

AMERICAN HEROES COLA ACT OF 2015

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FEBRUARY 1, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 677]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 677) to amend title 38, United States Code, to provide for annual cost-of-living adjustments to be made automatically by law each year in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “American Heroes COLA Act of 2015”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Expansion of eligibility for medallions.
- Sec. 3. Definitions relating to claims for benefits under laws administered by the Secretary of Veterans Affairs.
- Sec. 4. Quarterly reports on formal and informal claims for benefits under laws administered by Secretary of Veterans Affairs.
- Sec. 5. Expedited payment of survivor’s benefits.
- Sec. 6. Priority for processing claims of the Department of Veterans Affairs.
- Sec. 7. Treatment of medical evidence provided by non-Department of Veterans Affairs medical professionals in support of claims for disability compensation.
- Sec. 8. Automatic annual increase in rates of disability compensation and dependency and indemnity compensation.
- Sec. 9. Improvement of fiduciaries for veterans.
- Sec. 10. Board of Veterans’ Appeals video hearings.
- Sec. 11. Improvements to authority for performance of medical disabilities examinations by contract physicians.
- Sec. 12. Pilot program on fully developed appeals.
- Sec. 13. Deadline for certification of appeals forms by regional offices of the Department of Veterans Affairs.
- Sec. 14. Evaluation of backlog of disability claims and appeals of claims of Department of Veterans Affairs.
- Sec. 15. Methods for validating certain World War II Merchant Mariner service considered to be active service by the Secretary of Veterans Affairs.
- Sec. 16. Designation of American World War II Cities.
- Sec. 17. Sense of Congress regarding American veterans disabled for life.

### SEC. 2. EXPANSION OF ELIGIBILITY FOR MEDALLIONS.

Section 2306(d)(4) of title 38, United States Code, is amended to read as follows:  
“(4)(A) In lieu of furnishing a headstone or marker under this subsection to a deceased individual described in subparagraph (B), the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased individual’s status as a veteran, to be attached to a headstone or marker furnished at private expense.

“(B) A deceased individual described in this subsection is an individual who—

“(i) served in the Armed Forces on or after April 6, 1917; and

“(ii) is eligible for a headstone or marker furnished under paragraph (1) (or would be so eligible but for the date of the death of the individual).”.

### SEC. 3. DEFINITIONS RELATING TO CLAIMS FOR BENEFITS UNDER LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.

(a) DEFINITIONS.—

(1) IN GENERAL.—Section 5100 of title 38, United States Code, is amended to read as follows:

#### “§ 5100. Definitions

“In this chapter:

“(1) The term ‘claimant’ means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.

“(2) The term ‘claim’ means a communication in writing requesting a determination of entitlement or evidencing a belief in entitlement to a benefit under the laws administered by the Secretary.

“(3) The term ‘formal claim’ means a claim submitted on an application form prescribed by the Secretary.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of such title is further amended by striking the item relating to section 5100 and inserting the following new item:

“5100. Definitions.”.

(b) EFFECTIVE DATE.—Section 5100 of title 38, United States Code, as amended by subsection (a), shall take effect on the date of the enactment of this Act and shall apply with respect to a claim submitted on or after such date.

**SEC. 4. QUARTERLY REPORTS ON FORMAL AND INFORMAL CLAIMS FOR BENEFITS UNDER LAWS ADMINISTERED BY SECRETARY OF VETERANS AFFAIRS.**

(a) **QUARTERLY REPORTS.**—During the five-year period beginning on the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans Affairs of the Senate and House of Representatives quarterly reports on formal and informal claims submitted to the Secretary. Each such report shall include, for the three-month period covered by the report—

- (1) the total number of claims submitted to the Secretary;
- (2) the total number of informal claims submitted to the Secretary;
- (3) the total number of formal claims submitted to the Secretary;
- (4) the total number of forms indicating an intent to file a claim for benefits submitted to the Secretary;
- (5) the total number of claims notification letters that included an invitation to the claimant to submit an additional formal claim that was reasonably raised during the adjudication of the claim for which the notification letter is sent;
- (6) of the claimants who received notification letters described in paragraph (5), the total number who submitted a formal claim in response to the invitation included in the letter;
- (7) the total number of electronically filed claims submitted to the Secretary;

and

- (8) the total number of fully-developed claims submitted to the Secretary.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the Secretary of Veterans Affairs should develop a designated form for an increase or reopening of a claim that does not require the resubmittal of information previously submitted on a formal claim form.

(c) **DEFINITIONS.**—In this section:

(1) The terms “claim”, “claimant”, and “formal claim” have the meanings given such terms in section 5100 of title 38, United States Code, as amended by section 4.

(2) The term “informal claim” means a communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit under the laws administered by the Secretary of Veterans Affairs that—

(A) is submitted in a format other than on an application form prescribed by the Secretary;

(B) indicates an intent to apply for one or more benefits under the laws administered by the Secretary;

(C) identifies the benefit sought;

(D) is made or submitted by a claimant, his or her duly authorized representative, a Member of Congress, or another person acting on behalf of a claimant who meets the requirements established by the Secretary for such purpose; and

(E) may include a report of examination or hospitalization, if the report relates to a disability which may establish such an entitlement.

(3) The term “reasonably raised” with respect to a claim means that evidence of an entitlement to a benefit under the laws administered by the Secretary is inferred or logically placed at issue upon a sympathetic reading of another claim and the record developed with respect to that claim.

**SEC. 5. EXPEDITED PAYMENT OF SURVIVOR’S BENEFITS.**

(a) **IN GENERAL.**—Section 5101(a)(1) of title 38, United States Code, is amended—

(1) by striking “A specific” and inserting “(A) Except as provided in subparagraph (B), a specific”; and

(2) by adding at the end the following new subparagraph:

“(B)(i) The Secretary may pay benefits under chapters 13 and 15 and sections 2302, 2307, and 5121 of this title to a survivor of a veteran who has not filed a formal claim if the Secretary determines that the record contains sufficient evidence to establish the entitlement of the survivor to such benefits.

“(ii) For purposes of this subparagraph and section 5110 of this title, the earlier of the following dates shall be treated as the date of the receipt of the survivor’s application for benefits described in clause (i):

“(I) The date on which the survivor of a veteran (or the representative of such a survivor) notifies the Secretary of the death of the veteran through a death certificate or other relevant medical evidence indicating that the death was due to a service-connected or compensable disability.

“(II) The head of any other department or agency of the Federal Government notifies the Secretary of the death of the veteran.

“(iii) In notifying the Secretary of the death of a veteran as described in clause (ii)(I), the survivor (or the representative of such a survivor) may submit to the Secretary additional documents relating to such death without being required to file a formal claim.”.

## (b) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on benefits paid pursuant to covered claims.

(2) CONTENTS.—The report under paragraph (1) shall include the following:

(A) The number of covered claims adjudicated during the one-year period preceding the date of the report, disaggregated by the following:

(i) Claims in which the claimant claimed entitlement to compensation on the basis of the claimant's status as the spouse of a deceased veteran.

(ii) Claims in which the claimant claimed entitlement to compensation on the basis of the claimant's status as the child of a deceased veteran.

(iii) Claims in which the claimant claimed entitlement to compensation on the basis of the claimant's status as the parent of a deceased veteran.

(B) The number of covered claims that were adjudicated during such period and for which compensation was not awarded, disaggregated by clauses (i) through (iii) of subparagraph (A).

(C) A comparison of the accuracy and timeliness of covered claims adjudicated during such period with non-covered claims filed by survivors of a veteran.

(D) The findings of the Secretary with respect to adjudicating covered claims.

(E) Such recommendations as the Secretary may have for legislative or administrative action to improve the adjudication of claims submitted to the Secretary for benefits under chapters 13 and 15 and sections 2302, 2307, and 5121 of title 38, United States Code.

(3) COVERED CLAIM DEFINED.—In this subsection, the term “covered claim” means a claim covered by section 5101(a)(1)(B) of title 38, United States Code, as added by subsection (a).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to claims for benefits based on a death occurring on or after the date of the enactment of this Act.

**SEC. 6. PRIORITY FOR PROCESSING CLAIMS OF THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) IN GENERAL.—Subchapter I of chapter 51 of title 38, United States Code, is amended by adding at the end the following new section:

**“§ 5109C. Priority for processing claims**

“(a) PRIORITY.—In processing claims for compensation under this chapter, the Secretary shall provide the following claimants with priority over other claimants:

“(1) Veterans who have attained the age of 70.

“(2) Veterans who are terminally ill.

“(3) Veterans with life-threatening illnesses.

“(4) Homeless veterans (as defined in section 2002 of this title).

“(5) Veterans who were awarded the Medal of Honor.

“(6) Veterans who are former prisoners of war.

“(7) Veterans whose claims are being reviewed again in relation to a previously denied claim relating to military sexual trauma.

“(8) Veterans whom the Secretary determines, on a case-by-case basis, are seriously or very seriously injured.

“(9) Veterans whom the Secretary determines, on a case-by-case basis, should be given priority under this section based on an application for good cause established by the Secretary.

“(b) REGULATIONS.—The Secretary shall prescribe regulations to carry out subsection (a).”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5109B the following new item:

“5109C. Priority for processing claims.”.

**SEC. 7. TREATMENT OF MEDICAL EVIDENCE PROVIDED BY NON-DEPARTMENT OF VETERANS AFFAIRS MEDICAL PROFESSIONALS IN SUPPORT OF CLAIMS FOR DISABILITY COMPENSATION.**

(a) ACCEPTANCE OF REPORTS OF PRIVATE PHYSICIAN EXAMINATIONS.—Section 5125 of title 38, United States Code, is amended—

(1) by striking “For purposes” and inserting “(a) IN GENERAL.—For purposes”; and

(2) by adding at the end the following new subsections:

“(b) SUFFICIENCY OF EVIDENCE.—If a veteran has submitted a medical opinion or report of a medical examination administered by a private physician in support of the veteran’s claim, the Secretary may not order a medical examination to be administered by a Department physician unless the Secretary provides the veteran with a thorough explanation of why the medical opinion or report submitted by the veteran was not sufficiently complete and the reason why additional medical evidence is necessary.

“(c) SUFFICIENTLY COMPLETE DEFINED.—For purposes of a medical opinion or report described in subsection (a), the term ‘sufficiently complete’ means competent, credible, probative, and containing such information as may be required to make a decision on the claim for which the medical opinion or report is provided.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to medical evidence submitted after the date that is one year after the date of the enactment of this Act.

**SEC. 8. AUTOMATIC ANNUAL INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.**

(a) INDEXING TO SOCIAL SECURITY INCREASES.—Section 5312 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(d)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in paragraph (2), as such amounts were in effect immediately before the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

“(2) The dollar amounts to be increased pursuant to paragraph (1) are the following:

“(A) WARTIME DISABILITY COMPENSATION.—Each of the dollar amounts in effect under section 1114 of this title.

“(B) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of this title.

“(C) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of this title.

“(D) DEPENDENCY AND INDEMNITY COMPENSATION TO SURVIVING SPOUSE.—Each of the dollar amounts in effect under subsections (a) through (d) of section 1311 of such title.

“(E) DEPENDENCY AND INDEMNITY COMPENSATION TO CHILDREN.—Each of the dollar amounts in effect under sections 1313(a) and 1314 of such title.

“(3) Whenever there is an increase under paragraph (1) in amounts in effect for the payment of disability compensation and dependency and indemnity compensation, the Secretary shall publish such amounts, as increased pursuant to such paragraph, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

“(4) Each dollar amount increased under paragraph (1), if not a whole dollar amount, shall be rounded to the next lower whole dollar amount.

“(5) The Secretary of Veterans Affairs may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons under section 10 of Public Law 85–857 (72 Stat. 1263) who have not received compensation under chapter 11 of this title.”

(b) EFFECTIVE DATE.—Subsection (d) of section 5312 of title 38, United States Code, as added by subsection (a) of this section, shall take effect on December 1, 2015.

**SEC. 9. IMPROVEMENT OF FIDUCIARIES FOR VETERANS.**

(a) APPOINTMENT AND SUPERVISION.—

(1) Section 5502 of title 38, United States Code, is amended to read as follows:

**“§ 5502. Appointment of fiduciaries**

“(a) APPOINTMENT.—Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.

“(b) APPEALS.—(1) If the Secretary determines a beneficiary to be mentally incompetent for purposes of appointing a fiduciary under this chapter, the Secretary shall

provide such beneficiary with a written statement detailing the reasons for such determination.

“(2) A beneficiary whom the Secretary has determined to be mentally incompetent for purposes of appointing a fiduciary under this chapter may appeal such determination.

“(c) MODIFICATION.—(1) A beneficiary for whom the Secretary appoints a fiduciary under this chapter may, at any time, request the Secretary to—

“(A) remove the fiduciary so appointed; and

“(B) have a new fiduciary appointed.

“(2) The Secretary shall comply with a request under paragraph (1) if the Secretary determines that the request is made in good faith and—

“(A) the fiduciary requested to be removed receives a fee from the beneficiary and a suitable volunteer fiduciary is available to assist the beneficiary; or

“(B) the beneficiary provides credible information that the fiduciary requested to be removed is—

“(i) not acting in the interest of the beneficiary; or

“(ii) unable to effectively serve the beneficiary because of an irreconcilable personality conflict or disagreement.

“(3) The Secretary shall ensure that any removal or new appointment of a fiduciary under paragraph (1) does not delay or interrupt the beneficiary’s receipt of benefits administered by the Secretary.

“(d) INDEPENDENCE.—A fiduciary appointed by the Secretary shall operate independently of the Department to determine the actions that are in the interest of the beneficiary.

“(e) PREDESIGNATION.—A veteran may predesignate a fiduciary by—

“(1) submitting written notice to the Secretary of the predesignated fiduciary; or

“(2) submitting a form provided by the Secretary for such purpose.

“(f) APPOINTMENT OF NON-PREDESIGNATED FIDUCIARY.—If a beneficiary designates an individual to serve as a fiduciary under subsection (e) and the Secretary appoints an individual not so designated as the fiduciary for such beneficiary, the Secretary shall notify such beneficiary of—

“(1) the reason why such designated individual was not appointed; and

“(2) the ability of the beneficiary to modify the appointed fiduciary under subsection (c).

“(g) PRIORITY OF APPOINTMENT.—In appointing a fiduciary under this chapter, if a beneficiary does not designate a fiduciary pursuant to subsection (e), to the extent possible the Secretary shall appoint a person who is—

“(1) a relative of the beneficiary;

“(2) appointed as guardian of the beneficiary by a court of competent jurisdiction; or

“(3) authorized to act on behalf of the beneficiary under a durable power of attorney.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by striking the item relating to section 5502 and inserting the following:

“5502. Appointment of fiduciaries.”

(b) SUPERVISION.—

(1) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by inserting after section 5502, as amended by subsection (a)(1), the following new section:

**“§ 5502A. Supervision of fiduciaries**

“(a) COMMISSION.—(1)(A) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the monthly benefits provided to the beneficiary a reasonable commission for fiduciary services rendered, but the commission for any month may not exceed the lesser of the following amounts:

“(i) The amount that equals three percent of the monthly monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary.

“(ii) \$35.

“(B) A commission paid under this paragraph may not be derived from any award to a beneficiary regarding back pay or retroactive benefits payments.

“(C) A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

“(D) In accordance with section 6106 of this title, a commission may not be paid to a fiduciary if the Secretary determines that the fiduciary misused any benefit payments of a beneficiary.

“(E) If the Secretary determines that the fiduciary has misused any benefit or payments of a beneficiary, the Secretary may revoke the fiduciary status of the fiduciary.

