitted under sub-
5 section (a) shall include the following:

6 (1) ENHANCED ACCESS TO SYSTEMS.—An as-
7 sessment of the feasibility and current technical limi-
8 tations of providing governmental veterans service
9 officers enhanced access to certain Department sys-
10 tems to better serve veterans those governmental
11 service officers may not have authorization to rep-
12 resent.

13 (2) INTERGOVERNMENTAL LIAISONS.—An as-
14 sessment as to whether the Department would ben-
15 efit from the establishment or designation of an of-
16 fice or working group within the Department to
17 serve as an intergovernmental liaison between the
18 Department and governmental veterans service offi-
19 cers.

20 (3) OTHER.—Any other recommendations to
21 improve how the Department monitors, coordinates
22 with, or provides support to governmental veterans
23 service officers.

24 (c) DEFINITIONS.—In this section:

1 (1) GOVERNMENTAL VETERANS SERVICE OFFI-
 2 CER.—The term “governmental veterans service offi-
 3 cer” means an employee of a State, county, munic-
 4 ipal, or Tribal government—

5 (A) who is accredited by at least one vet-
 6 erans service organization to serve as a veterans
 7 service officer; and

8 (B) whose primary responsibilities include
 9 working as such an officer.

10 (2) VETERANS SERVICE ORGANIZATION.—The
 11 term “veterans service organization” means an orga-
 12 nization recognized by the Secretary for the rep-
 13 resentation of veterans under section 5902 of title
 14 38, United States Code.

15 **SEC. 302. ELECTRONIC NOTIFICATION OF DECISIONS AND**
 16 **OTHER ELECTRONIC COMMUNICATIONS.**

17 (a) NOTICE DEFINED.—Section 5100 of title 38,
 18 United States Code, is amended—

19 (1) in the section heading, by striking “**Defi-**
 20 **nition of “claimant”**” and inserting “**Defini-**
 21 **tions”**”;

22 (2) by striking “this chapter, the term” and in-
 23 serting “this chapter:

24 “(1) The term”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(2) The term ‘notice’ means a communication
4 delivered through a method determined appropriate
5 by the Secretary, which may include electronic noti-
6 fication in accordance with section 5104(e) of this
7 title.”.

8 (b) NOTICE OF DECISIONS OF SECRETARY OF VET-
9 ERANS AFFAIRS REGARDING BENEFITS.—Section 5104 of
10 such title is amended by adding at the end the following
11 new subsection:

12 “(c)(1) The Secretary may provide notice to a person
13 under subsection (a) of this section and under section
14 7104(e) of this title electronically, but only after the per-
15 son affirmatively consents to electronic notification for all
16 decisions requiring notice under this section, including sec-
17 tion 7104 of this title.

18 “(2)(A) A person may revoke consent to electronic
19 notification under paragraph (1) at any time by informing
20 the Secretary of such revocation.

21 “(B) A revocation under this paragraph is effective
22 upon a person’s submission of such revocation, whether
23 by electronic means or by mail.

24 “(3) The Secretary shall, on an annual basis—

1 “(A) solicit input from stakeholders for rec-
2 ommendations to improve how the Department
3 issues notifications under this section, including sec-
4 tion 7104 of this title; and

5 “(B) publicly publish responses to such input
6 on a website of the Department.”.

7 (c) NOTICE OF HIGHER-LEVEL REVIEW DECISION
8 BY AGENCY OF ORIGINAL JURISDICTION.—Section
9 5104B(c) of such title is amended by striking “in writing”
10 and inserting “to the claimant and the claimant’s rep-
11 resentative”.

12 (d) NOTICE OF DECISIONS BY BOARD OF VETERANS’
13 APPEALS.—Section 7104 of such title is amended by strik-
14 ing subsection (e) and inserting the following:

15 “(e) Subject to section 5104(c) of this title, after
16 reaching a decision on a case, the Board shall promptly
17 provide notice (as that term is defined in section 5100 of
18 this title) of such decision to the following:

19 “(1) The claimant.

20 “(2) Any other party with a right to notice of
21 such decision.

22 “(3) Any authorized representative of the appel-
23 lant or party described in subparagraph (B).”.

1 (e) NOTICE OF DISAGREEMENT.—Section
2 7105(b)(1)(A) of such title is amended by striking “mail-
3 ing” and inserting “provision”.

4 **SEC. 303. FACILITATING DEPARTMENT OF VETERANS AF-**
5 **FAIRS CONTRACTOR ACCESS TO FEDERAL**
6 **TAX RETURN INFORMATION NECESSARY FOR**
7 **CLAIMS PROCESSING.**

8 (a) IN GENERAL.—Section 6103(l)(7) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new subparagraph:

11 “(E) REDISCLOSURES.—

12 “(i) IN GENERAL.—Officers and em-
13 ployees of the Department of Veterans Af-
14 fairs who are specifically designated by the
15 Secretary of Veterans Affairs may redis-
16 close return information described in sub-
17 paragraphs (A) and (B) to contractors of
18 such Department administering (or assist-
19 ing in administering) a program listed in
20 subparagraph (D)(viii).

21 “(ii) RESTRICTIONS ON USE OF IN-
22 FORMATION.—Information disclosed under
23 this subparagraph shall be disclosed only
24 for purposes of, and to the extent nec-
25 essary in, determining eligibility for, or the

1 correct amount of, benefits under a pro-
2 gram listed in subparagraph (D)(viii).”.

3 (b) CONFORMING AMENDMENT.—Section 6103(a)(3)
4 of such Code is amended by inserting “(7)(E),” after
5 “(6),”.

6 (c) SAFEGUARDS.—Section 6103(p)(4) of such Code
7 is amended by striking “subsection (l)(10)” each place it
8 appears and inserting “subsection (l)(7), (10)”.

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