“(2) Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

“(b) COURT.—Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary’s authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary’s discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary’s duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

“(c) PAYMENT OF CERTAIN EXPENSES.—Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

“(d) TEMPORARY PAYMENT OF BENEFITS.—All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran’s dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary’s dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary’s fiduciary, or, in the event of the beneficiary’s death, to the beneficiary’s personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary’s personal representative if, under the law of the beneficiary’s last legal residence, the beneficiary’s estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patient’s trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the

Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

“(e) ESCHEATMENT.—Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

“(f) ASSISTANCE.—The Secretary shall provide to a fiduciary appointed under section 5502 of this title materials and tools to assist the fiduciary in carrying out the responsibilities of the fiduciary under this chapter, including—

“(1) handbooks, brochures, or other written material that explain the responsibilities of a fiduciary under this chapter;

“(2) tools located on an Internet website, including forms to submit to the Secretary required information; and

“(3) assistance provided by telephone.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by inserting after the item relating to section 5502 the following new item:

“5502A. Supervision of fiduciaries.”.

(c) DEFINITION OF FIDUCIARY.—Section 5506 of title 38, United States Code, is amended—

(1) by striking “For purposes” and inserting “(a) For purposes”; and

(2) by adding at the end the following new subsection:

“(b)(1) For purposes of subsection (a), the term ‘person’ includes any—

“(A) State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

“(B) any State or local government agency with fiduciary responsibilities; or

“(C) any nonprofit social service agency that the Secretary determines—

“(i) regularly provides services as a fiduciary concurrently to five or more individuals; and

“(ii) is not a creditor of any such individual.

“(2) The Secretary shall maintain a list of State or local agencies and nonprofit social service agencies under paragraph (1) that are qualified to act as a fiduciary under this chapter. In maintaining such list, the Secretary may consult the lists maintained under section 807(h) of the Social Security Act (42 U.S.C. 1007(h)).”.

(d) QUALIFICATIONS.—Section 5507 of title 38, United States Code, is amended to read as follows:

**“§ 5507. Inquiry, investigations, and qualification of fiduciaries**

“(a) INVESTIGATION.—Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary’s fiduciary under section 5502 of this title shall be made on the basis of—

“(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary to be conducted in advance of such certification and in accordance with subsection (b);

“(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations);

“(3) adequate evidence that the person to serve as fiduciary protects the private information of a beneficiary in accordance with subsection (d)(1); and

“(4) the furnishing of any bond that may be required by the Secretary in accordance with subsection (f).

“(b) ELEMENTS OF INVESTIGATION.—(1) In conducting an inquiry or investigation of a proposed fiduciary under subsection (a)(1), the Secretary shall conduct—

“(A) a face-to-face interview with the proposed fiduciary by not later than 30 days after the date on which such inquiry or investigation begins; and

“(B) a background check of the proposed fiduciary to—

“(i) in accordance with paragraph (2), determine whether the proposed fiduciary has been convicted of a crime; and

“(ii) determine whether the proposed fiduciary will serve the best interest of the beneficiary, including by conducting a credit check of the proposed fiduciary and checking the records under paragraph (5).

“(2) The Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law. If that person has been



convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

“(3) The Secretary shall conduct the background check described in paragraph (1)(B)—

“(A) each time a person is proposed to be a fiduciary, regardless of whether the person is serving or has served as a fiduciary; and

“(B) at no expense to the beneficiary.

“(4) Each proposed fiduciary shall disclose to the Secretary the number of beneficiaries that the fiduciary acts on behalf of.

“(5) The Secretary shall maintain records of any person who has—

“(A) previously served as a fiduciary; and

“(B) had such fiduciary status revoked by the Secretary.

“(6)(A) If a fiduciary appointed by the Secretary is convicted of a crime described in subparagraph (B), the Secretary shall notify the beneficiary of such conviction by not later than 14 days after the date on which the Secretary learns of such conviction.

“(B) A crime described in this subparagraph is a crime—

“(i) for which the fiduciary is convicted while serving as a fiduciary for any person;

“(ii) that is not included in a report submitted by the fiduciary under section 5509(a) of this title; and

“(iii) that the Secretary determines could affect the ability of the fiduciary to act on behalf of the beneficiary.

“(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include giving priority to conducting such inquiry or investigation. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

“(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

“(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

“(B) the spouse or parent of an incompetent beneficiary;

“(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction;

“(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title; or

“(E) a person who is authorized to act on behalf of the beneficiary under a durable power of attorney.

“(d) PROTECTION OF PRIVATE INFORMATION.—(1) A fiduciary shall take all reasonable precautions to—

“(A) protect the private information of a beneficiary, including personally identifiable information; and

“(B) securely conducts financial transactions.

“(2) A fiduciary shall notify the Secretary of any action of the fiduciary that compromises or potentially compromises the private information of a beneficiary.

“(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Secretary has reason to believe that a fiduciary may be misusing all or part of the benefit of a beneficiary, the Secretary shall—

“(A) conduct a thorough investigation to determine the veracity of such belief; and

“(B) if such veracity is established, transmit to the officials described in paragraph (2) a report of such investigation.

“(2) The officials described in this paragraph are the following:

“(A) The Attorney General.

“(B) Each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.

“(f) BOND.—In determining whether a proposed fiduciary is required to furnish a bond under subsection (a)(4), the Secretary shall consider—

“(1) the existence of any familial or other personal relationship between the proposed fiduciary and the beneficiary; and

“(2) the care the proposed fiduciary has taken to protect the interests of the beneficiary.

“(g) LIST OF FIDUCIARIES.—Each regional office of the Veterans Benefits Administration shall maintain a list of the following:

- “(1) The name and contact information of each fiduciary, including address, telephone number, and email address.
- “(2) With respect to each fiduciary described in paragraph (1)—
- “(A) the date of the most recent background check and credit check performed by the Secretary under this section;
- “(B) the date that any bond was paid under this section;
- “(C) the name, address, and telephone number of each beneficiary the fiduciary acts on behalf of; and
- “(D) the amount that the fiduciary controls with respect to each beneficiary described in subparagraph (C).”.
- (e) ANNUAL RECEIPT OF PAYMENTS.—
- (1) IN GENERAL.—Section 5509 of title 38, United States Code, is amended—
- (A) in subsection (a)—
- (i) by striking “may require a fiduciary to file a” and inserting “shall require a fiduciary to file an annual”; and
- (ii) by adding at the end the following new sentence: “The Secretary shall transmit such annual report or accounting to the beneficiary and any legal guardian of such beneficiary.”;
- (B) by adding at the end the following new subsections:
- “(c) MATTERS INCLUDED.—Except as provided by subsection (f), an annual report or accounting under subsection (a) shall include the following:
- “(1) For each beneficiary that a fiduciary acts on behalf of—
- “(A) the amount of the benefits of the beneficiary provided under any law administered by the Secretary accrued during the year, the amount spent, and the amount remaining; and
- “(B) if the fiduciary serves the beneficiary with respect to benefits not administered by the Secretary, an accounting of all sources of benefits or other income the fiduciary oversees for the beneficiary.
- “(2) A list of events that occurred during the year covered by the report that could affect the ability of the fiduciary to act on behalf of the beneficiary, including—
- “(A) the fiduciary being convicted of any crime;
- “(B) the fiduciary declaring bankruptcy; and
- “(C) any judgments entered against the fiduciary.
- “(d) RANDOM AUDITS.—The Secretary shall annually conduct random audits of fiduciaries who receive a commission pursuant to subsection 5502A(a)(1) of this title.
- “(e) STATUS OF FIDUCIARY.—If a fiduciary includes in the annual report events described in subsection (c)(2), the Secretary may take appropriate action to adjust the status of the fiduciary as the Secretary determines appropriate, including by revoking the fiduciary status of the fiduciary.
- “(f) CAREGIVERS AND CERTAIN OTHER FIDUCIARIES.—(1)(A) In carrying out this section, the Secretary shall ensure that a caregiver fiduciary is required only to file an annual report or accounting under subsection (a) with respect to the amount of the benefits of the beneficiary provided under any law administered by the Secretary—
- “(i) spent on—
- “(I) food and housing for the beneficiary; and
- “(II) clothing, health-related expenses, recreation, and other personal items for the beneficiary; and
- “(ii) saved for the beneficiary.
- “(B) The Secretary shall coordinate with the Under Secretary for Benefits and the Under Secretary for Health to—
- “(i) minimize the frequency with which employees of the Department visit the home of a caregiver fiduciary and beneficiary; and
- “(ii) limit the extent of supervision by such Under Secretaries with respect to such a fiduciary and beneficiary.
- “(C) In this paragraph, the term ‘caregiver fiduciary’ means a fiduciary who—
- “(i) in addition to acting as a fiduciary for a beneficiary, is approved by the Secretary to be a provider of personal care services for the beneficiary under paragraph (3)(A)(i) of section 1720G(a) of this title;
- “(ii) in carrying out such care services to such beneficiary, has undergone not less than four home visits under paragraph (9)(A) of such section; and
- “(iii) has not been required by the Secretary to take corrective action pursuant to paragraph (9)(C) of such section.
- “(2) In carrying out this section, the Secretary may adjust the matters required under an annual report or accounting under subsection (a) with respect to a fiduciary whom the Secretary determines to have effectively protected the interests of the beneficiary over a sustained period.”; and

(C) by striking the section heading and inserting the following: “**Annual reports and accountings of fiduciaries**”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by striking the item relating to section 5509 and inserting the following new item:

“5509. Annual reports and accountings of fiduciaries.”.

(f) REPAYMENT OF MISUSED BENEFITS.—Section 6107(a)(2)(C) of title 38, United States Code, is amended by inserting before the period the following: “, including by the Secretary not acting in accordance with section 5507 of this title”.

(g) ANNUAL REPORTS.—Section 5510 of title 38, United States Code, is amended by striking “The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary’s Annual Performance and Accountability Report” and inserting “Not later than July 1 of each year, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a separate report containing”.

(h) REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a comprehensive report on the implementation of the amendments made by this Act, including—

(1) detailed information on the establishment of new policies and procedures pursuant to such amendments and training provided on such policies and procedures; and

(2) a discussion of whether the Secretary should provide fiduciaries with standardized financial software to simplify reporting requirements.

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is one year after the date of the enactment of this Act.

#### SEC. 10. BOARD OF VETERANS’ APPEALS VIDEO HEARINGS.

Section 7107 of title 38, United States Code, is amended—

(1) in subsection (d), by amending paragraph (1) to read as follows:

“(1)(A) Upon request for a hearing, the Board shall determine, for purposes of scheduling the hearing for the earliest possible date, whether a hearing before the Board will be held at its principal location or at a facility of the Department or other appropriate Federal facility located within the area served by a regional office of the Department. The Board shall also determine whether to provide a hearing through the use of the facilities and equipment described in subsection (e)(1) or by the appellant personally appearing before a Board member or panel.

“(B) The Board shall notify the appellant of the determinations of the location and type of hearing made under subparagraph (A). Upon notification, the appellant may request a different location or type of hearing as described in such subparagraph. If so requested, the Board shall grant such request and ensure that the hearing is scheduled at the earliest possible date without any undue delay or other prejudice to the appellant.”; and

(2) in subsection (e), by amending paragraph (2) to read as follows:

“(2) Any hearing provided through the use of the facilities and equipment described in paragraph (1) shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing.”.

#### SEC. 11. IMPROVEMENTS TO AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS.

(a) EXTENSION OF TEMPORARY AUTHORITY.—Subsection (c) of section 704 of the Veterans Benefits Act of 2003 (38 U.S.C. 5101 note) is amended by striking “December 31, 2015” and inserting “December 31, 2017”.

(b) LICENSURE OF CONTRACT PHYSICIANS.—

(1) TEMPORARY AUTHORITY.—Such section 704 is further amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following new subsection (d):

“(d) LICENSURE OF CONTRACT PHYSICIANS.—

“(1) IN GENERAL.—Notwithstanding any law regarding the licensure of physicians, a physician described in paragraph (2) may conduct an examination pursuant to a contract entered into under subsection (b) at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract.

“(2) PHYSICIAN DESCRIBED.—A physician described in this paragraph is a physician who—

“(A) has a current unrestricted license to practice the health care profession of the physician;

“(B) is not barred from practicing such health care profession in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States; and

“(C) is performing authorized duties for the Department of Veterans Affairs pursuant to a contract entered into under subsection (b).”.

(2) PILOT PROGRAM.—Section 504 of the Veterans’ Benefits Improvement Act of 1996 (38 U.S.C. 5101 note) is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following new subsection (c):

“(c) LICENSURE OF CONTRACT PHYSICIANS.—

“(1) IN GENERAL.—Notwithstanding any law regarding the licensure of physicians, a physician described in paragraph (2) may conduct an examination pursuant to a contract entered into under subsection (a) at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract.

“(2) PHYSICIAN DESCRIBED.—A physician described in this paragraph is a physician who—

“(A) has a current unrestricted license to practice the health care profession of the physician;

“(B) is not barred from practicing such health care profession in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States; and

“(C) is performing authorized duties for the Department of Veterans Affairs pursuant to a contract entered into under subsection (a).”.

**SEC. 12. PILOT PROGRAM ON FULLY DEVELOPED APPEALS.**

(a) IN GENERAL.—The Secretary of Veterans Affairs shall carry out a pilot program to provide the option of an alternative appeals process that shall more quickly determine such appeals in accordance with this section.

(b) ELECTION.—

(1) FILING.—In accordance with paragraph (2), a claimant may elect to file a fully developed appeal under the pilot program under subsection (a) by filing with the Secretary the following:

(A) The notice of disagreement under chapter 71 of title 38, United States Code, along with the written election of the claimant to have the appeal determined under the pilot program.

(B) All evidence that the claimant believes is needed for the appeal as of the date of the filing.

(C) A statement of the argument in support of the claim, if any.

(2) TIMING.—A claimant shall make an election under paragraph (1) as part of the notice of disagreement filed by the claimant in accordance with paragraph (1)(A).

(3) REVERSION.—

(A) At any time, a claimant who makes an election under paragraph (1) may elect to revert to the standard appeals process. Such a reversion shall be final.

(B) A claimant described in subparagraph (A), or a claimant who makes an election under paragraph (1) but is later determined to be ineligible for the pilot program under subsection (a), shall revert to the standard appeals process without any penalty to the claimant other than the loss of the docket number associated with the fully developed appeal.

(4) OUTREACH.—In providing claimants with notices of the determination of a claim during the period in which the pilot program under subsection (a) is carried out, the Secretary shall conduct outreach as follows:

(A) The Secretary shall provide to the claimant (and to the representative of record of the claimant, if any) information regarding—

(i) the pilot program, including the advantages and disadvantages of the program;

(ii) how to make an election under paragraph (1);

(iii) the limitation on the use of new evidence described in paragraph (3) of subsection (c) and the development of information under paragraph (4) of such subsection; and

(iv) the ability of the claimant to seek advice and education regarding such process from veterans service organizations, attorneys, and claims agents recognized under chapter 59 of title 38, United States Code.

(B) The Secretary shall collaborate, partner with, and give weight to the advice of the three veterans service organizations with the most members

to publish on the Internet website of the Department of Veterans Affairs an online tutorial explaining the advantages and disadvantages of the pilot program.

(c) TREATMENT BY DEPARTMENT AND BOARD.—

(1) PROCESS.—Upon the election of a claimant to file a fully developed appeal pursuant to subsection (b)(1), the Secretary shall—

(A) not provide the claimant with a statement of the case nor require the claimant to file a substantive appeal; and

(B) transfer jurisdiction over the fully developed appeal directly to the Board of Veterans' Appeals.

(2) DOCKET.—

(A) The Board of Veterans' Appeals shall—

(i) maintain fully developed appeals on a separate docket than standard appeals;

(ii) decide fully developed appeals in the order that the fully developed appeals are received on the fully developed appeal docket;

(iii) except as provided by subparagraph (B), decide not more than one fully developed appeal for each four standard appeals decided; and

(iv) to the extent practicable, decide each fully developed appeal by the date that is one year following the date on which the claimant files the notice of disagreement.

(B) Beginning one year after the date on which the pilot program under subsection (a) commences, the Board may adjust the number of standard appeals decided for each fully developed appeal under subparagraph (A)(iii) if the Board determines that such adjustment is fair for both standard appeals and fully developed appeals.

(3) LIMITATION ON USE OF NEW EVIDENCE.—

(A) Except as provided by subparagraphs (B) and (C)—

(i) a claimant may not submit or identify to the Board of Veterans' Appeals any new evidence relating to a fully developed appeal after filing such appeal unless the claimant reverts to the standard appeals process pursuant to subsection (b)(3); and

(ii) if a claimant submits or identifies any such new evidence, such submission or identification shall be deemed to be an election to make such a reversion pursuant to subsection (b)(3).

(B) Subparagraph (A) shall not apply to evidence developed pursuant to paragraphs (4) and (5). The Board shall consider such evidence in the first instance without consideration by the Veterans Benefits Administration.

(C) The representative of record of a claimant for appeals purposes, if any, shall be provided an opportunity to review the fully developed appeal of the claimant and submit any additional arguments or evidence that the representative determines necessary during a period specified by the Board for purposes of this subparagraph.

(4) PROHIBITION ON REMAND FOR ADDITIONAL DEVELOPMENT.—If the Board of Veterans' Appeals determines that a fully developed appeal requires Federal records, independent medical opinions, or new medical examinations, the Board shall—

(A) in accordance with paragraph (5), take such actions as may be necessary to develop such records, opinions, or examinations in accordance with section 5103A of title 38, United States Code;

(B) retain jurisdiction of the fully developed appeal without requiring a determination by the Veterans Benefits Administration based on such records, opinions, or examinations;

(C) ensure the claimant, and the representative of record of a claimant, if any, receives a copy of such records, opinions, or examinations; and

(D) provide the claimant a period of 90 days after the date of mailing such records, opinions, or examinations during which the claimant may provide the Board any additional evidence without requiring the claimant to make a reversion pursuant to subsection (b)(3).

(5) DEVELOPMENT UNIT.—

(A) The Board of Veterans' Appeals shall establish an office to develop Federal records, independent medical opinions, and new medical examinations pursuant to paragraph (4)(A) that the Board determines necessary to decide a fully developed appeal.

(B) The Secretary shall—

(i) ensure that the Veterans Benefits Administration cooperates with the Board of Veterans' Appeals in carrying out subparagraph (A); and

(ii) transfer employees of the Veterans Benefits Administration who, prior to the enactment of this Act, were responsible for processing

claims remanded by the Board of Veterans' Appeals to positions within the office of the Board established under subparagraph (A) in a number the Secretary determines sufficient to carry out such subparagraph.

(6) HEARINGS.—Notwithstanding section 7107 of title 38, United States Code, the Secretary may not provide hearings with respect to fully developed appeals. If a claimant requests to hold a hearing pursuant to such section 7107, such request shall be deemed to be an election to revert to the standard appeals process pursuant to subsection (b)(3).

(d) DURATION; APPLICATION.—The Secretary shall carry out the pilot program under subsection (a) for a five-year period beginning one year after the date of the enactment of this Act. This section shall apply only to fully developed appeals that are filed during such period.

(e) REPORTS.—During each year in which the pilot program under subsection (a) is carried out, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the pilot program. The first such report shall be submitted by not later than 180 days after the date on which the pilot program commences. Each report shall include the following:

(1) For the period covered by the report—

(A) the number of claimants who filed a fully developed appeal under the pilot program;

(B) the average processing time for each such appeal, measured by each phase of the appeal, and, if the processing time for appeals exceed one year, the reasons for such processing time;

(C) a summary of reasons for which the development of evidence was required under subsection (c)(5);

(D) the number of issues decided, listed by the disposition of the issue;

(E) of the number identified in subparagraph (D), the number of issues for which evidence was not so developed, listed by the disposition of the issue;

(F) of the number of fully developed appeals decided by the Board of Veterans' Appeals, the number of cases from each agency of original jurisdiction, listed by the disposition of the issue;

(G) the number of fully developed appeals appealed to the Court of Appeals for Veterans Claims, listed by the disposition of the case;

(H) the number of reversions made under subsection (b)(3); and

(I) any reasons for why a claimant was determined to be ineligible to participate in the pilot program.

(2) A review, made in conjunction with veterans service organizations, of the efforts of the Secretary to provide clear rating decisions and improve disability rating notification letters, including with respect to—

(A) the opinions of veterans service organizations regarding such efforts; and

(B) how the pilot program improves such efforts.

(3) A recommendation for any changes to improve the pilot program.

(4) An assessment of the feasibility and advisability of expanding the pilot program.

(f) REGULATIONS.—Not later than one day after the date of the enactment of this Act, the Secretary shall publish interim guidance on the pilot program under subsection (a). Not later than 90 days after such date of enactment, the Secretary shall prescribe regulations to carry out such pilot program.

(g) DEFINITIONS.—In this section:

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

(2) The term “compensation” has the meaning given that term in section 101 of title 38, United States Code.

(3) The term “fully developed appeal” means an appeal of a claim for disability compensation that is—

(A) filed by a claimant in accordance with subsection (b)(1); and

(B) considered in accordance with this section.

(4) The term “standard appeal” means an appeal of a claim for disability compensation that is not a fully developed appeal.

**SEC. 13. DEADLINE FOR CERTIFICATION OF APPEALS FORMS BY REGIONAL OFFICES OF THE DEPARTMENT OF VETERANS AFFAIRS.**

The Secretary of Veterans Affairs shall take such steps as may be necessary to ensure that when a regional office of the Department of Veterans Affairs receives a form known as “VA Form 9, Appeal to Board of Veterans' Appeals”, or any successor form, submitted by a veteran to appeal a decision relating to a claim, the regional office certifies such form by not later than one year after the date of the receipt of the form.

**SEC. 14. EVALUATION OF BACKLOG OF DISABILITY CLAIMS AND APPEALS OF CLAIMS OF DEPARTMENT OF VETERANS AFFAIRS.**

(a) **IN GENERAL.**—There is established a commission or task force to evaluate the backlog of claims within the Department of Veterans Affairs and the appeals process of claims.

(b) **STUDIES.**—

(1) **BACKLOG STUDY.**—

(A) **IN GENERAL.**—The Commission or Task Force, acting through the subcommittee described in subsection (d)(2)(A), shall carry out a study on the backlog of claims, including the current process the Secretary of Veterans Affairs uses to evaluate claims and appeals and the laws and regulations applicable to such claims and appeals. Such study shall be a comprehensive evaluation and assessment of the backlog of claims, an analysis of possible improvements to the procedures used to process such claims, and any related issues that the Commission or Task Force considers relevant.

(B) **MATTERS INCLUDED.**—In carrying out the study under subparagraph (A), the Commission or Task Force shall examine the following:

(i) The backlog of claims, including an analysis of—

(I) the most effective means to quickly and accurately resolve all claims pending as of the date of the study; and

(II) with respect to the Department, the annual funding, number of full-time employees, workload management practices, and the progress, as of the date of the study, of the strategic plan.

(ii) Possible improvements to the claims process, including an evaluation and recommendations with respect to whether substantive and structural changes to the overall claims process are required.

(iii) In carrying out the evaluation and recommendations under subparagraph (B), an examination of—

(I) options that make no major substantive changes to the claims process;

(II) options that maintain the process but make minor changes; and

(III) options that make broad changes to the process.

(2) **APPEALS PROCESS STUDY.**—

(A) **IN GENERAL.**—The Commission or Task Force, acting through the subcommittee described in subsection (d)(2)(B), shall carry out a study on the anticipated increase of appeals of claims, including the current appeals process and the laws and regulations applicable to such appeals. Such study shall be a comprehensive evaluation and assessment of such anticipated increase of appeals claims, an analysis of possible improvements to the procedures used to process such appeals, and any related issues that the Commission or Task Force considers relevant.

(B) **MATTERS INCLUDED.**—In carrying out the study under subparagraph (A), the Commission or Task Force shall examine the following:

(i) The anticipated surge in appeals of claims, including an analysis of—

(I) the most effective means to quickly and accurately resolve pending appeals and future appeals;

(II) with respect to both the Board and the Court of Appeals for Veterans Claims, the annual funding, number of full-time employees, workload management practices, and the progress, as of the date of the study, of the strategic plan; and

(III) the efficiency, effectiveness, and utility of the Veterans Benefits Management System with respect to appeals operations, including an identification of key changes that may need to be implemented to such system.

(ii) Possible improvements to the appeals process, including an evaluation and recommendations with respect to whether substantive and structural changes to the overall appeals process are required.

(iii) In carrying out the evaluation and recommendations under clause (ii), an examination of—

(I) options that make no major substantive changes to the appeals process;

(II) options that maintain the process but make minor changes;

(III) options that make broad changes to the process;

(IV) the necessity of the multi-tiered levels of appeals at the regional office level, including filing a notice of disagreement, receipt of a statement of the case, supplemental statement of the case (if applicable), and substantive appeal (VA Form 9);

- (V) the role of the Board and the Appeals Management Center, including—
- (aa) the effectiveness of the workload management of the Board and the Center;
  - (bb) whether the Board and Center should be regionalized or maintain the centralized structure in the District of Columbia;
  - (cc) whether Board members should be required to pass the administrative law judges certification examination; and
  - (dd) whether the Board should continue to require de novo review of appeals; and
- (VI) the role of the Court of Appeals for Veterans Claims and the United States Court of Appeals for the Federal Circuit, including—
- (aa) the continued effectiveness and necessity of a multi-tiered structure of judicial review;
  - (bb) whether the Court of Appeals for Veterans Claims should have Article I or Article III status;
  - (cc) expansion of either the Court of Appeals for Veterans Claims or the United States Court of Appeals for the Federal Circuit jurisdiction, including by allowing such courts to hear class action lawsuits with respect to claims; and
  - (dd) the possibility of expanding judicial review of claims to all Federal circuit courts of appeals or allowing judicial review beyond the Court of Appeals for Veterans Claims only by the Supreme Court.
- (3) CONSIDERATION.—In carrying out the studies under paragraph (1)(A) and (2)(A) and making any recommendations under this section, the Commission or Task Force shall consider the following:
- (A) The interests of veterans, including with respect to accuracy, fairness, and transparency in the claims process of the Department.
  - (B) The values and requirements of the Constitution, including with respect to compliance with procedural and substantive due process.
  - (C) The public interest, including with respect to the responsible use of available resources.
  - (D) With respect to the study conducted under paragraph (1)(A), the importance of the claimant friendly, nonadversarial nature of the claims process.
  - (E) With respect to the study conducted under paragraph (2)(A), the importance of an appeals process that is efficient and easily understandable by a claimant.
- (4) ROLE OF SECRETARY, CHAIRMAN OF THE BOARD, AND CHIEF JUDGE.—
- (A) INFORMATION.—In carrying out each study under paragraph (1)(A) and (2)(A), at times that the Commission or Task Force determines appropriate, the Commission or Task Force shall submit to the Secretary of Veterans Affairs, the Chairman of the Board, and the Chief Judge of the Court of Appeals for Veterans Claims, as the case may be, information with respect to remedies and solutions that the Commission or Task Force identifies pursuant to such a study.
  - (B) IMPLEMENTATION.—The Secretary, the Chairman of the Board, and the Chief Judge shall each—
    - (i) fully consider the remedies and solutions submitted to the Secretary, the Chairman, or the Chief Judge, as the case may be, under subparagraph (A);
    - (ii) implement such remedies and solutions as the Secretary, the Chairman, or the Chief Judge, respectively, determines appropriate; and
    - (iii) submit to Congress justification for failing to implement any such remedy or solution.
  - (C) PLAN.—The Commission or Task Force shall submit to the Secretary, the Chairman of the Board, and the Chief Judge a feasible, timely, and cost-effective plan to eliminate the backlog of appeals of claims based on the remedies and solutions identified pursuant to the study under paragraph (2)(A) and the information submitted under subparagraph (A).
- (c) COMPREHENSIVE REPORTS.—
- (1) INITIAL COMPREHENSIVE REPORT.—Not later than 60 days after the date on which the Commission or Task Force first meets, the Commission or Task Force shall submit to the President and Congress an initial comprehensive report on the studies conducted under paragraphs (1)(A) and (2)(A) of subsection (b), including—
    - (A) the findings of the causes of the backlog of claims;



(B) a proposed plan to handle the anticipated surge in appeals of claims; and

(C) the level of cooperation the Commission or Task Force has received from the Secretary and the heads of other departments or agencies of the Federal Government.

(2) INTERIM COMPREHENSIVE REPORTS.—Not later than 90 days after the date on which the Commission or Task Force first meets, and each 30-day period thereafter ending on the date on which the Commission or Task Force submits the final comprehensive report under paragraph (3), the Commission or Task Force shall submit to the President and Congress a comprehensive report on—

(A) the progress of the Secretary with respect to implementing solutions to expedite the elimination of the backlog of claims pursuant to subsection (b)(4)(B)(ii);

(B) the progress of the Secretary, the Chairman of the Board, and the Chief Judge of the Court of Appeals for Veterans Claims with respect to implementing solutions to complete appeals of claims in a timely manner in a timely manner pursuant to such subsection; and

(C) the level of cooperation the Commission or Task Force has received from the Secretary and the heads of other departments or agencies of the Federal Government.

(3) FINAL COMPREHENSIVE REPORT.—Not later than 180 days after the date on which the Commission or Task Force first meets, the Commission or Task Force shall submit to the President and Congress a comprehensive report on the following:

(A) With respect to the study conducted under subsection (b)(1)(A)—

(i) The findings, conclusions, and recommendations of the Commission or Task Force with respect to the matters referred to in such subsection.

(ii) The recommendations of the Commission or Task Force for revising and improving the backlog of claims and the procedures used to process claims.

(iii) The progress of the Secretary with respect to implementing solutions to expedite the elimination of the backlog of claims pursuant to subsection (b)(4)(B)(ii).

(iv) Other information and recommendations with respect to claims as the Commission or Task Force considers appropriate.

(B) With respect to the study conducted under subsection (b)(2)(A)—

(i) The findings, conclusions, and recommendations of the Commission or Task Force with respect to the matters referred to in such subsection.

(ii) The recommendations of the Commission or Task Force for revising and improving the appeals process;

(iii) The information described in subsection (b)(4)(A).

(iv) The feasible, timely, and cost effective plan described in subsection (b)(4)(C).

(v) The progress of the Secretary, the Chairman of the Board, and the Chief Judge of the Court of Appeals for Veterans Claims with respect to implementing solutions to provide timely appeals of claims.

(vi) Other information and recommendations with respect to the appeals process as the Commission or Task Force considers appropriate.

(d) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission or Task Force shall be composed of 15 members, appointed as follows:

(A) Two members appointed by the Speaker of the House of Representatives, one of whom shall be designated to serve upon the Subcommittee on the Backlog of Claims and one of whom shall be designated to serve upon the Subcommittee on Appeals.

(B) Two members appointed by the minority leader of the House of Representatives, one of whom shall be designated to serve upon the Subcommittee on the Backlog of Claims and one of whom shall be designated to serve upon the Subcommittee on Appeals.

(C) Two members appointed by the majority leader of the Senate, one of whom shall be designated to serve upon the Subcommittee on the Backlog of Claims and one of whom shall be designated to serve upon the Subcommittee on Appeals.

(D) Two members appointed by the minority leader of the Senate, one of whom shall be designated to serve upon the Subcommittee on the Backlog of Claims and one of whom shall be designated to serve upon the Subcommittee on Appeals.

(E) Three members appointed by the President, two of whom shall be designated to serve upon the Subcommittee on the Backlog of Claims and one of whom shall be designated to serve upon the Subcommittee on Appeals.

(F) One member appointed by the Secretary of Defense, whom shall be designated to serve upon the Subcommittee on the Backlog of Claims.

(G) Two members appointed by the Secretary of Veterans Affairs, one of whom shall be designated to serve upon the Subcommittee on the Backlog of Claims and one of whom shall be designated to serve upon the Subcommittee on Appeals.

(H) One member appointed by the Chief Judge of the Court of Appeals for Veterans Claims, whom shall be designated to serve upon the Subcommittee on Appeals.

(2) SUBCOMMITTEES.—The Commission or Task Force shall have two subcommittees as follows:

(A) A Subcommittee on the Backlog of Claims consisting of the eight members designated in accordance with paragraph (1).

(B) A Subcommittee on Appeals consisting of the seven members designated in accordance with paragraph (1).

(3) QUALIFICATIONS.—Each member appointed under paragraph (1) shall be appointed based on the experience of the member as a veteran or on the subject matter expertise or other relevant experience of the member.

(4) ADVISORS.—

(A) IN GENERAL.—In addition to the 15 members appointed under paragraph (1), the Commission or Task Force shall—

(i) have five nonvoting, nonmember advisors, appointed by a majority of the Commission or Task Force, each from a different organization that represents the interests of veterans; and

(ii) seek advice from experts from nongovernmental organizations (including veterans service organizations and military organizations), the Internet technology industry, and the insurance industry.

(B) ADVICE.—Individuals described in clause (i) and (ii) of subparagraph (A) shall provide advice to both subcommittees described in paragraph (2).

(5) CHAIRMAN.—The President shall designate a member of the Commission or Task Force who is appointed by the President and designated to serve upon the Subcommittee on the Backlog of Claims to serve as the chairman of the Commission or Task Force. The chairman may designate a member to serve as the chairman of the Subcommittee on the Backlog of Claims and a member to serve as the chairman of the Subcommittee on Appeals to chair such subcommittees as the designee of the chairman of the Commission or Task Force.

(6) PERIOD OF APPOINTMENT.—Members of the Commission or Task Force shall be appointed for the life of the Commission or Task Force. A vacancy shall not affect its powers.

(7) VACANCY.—A vacancy on the Commission or Task Force shall be filled in the manner in which the original appointment was made.

(8) APPOINTMENT DEADLINE.—The appointment of members of the Commission or Task Force established in this section shall be made not later than 15 days after the date of the enactment of this Act.

(e) MEETINGS.—

(1) INITIAL MEETING.—The Commission or Task Force shall hold its first meeting not later than 15 days after the date on which a majority of the members are appointed.

(2) MEETINGS.—The Commission or Task Force shall meet at the call of the chairman.

(3) QUORUM.—A majority of the members of the Commission or Task Force shall constitute a quorum, but a lesser number may hold hearings.

(f) POWERS OF THE COMMISSION OR TASK FORCE.—

(1) HEARINGS.—The Commission or Task Force may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission or Task Force considers advisable to carry out the purposes of this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission or Task Force may secure directly from any department or agency of the Federal Government such information as the Commission or Task Force considers necessary to carry out the provisions of this section. Upon request of the chairman, the head of such department or agency shall furnish such information to the Commission or Task Force.

(3) POSTAL SERVICES.—The Commission or Task Force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Commission or Task Force may accept, use, and dispose of gifts or donations of service or property.

(g) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission or Task Force who is not an officer or employee of the United States shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission or Task Force. All members of the Commission or Task Force who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the Commission or Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service of the Commission or Task Force.

(3) STAFF.—

(A) APPOINTMENT.—The chairman of the Commission or Task Force may, without regard to the civil service laws and regulations, appoint an executive director and such other personnel as may be necessary to enable the Commission or Task Force to perform its duties. The appointment of an executive director shall be subject to the approval of the Commission or Task Force.

(B) COMPENSATION.—The chairman of the Commission or Task Force may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the chairman of the Commission or Task Force, the head of any department or agency of the Federal Government may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission or Task Force to assist it in carrying out its duties.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairman of the Commission or Task Force may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(h) TERMINATION OF COMMISSION OR TASK FORCE.—The Commission or Task Force shall terminate 60 days after the date on which the Commission or Task Force submits the final comprehensive report under subsection (c)(3).

(i) FUNDING.—

(1) IN GENERAL.—The Secretary shall, upon the request of the chairman of the Commission or Task Force, make available to the Commission or Task Force such amounts as the Commission or Task Force may require to carry out the duties of the Commission or Task Force under this section.

(2) AVAILABILITY.—Any sums made available to the Commission or Task Force shall remain available, without fiscal year limitation, until the termination of the Commission or Task Force.

(j) DEFINITIONS.—In this section:

(1) The term “appeals process” means the process to appeal the determination by the Secretary of a claim beginning with the notice of disagreement filed pursuant to section 7105 of title 38, United States Code, and ending with the review of a decision by the Supreme Court pursuant to section 7292(c) of such title.

(2) The term “Board” means the Board of Veterans’ Appeals.

(3) The term “strategic plan” means the Strategic Plan to Eliminate the Compensation Claims Backlog, published by the Secretary of Veterans Affairs on January 25, 2013.

(k) EFFECTIVE DATE.—This section shall take effect on the date that is one year after the date of the enactment of this Act.

**SEC. 15. METHODS FOR VALIDATING CERTAIN WORLD WAR II MERCHANT MARINER SERVICE CONSIDERED TO BE ACTIVE SERVICE BY THE SECRETARY OF VETERANS AFFAIRS.**

(a) IN GENERAL.—For the purposes of verifying that an individual performed service under honorable conditions that satisfies the requirements of a coastwise merchant seaman who is recognized pursuant to section 401 of the GI Bill Improvement

Act of 1977 (Public Law 95-202; 38 U.S.C. 106 note) as having performed active duty service for the purposes described in subsection (c)(1), the Secretary of Homeland Security shall accept the following:

(1) In the case of an individual who served on a coastwise merchant vessel seeking such recognition for whom no applicable Coast Guard shipping or discharge form, ship logbook, merchant mariner's document or Z-card, or other official employment record is available, the Secretary shall provide such recognition on the basis of applicable Social Security Administration records submitted for or by the individual, together with validated testimony given by the individual or the primary next of kin of the individual that the individual performed such service during the period beginning on December 7, 1941, and ending on December 31, 1946.

(2) In the case of an individual who served on a coastwise merchant vessel seeking such recognition for whom the applicable Coast Guard shipping or discharge form, ship logbook, merchant mariner's document or Z-card, or other official employment record has been destroyed or otherwise become unavailable by reason of any action committed by a person responsible for the control and maintenance of such form, logbook, or record, the Secretary shall accept other official documentation demonstrating that the individual performed such service during period beginning on December 7, 1941, and ending on December 31, 1946.

(3) For the purpose of determining whether to recognize service allegedly performed during the period beginning on December 7, 1941, and ending on December 31, 1946, the Secretary shall recognize masters of seagoing vessels or other officers in command of similarly organized groups as agents of the United States who were authorized to document any individual for purposes of hiring the individual to perform service in the merchant marine or discharging an individual from such service.

(b) TREATMENT OF OTHER DOCUMENTATION.—Other documentation accepted by the Secretary of Homeland Security pursuant to subsection (a)(2) shall satisfy all requirements for eligibility of service during the period beginning on December 7, 1941, and ending on December 31, 1946.

(c) BENEFITS ALLOWED.—

(1) BURIAL BENEFITS ELIGIBILITY.—Service of an individual that is considered active duty pursuant to subsection (a) shall be considered as active duty service with respect to providing burial benefits under chapters 23 and 24 of title 38, United States Code, to the individual.

(2) MEDALS, RIBBONS, AND DECORATIONS.—An individual whose service is recognized as active duty pursuant to subsection (a) may be awarded an appropriate medal, ribbon, or other military decoration based on such service.

(3) STATUS OF VETERAN.—An individual whose service is recognized as active duty pursuant to subsection (a) shall be honored as a veteran but shall not be entitled by reason of such recognized service to any benefit that is not described in this subsection.

(d) DETERMINATION OF COASTWISE MERCHANT SEAMAN.—The Secretary of Homeland Security shall verify that an individual performed service under honorable conditions that satisfies the requirements of a coastwise merchant seaman pursuant to this section without regard to the sex, age, or disability of the individual during the period in which the individual served as such a coastwise merchant seaman.

(e) DEFINITION OF PRIMARY NEXT OF KIN.—In this section, the term "primary next of kin" with respect to an individual seeking recognition for service under this section means the closest living relative of the individual who was alive during the period of such service.

(f) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act.

#### SEC. 16. DESIGNATION OF AMERICAN WORLD WAR II CITIES.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall designate at least one city in the United States each year as an "American World War II City".

(b) CRITERIA FOR DESIGNATION.—After the designation made under subsection (c), the Secretary, in consultation with the Secretary of Defense, shall make each designation under subsection (a) based on the following criteria:

(1) Contributions by a city to the war effort during World War II, including those related to defense manufacturing, bond drives, service in the Armed Forces, and the presence of military facilities within the city.

(2) Efforts by a city to preserve the history of the city's contributions during World War II, including through the establishment of preservation organizations or museums, restoration of World War II facilities, and recognition of World War II veterans.

(c) **FIRST AMERICAN WORLD WAR II CITY.**—The city of Wilmington, North Carolina, is designated as an “American World War II City”.

**SEC. 17. SENSE OF CONGRESS REGARDING AMERICAN VETERANS DISABLED FOR LIFE.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) There are at least 3,600,000 veterans currently living with service-connected disabilities.

(2) As a result of their service, many veterans are permanently disabled throughout their lives and in many cases must rely on the support of their families and friends when these visible and invisible burdens become too much to bear alone.

(3) October 5, which is the anniversary of the dedication of the American Veterans Disabled for Life Memorial, has been recognized as an appropriate day on which to honor American veterans disabled for life each year.

(b) **SENSE OF CONGRESS.**—Congress—

(1) expresses its appreciation to the men and women left permanently wounded, ill, or injured as a result of their service in the Armed Forces;

(2) supports the annual recognition of American veterans disabled for life each year; and

(3) encourages the American people to honor American veterans disabled for life each year with appropriate programs and activities.

**PURPOSE AND SUMMARY**

H.R. 677, the American Heroes COLA Act of 2015 was introduced by Representative Abraham of Louisiana on February 3, 2015, H.R. 677, as amended, incorporates the text H.R. 677 and provisions from the following bills: H.R. 245, introduced by Representative Abraham of Louisiana on January 9, 2015; H.R. 517, introduced by Representative Titus of Nevada on February 6, 2015; H.R. 732, introduced by Representative Ruiz of California on February 4, 2015; H.R. 800, introduced by Representative O’Rourke of Texas on February 5, 2015; H.R. 1288, introduced by Representative Butterfield of North Carolina on March 4, 2015; H.R. 1302, introduced by Representative Latta of Ohio on March 4, 2015; H.R. 1331, introduced by Representative Walz of Minnesota on March 4, 2015; H.R. 1380, introduced by Representative Miller of Florida on March 16, 2015; H.R. 1512, introduced by Representative Rouzer of North Carolina on April 7, 2015; H.R. 2214, introduced by Representative Abraham of Louisiana on May 1, 2015; H.R. 2286, as introduced by Representative Paul Cook of California on May 13, 2015; H.R. 2605, introduced by Representative Johnson of Ohio on June 2, 2015; H.R. 2691, introduced by Representative Ruiz of California on June 9, 2015; and, H. Con. Res. 53, introduced by Representative Frankel of Florida on May 26, 2015. Together, these provisions would improve the expedient and accurate processing of benefits claims and appeals, ensure appropriate availability of benefits and headstone adornments, increase availability of medical evidence for benefits cases, as well as bestow honors and make other crucial changes as it pertains to veterans’ status and designations.

**BACKGROUND AND NEED FOR LEGISLATION**

*Section 2. Expansion of eligibility for medallions*

Under current law, the Department of Veterans Affairs (VA) may provide a medallion that signifies an individual’s status as a veteran to be attached to a privately purchased headstone or marker for veterans who died on or after November 1, 1990. The reason that this medallion is currently only available to veterans who died

after October 31, 1990, is because from November 1, 1990, through September 11, 2001, VA did not pay for a private headstone or marker for veterans who were qualified for interment in a national or state veterans' cemetery. Thus, the medallions were provided as a way to distinguish the privately purchased headstones of veterans who died after November 1, 1990.

These medallions have been very much appreciated by veterans and their families and VA has received many requests for such medallions. According to VA testimony, since the Department began providing medallions in 2009, 91 percent of requests for these emblems have been denied because otherwise qualifying veterans died between 1960 and November 1, 1990.<sup>1</sup>

During the Subcommittee on Disability Assistance and Memorial Affairs hearing on June 24, 2015, The American Legion, Disabled American Veterans, Veterans of Foreign Wars, Iraq and Afghanistan Veterans of America, and Paralyzed Veterans of America testified in support of expanding the eligibility for such medallions. AMVETS and VA also testified in support of allowing more veterans to qualify for the medallions, but recommended that eligibility be restricted to help protect antique headstones and ensure that the landscape of historic cemeteries be preserved. Providing such medallions to veterans who served in the military after April 6, 1917, would help distinguish the final resting place of veterans who are buried in private cemeteries, while allowing the National Cemetery Administration to comply with historic preservation and federal stewardship statutes and regulations.

*Section 3. Definitions relating to claims for benefits under laws administered by the Secretary of Veterans Affairs*

This section would establish uniform definitions for the following terms: "claimant," "claim," and "formal claim." Establishing uniform definitions would ensure consistency in the types of information included in VA's reports to Congress with respect to VA's claims processing procedures.

*Section 4. Quarterly reports on formal and informal claims for benefits under laws administered by the Secretary of Veterans Affairs*

To improve congressional oversight of VA's claims processing procedures, this section would mandate that VA submit quarterly reports to the Committees on Veterans' Affairs of the Senate and House of Representatives. Such reports would include the following information: (1) the total number of claims submitted to VA; (2) the total number of informal claims submitted to VA; (3) the total number of formal claims submitted to VA; (4) the total number of forms indicating an intent to file a claim for benefits submitted to VA; (5) the total number of claims notification letters sent by VA that included an invitation to the claimant to submit an additional formal claim, and of those, the total number who submitted a formal claim in response to such notification letters; (6) the total number of elec-

<sup>1</sup>McLenachen, David R., Acting Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration, U.S. Department of Veterans Affairs, Statement to the House of Representatives Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs Hearing on June 24, 2015.

tronically filed claims submitted to VA; and, (7) the total number of fully-developed claims submitted to VA.

It is inefficient to require a veteran who is seeking an increased rating or to reopen a claim to submit information that is already in VA's possession. Therefore, section 4 would express the sense of Congress that VA should develop a designated form for an increased rating claim or reopening of a claim that does not require the resubmittal of information previously submitted on a formal claim form.

*Section 5. Expedited payment of survivors benefits*

VA provides several benefits to qualifying family members of certain deceased veterans, including Dependency and Indemnity Compensation (DIC), survivors' pension, home loans, and the Dependents' Educational Assistance Program. In most cases, VA's records already include many of the documents necessary to grant benefits to his or her survivors, such as the veteran's DD-214. However, to qualify for benefits, the survivor is required to file a formal claim and resubmit evidence that VA already has, such as the veteran's service-connected disability ratings.

The current system for processing survivor's benefits is inefficient because VA employees are required to review paperwork that may already be in the veteran's file. Furthermore, the application process places a burden on the veteran's grieving family members, who are forced to file a formal claim and resubmit documents that may already be in VA's possession.

Section 5 of H.R. 677, as amended, would authorize VA to automatically pay benefits to qualified survivors of veterans, as long as VA has the information necessary to establish entitlement to benefits. The survivor would be able to submit new evidence, such as the death certificate and other information, but the survivor would not have to file a formal claim. Additionally, Section 5 would establish that the date the survivor notified VA of the death of the veteran would serve as the date of receipt of such a claim.

This section would also require that not later than one year after the date of enactment of this Act, VA would submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report with certain information regarding survivors' claims adjudicated during the period of time covered by such report. Such report would include any recommendations VA may have for legislative or administrative action to improve the adjudication of survivors' claims submitted to VA. Finally, section 5 would establish that the effective date of this section would apply with respect to claims for benefits based on a death occurring on or after the date of enactment of this Act.

*Section 6. Priority for processing claims of the Department of Veterans Affairs*

Section 6 of H.R. 677, as amended, would require the Secretary of Veterans Affairs to prioritize disability benefits claims submitted by veterans who: (1) have attained the age of 70; (2) are terminally ill; (3) have life-threatening illnesses; (4) are homeless; (5) have received the Medal of Honor; (6) were prisoners of war; (7) have claims being reviewed again in relation to a previously denied claim relating to military sexual trauma; (8) the Secretary deter-

mines, on a case-by-case basis, are seriously or very seriously injured; and, (9) the Secretary determines a good cause justifies prioritization.

Current VA practice allows the prioritization of certain claims, to include applications filed by Medal of Honor recipients, homeless veterans, veterans experiencing extreme financial hardships, and veterans suffering from terminal illness. Thus, current VA policy has already identified certain classes of claimants and determined that expedited treatment may be appropriate in some instances. Most of the classes of claimants enumerated in Section 6 currently qualify for prioritization and expedited process under VA's policy. However, on June 28, 2013, at a Subcommittee on Disability Assistance and Memorial Affairs legislative hearing on this proposal, Veterans Benefits Administration Director of Compensation Service, Thomas Murphy, testified that it is not guaranteed that this VA practice is uniformly applied across all regional offices. Accordingly, it is the intent of this Section to create a statutory requirement in order to ensure uniform prioritization for veterans who have the most urgent claims. The codification of this requirement would ensure uniform application of the priority classes, while still giving discretion to the Secretary of Veterans Affairs to provide for the prioritization of additional claims on a case-by-case basis.

*Section 7. Treatment of medical evidence provided by non-department of Veterans Affairs medical professionals in support of claims for disability compensation*

VA may afford medical examinations to veterans seeking disability benefits, but there is often a long wait time before these examinations can be scheduled by VA. Moreover, many veterans prefer to submit private medical evidence to support their claims for disability benefits.

Section 1525 of title 38, U.S.C., currently states: "For purposes of establishing any claim for benefits under chapter 11 or 15 of this title [38 USCS §§ 1101 et seq. or 1501 et seq.], a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim."

During the April 14, 2015, Subcommittee on Disability Assistance and Memorial Affairs hearing, The American Legion testified that it had documented many instances of VA scheduling unnecessary and duplicative examinations with a VA physician, even though there was already sufficient medical evidence in the claims file from a private physician to decide the claim. These duplicative examinations add unnecessary delays to the disability claims process.

Section 7 would require VA to accept a medical examination administered by a private physician if such examination report is sufficiently complete. This Section would define "sufficiently complete" to mean "competent, credible, probative, and containing such information as may be required to make a decision on the claim from which the report is provided." However, if VA decides that the evidence submitted by a non-VA physician is not sufficiently complete,



Section 7 would require VA to provide the veteran with a thorough explanation of why such medical opinion does not include adequate information for VA to issue a decision on the claim, and the reason why additional medical evidence is necessary. Finally, this section would establish that the effective date of this Section would apply with respect to medical evidence submitted after the date that is one year after the date of enactment.

Section 7 would improve VA's claims processing system by eliminating the requirement that claimants undergo unnecessary examinations. Moreover, requiring VA to accept a sufficiently complete report from a private physician would result in a reduction in the number of disability examinations conducted by VA physicians. This would allow VA's medical professionals to devote more resources to providing care for our nation's veterans and improve timeliness for those VA compensation examinations conducted by VA physicians.

*Section 8. Automatic annual increase in rates of disability compensation and dependency and indemnity compensation*

The basic purpose of the disability compensation program is to provide relief from the impaired earning capacity of veterans who are disabled as a result of their military service. The amount of compensation payable varies according to the degree of disability. This amount in turn is required by law to represent, to the extent practicable, the average impairment in earning capacity in civilian occupations resulting from such disability or combination of disabilities. To be eligible to receive disability compensation, a veteran must have a disability incurred in or aggravated by military service, which is not the result of willful misconduct, and must have been discharged under other than dishonorable conditions. The responsibility for determining a veteran's entitlement to service-connection for a disability rests with VA.

Surviving spouses and dependent children of veterans who died as a result of disabilities determined by VA to be service-connected (including veterans who died while on active duty), or who had a service-connected disability rated at 100 percent for a specified minimum amount of time prior to death, are entitled to receive monthly DIC benefits. Additional amounts are paid to survivors who are housebound, in need of aid and attendance, or who have minor children. The purpose of DIC benefits authorized under chapter 13 of title 38, U.S.C., is to provide partial compensation to the appropriate survivors for the loss in financial support due to the veteran's service-connected death. Income and need are not factors in determining a surviving spouse's or child's entitlement because the nation, in part, assumes the legal and moral obligation of the veteran to support the spouse and children.

Each year, the Committee approves and reports legislation that sets the cost-of-living adjustment (COLA) by reference to the Social Security increase. Although the Committee typically passes such legislation each year, veterans must wait for Congress to act before they are granted such an increase. In contrast, Social Security beneficiaries receive an automatic and annual COLA if there is an increase in the Consumer Price Index for Urban Wage Earners and

Clerical Workers (CPI-W) in the previous year.<sup>2</sup> Accordingly, service-disabled veterans who are receiving disability benefits from VA should also automatically receive their benefits increase, particularly in light of the current economic climate.

To correct this inequity, rather than being subject to the uncertainty of an annual COLA bill, this Section would make compensation to veterans and their dependents permanently subject to the same COLA as Social Security recipients. By making such an increase automatic, veterans would not have to wait for Congress to pass an annual COLA bill before receiving the COLA increase in benefits. Further, because a COLA is assumed in the Congressional Budget Office's baseline, there is no projected increase in mandatory spending relative to the baseline projected for this provision.

#### *Section 9. Improvement of fiduciaries for veterans*

Section 9 would provide reforms to VA's fiduciary program. Specifically, chapter 55 of title 38, U.S.C., provides authority for the VA fiduciary program, which is intended to help veterans and other VA beneficiaries who are deemed by the Secretary of Veterans Affairs to be mentally incompetent for purposes of handling their financial affairs. In such cases, the Secretary appoints a fiduciary who, by statute, is only authorized to receive and manage benefits administered by the Secretary on behalf of the beneficiary. The fiduciary is responsible for ensuring that a beneficiary's bills are paid on time and that a beneficiary receives money to pay for food, shelter, clothing, medical expenses, and other necessities.

The framework established in chapter 55 allows VA a great deal of latitude in implementing the fiduciary program. Section 9 is designed to transform VA's fiduciary program to better serve the needs of our most vulnerable veterans and their hardworking fiduciaries, and to protect veterans in the program from falling victim to deceitful and criminal fiduciaries. Section 9 would overhaul the VA fiduciary program, making many necessary reforms to address problems identified in recent years and would realign chapter 55 to a structure more consistent with other amended sections of title 38, U.S.C.

Under current law, a VA beneficiary may appeal VA's decision to appoint a fiduciary. However, the appeals process within VA's fiduciary program is difficult, slow, and often results in healthy, capable veterans being unable to remove themselves from the program. Section 9 would require that whenever the Secretary appoints a fiduciary, the Secretary must provide a written statement detailing the reasons why such beneficiary is unable to handle his or her VA funds. Furthermore, the beneficiary would be allowed to appeal the finding of incompetence at any time. This provision not only enables a veteran to remain out of the fiduciary program if medical evidence supports such a position, it would also allow a veteran who has sufficiently recovered at a later time to return to managing his or her own financial affairs.

This Section would also permit a veteran or other VA beneficiary to request the appointment of a new fiduciary if it is perceived that the current fiduciary is not acting in the best interest of the vet-

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<sup>2</sup>Under current law, the COLA equals the percentage increase in the average CPI-W from the third quarter of the base year (the last year for which a COLA was applied) to the third quarter of the current year.

eran or has an irreconcilable personality conflict or disagreement. The Secretary may deny the removal of an appointed fiduciary if it is determined that the request was not made in good faith, and would ensure that the delivery of benefits is not interrupted if a previous fiduciary is removed and a new one appointed.

This section would enable a veteran or other VA beneficiary to designate a preferred fiduciary ahead of time, such as a family member or guardian. While the Secretary would not be required to appoint the designated fiduciary, the reason for not appointing that fiduciary would have to be presented in writing to the veteran as would a notice of the veteran's right to modify the appointment. In many cases, a veteran or other VA beneficiary may already have a family member or court-appointed guardian acting as a fiduciary for other benefits, and in cases where the veteran is happy with the fiduciary's performance of those duties, a sensible approach would be to maintain that relationship.

In response to due process concerns raised by the Veterans of Foreign Wars, during the July 9, 2015, Disability Assistance and Memorial Affairs subcommittee legislative hearing, an amendment was adopted that removed the provision authorizing the appointment of a temporary fiduciary in cases where the veteran was not yet afforded a hearing. If a beneficiary does not designate a preferred fiduciary in advance, Section 9 would also establish the priority for VA to follow when determining whom to appoint as the veteran's fiduciary. Such priority would include a relative of the beneficiary, the person appointed as guardian of the beneficiary by a court of competent jurisdiction, and anyone authorized to act on behalf of the beneficiary under a durable power of attorney.

Under certain circumstances, the Secretary may decide that a paid fiduciary is in a veteran's or other VA beneficiary's best interest. Currently, Section 5502(a)(2) of title 38, U.S.C., states that a fiduciary may receive a commission for his or her efforts, but that commission may not exceed four percent of the monetary benefits a beneficiary receives in one year. Investigations, hearings, and media reports have identified many problems in the fiduciary program arising from paid fiduciaries receiving more than the amount authorized under law, including receiving commissions from retroactive and lump sum payments to veterans. Further, evidence has also revealed VA field examiners directing fiduciaries to take income from non-VA benefits as well, an action explicitly not authorized by law. In some cases, the veteran beneficiary had not received basic funding for food, clothing, and shelter that should have been administered by the fiduciary.

The Committee has continued to hold hearings and conduct investigations that have indicated that current law and policy regarding commissions paid to fiduciaries are frequently violated throughout the nation. Additionally, the commission rate paid to VA-appointed fiduciaries is already higher than that paid by the Social Security Administration (SSA) under the Representative Payee Program, the SSA's equivalent to VA's fiduciary program.

Section 9 would reduce the commission rate paid to fiduciaries, if the Secretary determines that a paid fiduciary is in the best interest of the veteran, to not more than 3 percent of the veteran's monthly benefits, or \$35 per month, whichever is less. Any desire by VA to increase this rate would require congressional authoriza-

tion. This commission rate would give VA's fiduciary program a similar structure to the SSA's Representative Payee Program and would reduce the profit motive of predatory fiduciaries. This section would also clarify that (1) commission payments are not to be derived from retroactive or lump sum payments; (2) fiduciaries who are determined to misuse a veteran's benefits may not receive commissions; (3) fiduciaries found to be misusing funds may have their status as fiduciaries revoked; (4) the Secretary may seek compensation in a court of law from fiduciaries found to misuse benefits or fiduciaries who fail to adequately account for a veteran's benefits; and, (5) funds remaining with a paid fiduciary after a veteran's passing would escheat to the federal government. Reducing the financial incentive for a predatory fiduciary to apply to VA's fiduciary program provides further assurance that participants are working in the best interest of vulnerable veterans.

According to testimony provided by the VA Office of Inspector General (OIG), from April 1, 2010, to March 31, 2015, the OIG conducted 216 investigations involving fiduciary fraud and arrested 94 fiduciaries and/or associates.<sup>3</sup> Furthermore, Committee investigations have documented cases of convicted felons serving as fiduciaries, as well as fiduciaries with no knowledge of or training regarding their duties to the veteran. Many cases of embezzlement of a veteran's funds could have been prevented with a basic background check of a fiduciary. However, VA frequently used its authority to waive the current background check requirement for appointment of a fiduciary, and failed to follow up at a later point in time to determine the suitability of the appointed fiduciary.

Furthermore, on June 1, 2015, the OIG issued a report finding that VA failed to schedule required field examinations in a timely manner. The purpose of VA's field examinations is to assess the welfare of the veteran through personal contact via a visit to the veteran's home. Field examinations are also used to review fund usage and the overall performance of the fiduciary. OIG reported that during Calendar Year 2013, VA did not meet timeliness standards for about 45,500 of approximately 109,000 (42%) field examinations. Of those 45,500 examinations, approximately 18,100 were still not completed as of December 31, 2013.

Moreover, the Veterans Benefits Administration (VBA) did not meet timeliness standards for about 54,000 of approximately 106,400 field examinations for the first three quarters of Calendar Year 2014. Of the 54,000 field examinations that did not meet timeliness standards in the first three quarters of Calendar Year 2014, approximately 21,900 were still not completed as of September 2014. As a result, the OIG concluded that untimely field examinations placed approximately \$360.7 million in benefit payments and \$487.6 million in estate values at increased risk of misuse. In addition, the OIG determined that VBA had failed to schedule required field examinations for approximately 1,800 beneficiaries in Calendar Year 2013.<sup>4</sup>

<sup>3</sup>Abe, Gary, K., Deputy Assistant Inspector General for Audits and Evaluations, Office of Inspector General, U.S. Department of Veterans Affairs, Statement to the House of Representatives Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs Hearing on June 11, 2015.

<sup>4</sup>Ibid, at page 3.

Field examinations are essential to ensure that the veteran is adequately protected. The Committee is concerned that VA's failure to conduct timely field examinations may be evidence that VA is not adequately fulfilling its required oversight of fiduciaries. The lack of oversight may place the general health and well-being of beneficiaries at risk.

Section 9 would improve the oversight and the qualification processes for fiduciaries by requiring the Secretary to perform civil and criminal background investigations, and conduct a face-to-face interview prior to certifying an individual as a fiduciary. In response to concerns that performing background checks may slow the fiduciary appointment process, authority would be provided to the Secretary, to expedite background checks where necessary. This Section would also protect veterans' sensitive personal information and would mandate the furnishing of a bond when required by the Secretary, before certifying an individual as a fiduciary. Veterans service organizations (VSOs) raised concerns that the requirement of a bond for family or caregiver fiduciaries causes undue hardship upon those closest to the veteran; to address these concerns, Section 9 would allow the Secretary to consider the existence of a familial or personal relationship between the proposed fiduciary and beneficiary, as well as the care the proposed fiduciary has taken to protect the interests of the beneficiary.

Committee investigations have yielded information regarding cases where a veteran or other VA beneficiary had never met nor heard from his or her fiduciary.<sup>5</sup> According to one witness at an oversight hearing conducted on February 9, 2012, this lack of accountability on the part of fiduciaries, coupled with VA's lack of oversight, contributed to allegations that some veterans did not receive the necessary funds to pay basic utilities and predatory fiduciaries making a profit at the expense of the veteran.<sup>6</sup>

To improve VA oversight of fiduciaries, Section 9 contains a provision that would require an annual accounting by fiduciaries of benefits earned, benefits disbursed, and the remaining balance as well as other fiduciary-controlled sources of income of that veteran. The fiduciary would also be required to report any events affecting his or her ability to serve the veteran, including criminal convictions, bankruptcy filings, and judgments filed against the fiduciary. Any events reported in the annual accounting may be considered by the Secretary in determining a fiduciary's ability to continue serving the best interest of the veteran. This annual report would be transmitted to the beneficiary or the beneficiary's guardian.

Under current law, VA is not required to review a fiduciary's annual accounting. VA's current policy generally requires fiduciaries to submit an annual accounting in cases where: the beneficiary's annual VA benefit amount equals or exceeds the compensation payable to a veteran with a service-connected disability that is rated totally disabling; the beneficiary's accumulated VA funds under management by a fiduciary is \$10,000 or more; the fiduciary was appointed by a court; or, the fiduciary receives a fee. Such audits

<sup>5</sup> Rosinski, Doug, Attorney, Law Office of Douglas J. Rosinski, Esq., Testimony to the House of Representatives Committee on Veterans' Affairs Subcommittee on Oversight and Investigations Hearing on February 9, 2012.

<sup>6</sup> Eagle, Katrina, Attorney, Law office of Katrina J. Eagle, Esq, Testimony to the House of Representatives Committee on Veterans' Affairs Subcommittee on Oversight and Investigations Hearing on February 9, 2012.

generally require a statement of the beginning account balance, a detailed accounting of the funds managed on behalf of the beneficiary, a detailed list of the expenses paid, and the ending account balance.

Section 9 would provide for specific treatment of caregiver fiduciaries, ensuring that a limited annual report is required. However, Section 9 would give VA the opportunity to audit fiduciaries whose accounting is suspect. The Secretary would be given discretion to adjust the content required under an annual report or accounting with respect to a caregiver fiduciary whom the Secretary determines to have effectively protected the interests of the beneficiary over a sustained period, including the parameters for the posting of bond as mentioned above. Additionally, the VBA and the Veterans Health Administration (VHA) would be required to coordinate and minimize the frequency with which employees of VA visit the home of a caregiver fiduciary and beneficiary, and limit the extent of supervision by Under Secretaries with respect to such a fiduciary and beneficiary.

Although it is important for VA to periodically audit fiduciaries, particularly fiduciaries who receive a commission, a comprehensive annual reporting requirement may place a burden on volunteer fiduciaries. This burden may be particularly onerous if the fiduciary is also serving as the veteran's caregiver. Caregivers are often loving family members, who are making tremendous sacrifices to ensure the care and comfort of the veteran. Furthermore, many caregivers are already being supervised by the VHA under the Caregivers and Veterans Omnibus Health Services Act of 2010<sup>7</sup> (Caregivers Act). Fiduciaries who also receive VA assistance are subject to periodic home visits by VHA employees to assess the welfare of the veteran. If the VHA home visits reveal that the veteran is not receiving proper care, VHA may terminate caregiver support. Therefore, requiring caregivers to provide a detailed annual accounting would be an unnecessary burden and would not provide additional protections for the beneficiary.

#### *Section 10. Board of Veterans' Appeals video hearings*

Although a hearing is not required in order for the Board of Veterans' Appeals (Board) to issue a final decision in a veteran's appeal, a veteran is entitled to a hearing upon request. In FY 2014, the Board held almost 11,000 hearings. Many of these hearings were conducted at the Board offices, but Board Members also travel to VA regional benefits offices around the country for the purpose of holding hearings in locations more convenient for veterans. In addition, the Board offers veterans the option of having a videoconference hearing.

During the January 22, 2015, Subcommittee on Disability Assistance and Memorial Affairs hearing, the Board's Vice Chairman, Laura Eskenazi, testified that there is no statistical difference in the ultimate disposition of in-person hearings as compared to videoconference hearings. Veterans who had videoconference hearings had an allowance rate for their appeals that was virtually the same as veterans who had an in-person hearing.<sup>8</sup> Furthermore, during

<sup>7</sup> P.L. 111-163 (May 5, 2010)

<sup>8</sup> Eskenazi testimony, op. cit.

the April 14, 2015, Subcommittee on Disability Assistance and Memorial Affairs hearing, VA testified that the Board has historically been able to schedule videoconference hearings more quickly than in-person hearings. For example, in FY 2014, on average, videoconference hearings were held 124 days sooner than in-person hearings.

Section 10 would permit the Board to schedule the earliest possible hearing for the appellant, which may be a videoconference hearing. This provision, however, would preserve the right of the appellant to request a different type of hearing, such as a hearing at the Board offices in Washington, D.C., or a hearing by a Board Member held at the appellant's local regional office.

Section 10 would encourage the additional use of videoconferencing at the Board for the purpose of expediting the scheduling of appeals hearings. This Section would also improve efficiencies at the Board by reducing time lost due to the Veterans Law Judges having to travel to regional benefits offices to conduct in-person hearings.

*Section 11. Improvements to authority for performance of medical disabilities examinations by contract physicians*

Some veterans are afforded a VA medical examination to evaluate their application for disability benefits. Unfortunately, there are not enough VA examiners to perform these evaluations in a timely manner, and some veterans experience lengthy delays before VA is able to schedule such examinations. It may be especially difficult for VA to timely schedule these examinations if the veteran needs to see a specialist, such as a cardiologist or orthopedic surgeon. Moreover, veterans who live in rural areas may have to travel for miles to a VA facility in order to see a VA examiner for a disability examination.

During the July 29, 2015, Subcommittee on Disability Assistance and Memorial Affairs hearing, VA testified that enabling licensed physicians operating under a VA contract to conduct more examinations would allow VA doctors to devote more time to treating veterans, rather than conducting disability examinations. In 2003, Congress gave VA temporary authority to contract with non-VA physicians to perform disability examinations. However, such authorization expires on December 31, 2016.

Section 11 would extend VA's authority to contract with non-VA physicians to conduct disability examinations through December 31, 2017. This Section would also revise provisions of the Veterans Benefits Act of 2003 and the Veterans' Benefits Improvement Act of 1996 relating to contract examinations. Section 11 would clarify that, notwithstanding any law regarding the licensure of physicians, a physician who has a current unrestricted license would be authorized to conduct disability examinations for VA in any state, the District of Columbia, or a commonwealth, territory, or possession of the United States. However, this authorization would only extend to physicians conducting an examination within the scope of the physician's authorized duties under a contract with VA. Furthermore, VA would only be able to contract with physicians who are not barred from conducting such an examination in any state, the District of Columbia, or a commonwealth, territory, or possession of the United States.

Moreover, the Committee is concerned about a news report indicating that some veterans have been referred to a physician who was under criminal investigation and practicing medicine with a restricted license.<sup>9</sup> A restricted license limits a physician's practice, generally because the physician has a health problem or is being disciplined for professional misconduct. Section 11 would ensure that VA would not be able to contract with any physician who is practicing medicine with a restricted license.

It would benefit veterans to extend VA's temporary authority to contract with private physicians to conduct disability examinations. However, VA should only contract with physicians who have current unrestricted licenses and are not barred from conducting medical examinations within the United States or its territories.

*Section 12. Pilot program on fully developed appeals*

Under the current VA appeals system, a veteran who disagrees with VA's decision with respect to his or her claim for benefits may file a Notice of Disagreement (NOD). The VA regional benefits office then determines whether additional development is needed and, if so, undertakes that development and provides the veteran with a statement of the case (SOC). The SOC includes a summary of the evidence considered, a summary of the applicable laws and regulations, and a discussion of how such laws and regulations affect VA's decision. The veteran may then file a substantive appeal via a VA Form 9, and is permitted to submit additional evidence to support his or her appeal. Each time the veteran submits new information, the regional benefits office will generally issue a new decision or supplemental statement of the case (SSOC).

The requirement that VA issue a SSOC every time new evidence is submitted increases the wait time for veterans. In FY 2014, the average time between the date a veteran filed an NOD and the issuance of an SOC was 330 days. The time from issuance of an SOC to filing of a substantive appeal averaged 39 days. The period between the filing of a substantive appeal and certification of an appeal to the Board was 681 days.<sup>10</sup>

To determine whether the fully developed appeals (FDA) process would help expedite VA's appeals process, Section 12 would create a five-year FDA pilot program. This Section would require VA to provide the claimant with information about the pilot program, including the limitation on providing new evidence after filing an appeal and the advantages and disadvantages of participating in the program. Further, VA would be required to collaborate with veterans service organizations to publish an online tutorial explaining the advantages and disadvantages of the pilot program.

Under Section 12, a claimant who elects to participate in the pilot program would file a NOD, along with a written election to have the appeal determined under the pilot program. At the time of filing the NOD, the claimant would submit all evidence that the claimant believes is needed for the appeal, as of the date of filing, and a statement of argument, if any, in support of the claim. Furthermore, the claimant's representative of record, if any, would have the opportunity to review the claimant's FDA and submit any

<sup>9</sup>Ryan, Patty, "VA Contractor Sent Patients to Tampa Doctor as Prosecutors Tried to Send Him to Prison," *Tampa Bay Times*, August 22, 2015.

<sup>10</sup>McLenachen testimony, op. cit., April 14, 2015.



additional arguments or evidence that the representative determines necessary. After the claimant elects to file a FDA, jurisdiction over the appeal would transfer to the Board.

Section 12 would allow a veteran to revert to the traditional appeals process at any time after making an FDA election, with no penalty other than the time lost whereby the appeal may have been reviewed under the traditional appeals process. If the claimant decides to submit new evidence, the claimant would be required to revert to the traditional appeals process. Additionally, if the claimant requests to hold a hearing, such request would be deemed to be an election to revert to the standard appeals process.

Upon the election of a claimant to file a FDA, the jurisdiction of the appeal would transfer directly to the Board. The Board would maintain FDA on a separate docket than the standard appeals docket. The Board would also be directed to decide FDAs in the order they are received, however, the Board would not decide more than one FDA for each four traditional appeals decided. Finally, to the extent practicable, Section 12 would require that the Board decide each FDA within one year of the date on which the claimant files the NOD.

In addition, Section 12 would require the Board to establish an office to develop any evidence the Board determines necessary to decide a FDA. VA would be required to cooperate with the Board in developing evidence. Furthermore, VA would be required to transfer employees who were responsible for processing remanded cases to positions within the Board in a number VA determines sufficient to carry out this section.

Section 12 would, in cases where the Board determines that a FDA requires additional evidence, direct the Board to take such action as may be necessary to develop such new evidence without remanding the case to the VBA. The Board would consider such evidence in the first instance without consideration by the VBA. Moreover, the claimant or the representative of the claimant, if any, would have the opportunity to review a copy of such new evidence and is able to respond within 90 days after the date of mailing such evidence, without requiring the claimant to make a reversion to the traditional appeals process.

Section 12 would also require VA to provide an annual report that would include recommendations for changes to improve the pilot program and an assessment of the feasibility and advisability of expanding the pilot program. Such annual reports would begin 180 days after the date on which the pilot program commences.

VA's current rating notification letters fail to clearly explain the rationale for its conclusions. If veterans better understood why VA denied their initial claim, the number of appeals may be reduced. More complete and clear decision letters would provide veterans and their representatives with a better understanding of what is needed to prevail in their appeal, regardless of which option they choose. To ensure VA works cooperatively with VSOs to develop a better, more understandable rating notification letter, this Section would require the annual report to include a review, made in conjunction with VSOs, of VA's efforts to improve disability rating notification letters. Moreover, the report would include the opinions of the VSOs regarding VA's efforts to provide clear notification letters. Finally, section 12 would require VA to publish interim guid-

ance on the pilot program not later than one day after the date of enactment and would require VA to prescribe regulations to carry out such pilot program not later than 90 days after enactment.

*Section 13. Deadline for certification of appeals forms by regional offices of the Department of Veterans Affairs*

After a veteran files a substantive appeal, VA employees are required to review the claims file to ensure that all administrative and adjudicative procedures have been completed before the appeal is certified to the Board. The purpose of the review is to avoid unnecessary remands by ensuring that all issues have been addressed before certification to the Board. Despite the fact that this review is simply an administrative procedure, it currently takes 681 days on average for VA to complete the process of certifying an appeal to the Board.<sup>11</sup>

During the June 24, 2015, Subcommittee on Disability Assistance and Memorial Affairs hearing, The American Legion and the Iraq and Afghanistan Veterans of America testified in support of the provisions of Section 13, which would require VA to complete the certification process within one year.

*Section 14. Evaluation of backlog of disability claims and appeals of claims of Department of Veterans Affairs*

Section 14 would establish a commission or task force to provide a comprehensive evaluation and assessment of the backlog of VA disability claims, as well as the lesser noted backlog of appeals of initial decisions, an analysis of possible improvements to VA disability claims processing, and any related issues that the commission or task force considers relevant. This Section would require VA to submit interim and final reports to Congress within 180 days of commencement of work.

The VA disability compensation program provides monetary support to veterans with disabling conditions that were incurred or aggravated during military service. In FY 2015, the program provided approximately \$63.7 billion in disability compensation benefits to nearly 4.1 million veterans. For years, the disability compensation claims process has been the subject of concern and attention by VA, Congress, and VSOs, due in large part to long waits for decisions and the large number of claims pending a decision. Against this backdrop, thousands of servicemembers are expected to become veterans in the coming years according to VA officials, with a significant number expected to apply for disability benefits.

VA has installed sweeping technological changes in recent years, and has implemented various initiatives under its Strategic Plan. However, VA has also layered new initiative upon new initiative, including short-notice mandatory overtime, focused deadlines for claims dated in excess of one year, and alteration of the VA tracking and reporting figures of backlogged claims in its Monday Morning Workload Report. In December 2012, the GAO issued a report entitled, "Veterans' Disability Benefits: Challenges to Timely Processing Remains a Daunting Challenge" that reviewed VA's disability adjudication process. The GAO noted that, although VA is attempting to address processing challenges through various im-

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<sup>11</sup> Ibid.

provement initiatives, without a comprehensive plan to strategically manage resources and evaluate the effectiveness of these efforts, the agency risks spending limited resources on initiatives that may not speed up the disability claims and appeals processes. This may, in turn, result in forcing veterans to continue to wait months and even years to receive compensation for injuries incurred during their service to the country.<sup>12</sup>

Furthermore, numerous recent reports from VA OIG demonstrate that VA regional offices across the nation continue to lack effective controls and accuracy in processing disability claims, fail to adequately interpret policy requirements, lack effective training, and further lack proper managerial oversight. While VA has set concrete goals for processing times and reduction of backlogged veterans' disability compensation claims, it is evident that more must be done to ensure that VA implements a workload management strategy that will not only eliminate the current backlog, but will also improve the system in a holistic manner, provide capacity for anticipated and unanticipated surges, ensure accurate processing of claims, and prevent future backlog occurrences.

The need for legislation establishing a commission or task force has been highlighted before the Committee by independent subject matter expert academics, organizations who advocate on behalf of veterans, and by the CAVC. An outside analysis is necessary to clearly identify, first, why the backlog exists, and second, how to prevent this situation from recurring, whether by amendment to law, regulation, policy, or process.

The commission or task force created by this Section would augment and support VA's ongoing work, contribute added value to VA's efforts, report on its findings early and often, and increase transparency throughout the process. Additionally, while much focus is placed upon the backlog of veterans' disability benefit claims, a commensurate focus upon the backlog of veterans' appealed claims does not exist. With a current caseload of more than 420,000 appeals and a projected workload of hundreds of thousands of appealed claims in the coming years, the appeals system must also be considered with thoughtful analysis, evaluation, and recommendations for improvement.

*Section 15. Methods for validating certain World War II Merchant Mariner service considered to be active service by the Secretary of Veterans Affairs*

Historically, merchant mariners were private citizens employed by freight shipping companies. In an effort to support the American war effort during World War II, these freight shipping companies and their employees became an auxiliary to the United States Navy. Their mission was to transport bulk war materials including food, clothing, weapons, and even troops to all areas of conflict and coastal installations here at home.

Currently, a certificate of shipping and discharge forms, continuous deck or engine logbooks, and shipping company records that indicate the vessel names and dates of voyages are the only documents that are considered acceptable to determine an individual's

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<sup>12</sup>U.S. Government Accountability Office, *Veterans' Disability Benefits: Challenges to Timely Processing Remains a Daunting Challenge* (GAO-13-89) (December 2012).

service in the merchant marine. Unfortunately, such documentation may no longer exist or can be difficult to find.

Section 15 would expand the official documentation accepted by the Secretary of Homeland Security to grant veterans status with limited benefits to World War II merchant marine and coastwise merchant seamen. This Section would expand the acceptable forms of documentation used to determine eligible service in the merchant marine, and would allow acceptance of Social Security Administration records, validated testimony by the applicant or closest living relative, and other official records that provide sufficient proof of service. The limited benefits that would be conferred by Section 15 include burial benefits and the awarding of any commendations, ribbons, or honors earned during an individual's time of service.

*Section 16. Designation of American World War II Cities*

Section 16 would mandate that the VA Secretary designate one city in the United States each year as an "American World War II City" based on a set of criteria that includes: contributions to the war effort, efforts to preserve the history of the city's contributions, and the presence of military facilities within the city. The Committee believes that American cities provided critical and distinguished contributions to the World War II effort and should be honored and celebrated accordingly. This Section would set in place a procedure for other cities to receive this designation.

*Section 17. Sense of Congress Regarding American Veterans Disabled for Life*

There are 3.6 million veterans of the United States Armed Forces living today that are recognized by the VA to be service-disabled veterans. These American heroes carry the lasting scars of their service to our nation throughout their lives.

In recognition of these veterans, Congress approved construction of the American Veterans Disabled For Life Memorial, located in Washington, DC, which was dedicated on October 5, 2014 to serve as a permanent reminder of the enduring human sacrifices of war. Section 17 would express the sense of Congress that our nation honors the service and sacrifice made by the men and women left permanently wounded, ill, or injured as a result of their service in the United States Armed Forces.

#### HEARINGS

On January 27, 2015, the full Committee conducted a legislative hearing on various bills introduced during the 114th Congress, including H.R. 245.

The following witnesses testified:

The Honorable Alan Grayson, U.S. House of Representatives; Mr. David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Zachary Hearn, Deputy Director for Claims, Veterans Affairs and Rehabilitation Division, The American Legion; Mr. Joseph A. Violante, National Legislative Director, Disabled American Veterans; Mr. Blake

C. Ortner, Deputy Government Relations Director, Paralyzed Veterans of America; and, Mr. Aleks Morosky, Deputy Director, National Legislative Service, Veterans of Foreign Wars.

Statements for the record were submitted by the following:

Vietnam Veterans of America and the Housing Policy Council.

On April 14, 2015, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 114th Congress, including H.R. 677, H.R. 800, H.R. 1331, and H.R. 1379.

The following witnesses testified:

The Honorable Chellie Pingree, U.S. House of Representatives; Mr. David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Zachary Hearn, Deputy Director for Claims, Veterans Affairs and Rehabilitation Division, The American Legion; Mr. Blake C. Ortner, Deputy Government Relations Director, Paralyzed Veterans of America; Mr. Paul R. Varela, Assistant National Legislative Director, Disabled American Veterans; Mr. Ronald B. Abrams, Joint Executive Director, National Veterans Legal Services Program; and, Mr. Kenneth M. Carpenter, Founding Member, National Organization of Veterans' Advocates.

Statements for the record were submitted by the following:

The Veterans of Foreign Wars and the U.S. Court of Appeals for Veterans Claims.

On June 24, 2015, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 114th Congress, including H.R. 1302, H.R. 1338, H.R. 1380, H.R. 2214, H.R. 2605, and, H.R. 2691.

The following witnesses testified:

The Honorable Bill Johnson, U.S. House of Representatives; Mr. David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Zachary Hearn, Deputy Director for Claims, Veterans Affairs and Rehabilitation Division, The American Legion; Mr. Paul R. Varela, Assistant National Legislative Director, Disabled American Veterans; Mr. Aleks Morosky, Deputy Director, National Legislative Service, Veterans of Foreign Wars; Ms. Diane Zumatto, National Legislative Director, AMVETS; and, Mr. Chris Neiweem, Legislative Associate, Iraq and Afghanistan Veterans of America.

Statements for the record were submitted by the following:

The Honorable Bob Latta, U.S. House of Representatives; the Honorable Bill Shuster, U.S. House of Representatives; and, the Paralyzed Veterans of America.

## SUBCOMMITTEE CONSIDERATION

On May 14, 2015, the Subcommittee on Disability Assistance and Memorial Affairs met in open markup session, a quorum being present, and favorably forwarded to the full Committee H.R. 732, as amended, and, H.R. 1331. During consideration of H.R. 732, the following amendment was considered and agreed to by voice vote:

An amendment offered by Mr. Ruiz of California that retained the original language regarding appeals hearings, and includes additional language that would provide priority for processing claims for certain veterans. The amended version would establish a commission or task force to evaluate and assess the backlog of VA disability claims and the backlog of appealed claims. The commission or task force would provide regular reports to the President and Congress.

On July 9, 2015, the Subcommittee on Disability Assistance and Memorial Affairs met in open markup session, a quorum being present, and favorably forwarded to the full Committee H.R. 800, as amended; H.R. 1380, as amended; H.R. 2214, as amended; H.R. 2605, as amended; H.R. 1302; H.R. 1338; and, H.R. 2691.

During consideration of H.R. 800, the following amendment in the nature of a substitute was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Ms. Titus of Nevada that retained the original language regarding the five-year fully developed appeals (FDA) pilot program. The amendment in the nature of a substitute eliminated the provision that would have allowed a claimant who had already filed a traditional appeal to transfer to the pilot program. The amendment in the nature of a substitute would require that: (1) the Secretary provide the claimant and claimant's representative, if any, information regarding the advantages and disadvantages of the pilot program, including the limitation on the use of new evidence; (2) VA collaborate with the three veterans service organizations with the most members in developing and publishing an online tutorial explaining the advantages and disadvantages of the pilot program; and, (3) the Secretary prescribe regulations to carry out such pilot program not later than 90 days after the date of enactment. Further, the amendment in the nature of a substitute would clarify that (1) participants in the pilot program may seek advice from claims agents recognized under chapter 59 of Title 38, U.S.C.; (2) claimants who are not eligible to participate in the pilot program would be allowed to revert to the standard appeals process without any penalty to the claimant other than the loss of the docket number associated with the FDA; the Board would consider newly developed evidence in the first instance without prior consideration by the Veterans Benefits Administration; (3) if the claimant requests a hearing, such request would be deemed to be an election to revert to the standard appeals process; (4) the Secretary would transfer employees of the VBA who were responsible for processing claims remanded by the Board to positions within the office of the Board. Finally, the amendment in the nature of a substitute would require that

the claimant and the claimant's representative of record receive a copy of any new evidence developed by the Board. The claimant would have 45 days to respond to such evidence. The amendment in the nature of a substitute would clarify that responding to such evidence would not cause the case to revert to the standard appeals process.

During consideration of H.R. 1380, the following amendment in the nature of a substitute was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Mr. Abraham of Louisiana that retained the original language that would authorize VA to furnish a medallion to signify the veterans status of a deceased individual in certain cases. However, the amendment in the nature of a substitute modified the original text to limit eligibility for such medallions to persons who served in the Armed Forces on or after April 6, 1917.

During consideration of H.R. 2214, the following amendment was considered and agreed to by voice vote:

An amendment offered by Mr. Abraham of Louisiana that retained the original language extending VA's authority to contract with private physicians to conduct disability examinations until December 31, 2017. The amendment removed the limit on the number of VA regional offices through which the Secretary is authorized to carry out the pilot program. The amendment also removed the provision that required the Secretary to conduct an annual data analysis of the regional offices participating in the pilot program.

During consideration of H.R. 2605, the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Mr. Abraham of Louisiana that incorporated the text of H.R. 2605, but removed the provision authorizing the appointment of a temporary fiduciary under certain conditions.

#### COMMITTEE CONSIDERATION

On September 17, 2015, the full Committee met in open markup session, a quorum being present, and ordered H.R. 677, as amended, reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendments were considered:

An amendment offered by Mr. Abraham of Louisiana that would (1) expand the eligibility for medallions signifying veteran status that adorn a privately purchased headstone or marker; (2) codify the meaning of certain terms; (3) require VA to submit quarterly reports with respect to claims processing, and express the sense of Congress that VA should streamline the application process for certain claims; (4) expedite payment of survivor's benefits; (5) provide priority of processing claims for certain veterans; (6) provide guidelines for the treatment of medical evidence provided by non-VA medical professionals in

support of claims for disability compensation; (7) require that, whenever there is an increase in benefit amounts payable under title II (Old Age, Survivors and Disability Insurance) of the Social Security Act, VA would increase by the same percentage the amounts payable as veterans' disability compensation, additional compensation for dependents, the clothing allowance for certain disabled adult children, and dependency and indemnity compensation for surviving spouses and children; (8) improve VA's fiduciary program; (9) require the Board of Veterans' Appeals, for purposes of scheduling a veteran's appeals hearing at the earliest possible date, to determine whether to provide such hearing at the principal location or another VA facility or other federal facility or through the use of videoconferencing or by an appellant's personal appearance; (10) improve the authority for performance of medical disabilities examinations by contract physicians; (11) establish a pilot program on fully developed appeals; (12) direct VA to certify an appeal to the Board of Veterans' Appeals within one year after receiving an appeal form; (13) establish a commission or task force to evaluate and assess the backlog of VA disability claims and the backlog of appealed claims; (14) expand the acceptable forms of documentation used to determine eligible service in the merchant marine and provides for certain limited burial benefits; (15) designate certain cities as American World War II cities; and, (16) express the sense of Congress honoring American veterans disabled for life, was agreed to by voice vote.

An amendment to the Amendment in the Nature of a Substitute to H.R. 677 was offered by Ms. Titus of Nevada to revise the definition of marriage under title 38 United States Code and was rejected by a record vote of 12 nays and 10 yeas with 1 present and 1 absent (Record vote no. 1).

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. The following reflects the record vote taken during the Committee consideration:

An amendment to the Amendment in the Nature of a Substitute to H.R. 677 was offered by Ms. Titus of Nevada to revise the definition of marriage under Title 38 United States Code. This amendment was defeated by a record vote of 10 yeas and 12 nays, with one member voting present, and one member not voting (Record vote no. 1). The names of the members voting for and against follow.



COMMITTEE ON VETERANS' AFFAIRS  
RECORDED VOTE 1

Date: September 17, 2015  
Amendment offered by Ms. Titus to the amendment in the nature of the substitute to  
H.R. 677  
Failed: 10 yeas and 12 nays.

Representative	Yea	Nay	Present	Not Voting	Representative	Yea	Nay	Present	Not Voting
Mr. Miller, Chairman .....		X			Ms. Brown, Ranking Member .....			X	
Mr. Lamborn .....		X			Mr. Takano .....	X			
Mr. Bilirakis .....		X			Ms. Brownley .....	X			
Mr. Roe .....		X			Ms. Titus .....	X			
Mr. Benishbek .....		X			Mr. Ruiz .....	X			
Mr. Huelkamp .....		X			Ms. Kuster .....	X			
Mr. Coffman .....	X				Mr. O'Rourke .....	X			
Mr. Wenstrup .....		X			Miss Rice .....	X			
Mrs. Walorski .....		X			Mr. Walz .....	X			
Mr. Abraham .....		X			Mr. McNerney .....				X
Mr. Zeldin .....		X							
Mr. Castello .....	X								
Mrs. Radewagen .....		X							
Mr. Bost .....		X							
Vote Total:						10	12	1	1

A motion by Ranking Member Corrine Brown of Florida to report H.R. 677, as amended, favorably to the House of Representatives was offered and adopted by the Full Committee by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Secretary of VA will use the authority granted by this legislation to improve VA's claims and appeals procedures; ensure veterans' benefits keep pace with inflation; better protect beneficiaries who are in the fiduciary program; recognize and honor members of the merchant marine who served during World War II; and, help ensure that our nation remembers and honors the service and sacrifice of certain deceased veterans, veterans disabled for life, and cities who served our nation during World War II. Specifically, the legislation would expand the eligibility for a medallions signifying veteran status that would adorn a privately purchased headstone or marker; expedite and improve VA's claims processing and appeals processing; provide for an automatic COLA for veterans' benefits; improve VA's fiduciary program; expand the official documentation accepted by the Secretary of Homeland Security to grant veteran status with limited benefits to World War II merchant marine and coastwise merchant seamen; designate certain cities as American World War II cities; and express the sense of Congress honoring American veterans disabled for life.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX  
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 677, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 677, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 677, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 22, 2016.*

Hon. JEFF MILLER,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 677, the American Heroes COLA Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 677—American Heroes COLA Act of 2015*

Summary: H.R. 677 would modify several mandatory programs administered by the Department of Veterans Affairs (VA), including disability compensation and burial benefits. H.R. 677 also would provide a permanent annual cost-of-living adjustment (COLA) to the amounts paid to veterans for disability compensation and to their survivors for dependency and indemnity compensation. That provision would increase direct spending for veterans' benefits by \$72.7 billion over the 2016–2025 period. However, because the COLA is assumed in CBO's baseline pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act, enacting that provision would have no budgetary effect relative to that baseline.

CBO estimates that the other provisions of H.R. 677, including a requirement that the increases resulting from the COLA be rounded down to the next whole dollar, would increase net direct spending by \$5.8 billion over the 2016–2025 period relative to CBO’s baseline. Because the bill would affect direct spending, pay-as-you-go procedures would apply. Enacting H.R. 677 would not affect revenues.

In addition, the bill would change the administration of VA’s fiduciary program and several other programs in ways that would require an increase in the number of VA employees. CBO estimates that implementing those changes would cost \$176 million over the 2016–2020 period, assuming appropriation of the estimated amounts.

CBO estimates that enacting the legislation would increase net direct spending and on-budget deficits by more than \$5 billion in each of the four consecutive 10-year periods beginning in 2026.

H.R. 677 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

**Estimated cost to the Federal Government:** The estimated budgetary effect of H.R. 677 is shown in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

TABLE 1—ESTIMATED BUDGETARY EFFECTS OF H.R. 677

	By fiscal year, in millions of dollars—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority .....	–24	–30	13	104	258	321
Estimated Outlays .....	–24	–30	13	104	258	321
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level .....	*	45	47	41	42	176
Estimated Outlays .....	*	45	47	41	42	176

Notes: In addition to the direct spending effects shown here, enacting H.R. 677 would affect direct spending beyond 2020 (see Table 2). CBO estimates that total direct spending would increase by \$5.8 billion over the 2016–2025 period. Components may not sum to totals because of rounding; \* = less than \$500,000.

**Basis of estimate:** For the purposes of this estimate, CBO assumes the legislation will be enacted early in calendar year 2016, that the necessary amounts will be appropriated each year, and that outlays will follow historical spending patterns for similar and existing programs.

#### *Direct spending*

H.R. 677 would modify veterans’ compensation, pension, and burial benefits. In total, CBO estimates that enacting the legislation would, on net, increase direct spending for those programs by \$5.8 billion over the 2016–2025 period (see Table 2).

TABLE 2—IMPACT OF H.R. 677 ON DIRECT SPENDING

	By fiscal year, in millions of dollars—											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016–2020	2016–2025
<b>Use of Non-VA Medical Opinions in Claims for Disability Compensation:</b>												
Estimated Budget Authority .....	0	23	93	216	404	678	1,016	1,364	1,695	2,009	736	7,498
Estimated Outlays .....	0	23	93	216	404	678	1,016	1,364	1,695	2,009	736	7,498
<b>Annual COLA:</b>												
Estimated Budget Authority .....	-24	-53	-81	-113	-147	-181	-219	-255	-288	-326	-418	-1,687
Estimated Outlays .....	-24	-53	-81	-113	-147	-181	-219	-255	-288	-326	-418	-1,687
<b>Expansion of Eligibility for Medallions:</b>												
Estimated Budget Authority .....	*	*	1	1	1	1	1	1	1	1	3	5
Estimated Outlays .....	*	*	1	1	1	1	1	1	1	1	3	5
<b>Benefits for Coastwise Merchant Mariners:</b>												
Estimated Budget Authority .....	*	*	*	*	*	*	*	*	*	*	*	1
Estimated Outlays .....	*	*	*	*	*	*	*	*	*	*	*	1
<b>Total Changes in Direct Spending:</b>												
Estimated Budget Authority .....	-24	-30	13	104	258	498	798	1,110	1,408	1,684	321	5,817
Estimated Outlays .....	-24	-30	13	104	258	498	798	1,110	1,408	1,684	321	5,817

Note: Components may not sum to totals because of rounding; COLA = cost-of-living adjustment; \* = less than \$500,000.

Use of Non-VA Medical Opinions in Claims for Disability Compensation. Section 7 would prohibit VA from conducting its own medical examination in cases where a veteran submits a private medical opinion in support of a claim for disability compensation unless VA can substantiate why the private medical opinion is insufficient to decide the claim. Currently, VA almost always conducts its own medical exams even if veterans submit private medical opinions. Section 7 would take effect one year from the date of enactment of the bill.

CBO expects that allowing veterans to choose the physician that would provide the deciding medical opinion on whether a veteran is disabled and whether that disability could be traced to their time in service would lead to significantly more veterans receiving disability ratings and to higher levels of disability ratings. Furthermore, we expect that effect would increase over time as private doctors gained experience with the VA system. Medical literature shows that doctors who have an established relationship with a patient tend to provide more favorable reports for those patients than doctors who are seeing the patient for the first time, as is the case with a VA-ordered examination.<sup>1</sup> Furthermore, veterans would be able to visit multiple doctors in order to gain the most favorable medical report.

CBO expects that the majority of claims for disability where a private medical exam would make a difference are those for subjective disabilities (i.e., mental disorders, nerve disorders, and back pain) or disabilities for which different examiners are more likely to provide different conclusions. Over time, CBO anticipates that the percentage of veterans submitting private medical opinions would increase. In CBO's analysis, enacting section 7 would:

- Increase the average amount of disability compensation for veterans who currently receive compensation, as those veterans can request a reevaluation at any time and would be more likely to do so under the bill;
- Increase the average amount of disability compensation paid to veterans newly awarded a disability compensation rating; and
- Increase the number of veterans who receive compensation by enabling some of those who would be denied benefits under current law to be awarded a disability rating.

In total, CBO estimates that enacting section 7 would result in about 360,000 more veterans receiving an additional \$7.5 billion in disability compensation over the 2016–2025 period.

*Current Beneficiaries.* On average, about 15 percent of veterans currently receiving disability compensation come to VA to be reevaluated every year. In recent years, current beneficiaries have had their disability ratings increased by an average of 10 percentage points as a result of those reevaluations. CBO estimates that under current law about 4.1 million veterans will be receiving disability compensation in 2017, and that 653,000 will return to VA to be reevaluated.

Based on information from VA, CBO estimates that about 40 percent of rated disabilities fall into the subjective category. Under

<sup>1</sup> Simen Markussen, Knut Roed\*, Ole Rogeberg, "The changing of the guards: Can family doctors contain worker absenteeism?", *Journal of Health Economics*, vol 32 (2013), pp. 1230–1239, <http://dx.doi.org/10.1016/j.jhealeco.2013.10.005>.

section 7, CBO expects about 60 percent of the reevaluations (increasing to 75 percent by 2025) would involve a private medical opinion. Based on a review of existing literature, CBO expects that the average disability rating would increase by 10 percentage points for 10 percent of the claims reevaluated in 2017 (increasing to 30 percent of such claims in 2021 and thereafter).<sup>2</sup> Thus, about 8,200 veterans currently on the rolls in 2017 (about 49,000 in 2025) would receive an increase of 10 percentage points in their disability rating. The average disability rating for a veteran who has been reevaluated is 50 percent; increasing that rating to 60 percent would represent an annual benefit increase of \$4,900 in 2017 (increasing to \$5,900 in 2025). After accounting for inflation and mortality, CBO estimates that enacting section 7 would increase direct spending for veterans currently on the rolls by \$6.9 billion over the 2016–2025 period.

*Annual Accessions.* Over the 2012–2014 period, the VA disability compensation program added an average of 290,000 new beneficiaries per year. As with current beneficiaries, CBO estimates that about 40 percent of rated disabilities for those new accessions fall into the subjective category. Under section 7, CBO expects that those veterans who did not file a claim immediately after being discharged from military service would provide private medical opinions and receive increased disability ratings at the same rates and with the same incremental increase as current beneficiaries. CBO expects that veterans who apply to VA immediately after being discharged from military service would be much less likely than other veterans to obtain private medical opinions, but those that do would see the same increases as other new accessions. Thus, we estimate that 15 percent (increasing to 25 percent by 2025) of newly discharged veterans would submit a private medical opinion. On that basis, CBO estimates that about 1,700 veterans in 2017 (increasing to about 6,200 veterans in 2025) would receive a 10 percentage point increase in their disability rating (from an average of 40 percent to 50 percent). That would amount to an average annual increase of about \$3,200 in 2017 (increasing to about \$3,900 in 2025). After accounting for inflation and mortality, CBO estimates that enacting section 7 would increase direct spending for new accessions by \$525 million over the 2016–2025 period.

*Newly Eligible Applicants.* On average, VA denies about 20 percent of all claims for disability compensation. Under section 7, CBO expects that some veterans who would otherwise be denied would receive a disability rating because of their use of private medical opinions. Based on the number of new accessions per year and similar rates of subjective disabilities, use of private medical opinions, and award rates, CBO estimates that about 630 veterans who will be denied under current law would under the bill receive a disability rating in 2017, increasing to 1,725 by 2025. CBO estimates that this cohort would receive an average rating of 10 percent (about \$1,630 annually in 2017). After accounting for inflation and mortality, CBO estimates that section 7 would increase direct spending for veterans who would be denied a disability rating under current law by \$87 million over the 2015–2026 period.

<sup>2</sup>Helge Liebert, *Medical Screening and Moral Hazard in Disability Insurance: Evidence from Switzerland* (Center for Disability and Integration, School of Economics and Political Science, University of St. Gallen, 2014) <http://www.hha.dk/nat/larss/CAFE2014/HLiebert.pdf>.

Annual COLA. Section 8 would provide a permanent annual cost-of-living adjustment to the amounts paid to veterans for disability compensation and to their survivors for dependency and indemnity compensation. The COLA would equal the cost-of-living adjustment payable to Social Security recipients and would take effect on December 1 of each year.

The COLA that would be authorized by this bill is assumed in CBO's baseline, pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act. Because the COLA is assumed in CBO's baseline, enacting this provision would have no budgetary effect relative to that baseline (the COLA effect assumed in the baseline over the 2016–2025 period amounts to \$72.7 billion). On October 15, 2015, the Social Security Administration announced that the COLA for 2016 would be zero percent, and thus have no effect on disability compensation payments in 2016.

Section 2 also would require that increases in the monthly rates resulting from the COLA be rounded down to the next lower whole dollar. This provision would apply to both disability compensation and dependency and indemnity compensation payments. A similar requirement expired at the end of 2013. CBO expects that, on average, this requirement would reduce each monthly payment issued in the first year by 50 cents. In the second year, the COLA would be applied to that reduced amount and again rounded down by an average of 50 cents. Those savings would continue to compound in subsequent years, with the resultant amount rounded down again each year. Based on information from VA, CBO projects that an average of 5.5 million veterans and survivors will receive 12 monthly payments each year over the next decade. On that basis, CBO estimates that this section would result in direct spending savings of about \$1.7 billion over the 2016–2025 period.

Expansion of Eligibility for Medallions. Section 2 would allow the survivor of an eligible deceased veteran to receive a VA-furnished medallion instead of a headstone or marker for use in a private cemetery. Eligible veterans are those who served in the armed forces on or after April 6, 1917. Under current law, VA can only provide a medallion for eligible veterans buried in private cemeteries who died on or after November 1, 1990. Based on information from VA, CBO expects about 5,400 such requests to be made per year. At a cost of about \$100 per medallion, CBO estimates that enacting section 2 would increase direct spending by about \$5 million over the 2016–2025 period.

Benefits for Coastwise Merchant Mariners. Section 15 would extend eligibility for burial benefits and medals, ribbons, or decorations to merchant mariners who served off of the coast of the United States between December 7, 1941, and December 31, 1946. Based on information from VA and the U.S. Coastwise Merchant Seamen's Association, CBO estimates that in 2016, the survivors of roughly 100 eligible merchant mariners would apply for a burial marker (and be eligible for an outer-burial receptacle) and a ribbon or medallion at a cost of about \$1,200 per request. CBO expects the number of applications would decline steadily in subsequent years. Thus, CBO estimates that section 15 would increase direct spending by about \$1 million over the 2016–2025 period.

Other Provisions. H.R. 677 contains other provisions that would have a negligible effect on direct spending, primarily because they

would shift the timing but not the amount of benefit payments. Specifically:

- Section 5 would allow eligible survivors to begin receiving any survivor's benefits due them before filing a formal claim.
- Section 6 would create a priority list for processing claims for disability compensation.

*Spending subject to appropriation*

H.R. 677 would modify the fiduciary program for veterans and extend a pilot program that allows VA to use contract physicians to complete disability exams. It also would create a pilot program for adjudicating fully developed appeals, require an evaluation of the disability backlog, and require several reports on various functions of VA. CBO estimates that implementing those provisions of the bill would cost \$176 million over the 2016–2020 period, assuming appropriation of the estimated amounts (see Table 3).

TABLE 3—IMPACT OF H.R. 677 ON SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, in millions of dollars—					
	2016	2017	2018	2019	2020	2016–2020
<b>Fiduciary Program:</b>						
Estimated Authorization Level .....	0	19	38	39	40	136
Estimated Outlays .....	0	19	38	39	40	136
<b>Disability Examinations by Contract Physicians:</b>						
Estimated Authorization Level .....	0	22	7	0	0	29
Estimated Outlays .....	0	22	7	0	0	29
<b>Pilot Program on Fully Developed Appeals:</b>						
Estimated Authorization Level .....	0	2	2	2	2	8
Estimated Outlays .....	0	2	2	2	2	8
<b>Evaluation of Backlog of Disability Claims:</b>						
Estimated Authorization Level .....	0	2	0	0	0	2
Estimated Outlays .....	0	2	0	0	0	2
<b>Reports:</b>						
Estimated Authorization Level .....	*	*	*	*	*	1
Estimated Outlays .....	*	*	*	*	*	1
<b>Total Changes in Discretionary Spending:</b>						
Estimated Authorization Level .....	*	45	47	41	42	176
Estimated Outlays .....	*	45	47	41	42	176

Notes: Components may not sum to totals because of rounding; \* = less than \$500,000.

**Fiduciary Program.** Effective one year after the legislation's enactment, section 9 would make significant changes to VA's fiduciary program. That program provides or approves fiduciaries for veterans who cannot manage their financial affairs. The fiduciaries receive and manage the veterans' benefits on their behalf. The provision would require VA to:

- Determine the competency of individuals appointed as fiduciaries;
- Remove certain fiduciaries deemed incompetent and review the files of fiduciaries appealing such decisions;
- Maintain a list of state, local, or nonprofit agencies that could perform fiduciary duties;
- Require that all fiduciaries provide pertinent accounting details for VA verification;
- Update the qualifications and procedures for certifying a fiduciary to include: visits to proposed fiduciaries, Internet training, and criminal background and credit checks; and



- Notify veterans if a requested fiduciary is unqualified and why, and provide veterans with a notice of certified fiduciaries.

Section 9 also would require VA to maintain a database of all fiduciaries and to submit a report to the Congress on the progress of the program.

Based on information from VA, CBO estimates that the department would need to hire 460 additional employees to carry out the requirements of section 9 at an average cost of about \$80,000 per employee in 2016 and increasing thereafter with inflation. We also estimate that the information technology systems necessary to maintain the database would cost about \$1 million per year. In total, CBO estimates that implementing section 9 would cost \$136 million over the 2016–2020 period.

**Disability Examinations by Contract Physicians.** Section 11 would extend the pilot program that allows VA to use contract physicians to perform medical disability examinations through December 31, 2017. Under current law, that authority will expire on December 31, 2016. In 2015, about 36,000 exams were completed by contract physicians under the pilot program at a cost of about \$800 per exam. Under section 11, we expect a similar number of exams would be performed annually over the 2017–2018 period. In the absence of such authority, VA physicians who would otherwise be providing other types of health care to veterans will perform the exams, at no additional cost to VA. Thus, after accounting for expected inflation, CBO estimates that implementing section 201 would cost \$29 million over the 2017–2018 period.

**Pilot Program on Fully Developed Appeals.** Section 12 would establish a pilot program within the Board of Veterans Appeals (BVA) for veterans who wish to file a fully developed appeal (an appeal for which no further evidence or information will be submitted). Such appellants, upon choosing to file a notice of disagreement with VA, could choose to file a claim using the regular appeals process, or if they believe they have provided all of the necessary information for the BVA to make a decision, could elect to file under the pilot program in order to receive a more immediate decision. Appellants could choose at any point to revert to the standard appeals process. The pilot program established under section 12 would run for five years, beginning one year from the date of enactment of H.R. 677.

Section 12 would require the BVA to establish a development unit that would provide the Board with any federal records, independent medical opinions, and new medical exams that it needs to decide appeals. VA would be required to transfer certain employees from the Veterans Benefits Administration to this new unit inside the BVA. According to VA, about 10 additional employees also would be necessary to achieve the goals of the pilot program while not reducing the timeliness of the current process. VA further reports that such employees (primarily lawyers) would receive salary and benefits amounting to about \$150,000 in 2016. On that basis, and accounting for projected inflation, CBO estimates that implementing the pilot program would cost \$8 million over the 2016–2020 period.

**Evaluation of Backlog of Disability Claims.** Effective one year after the date of enactment, section 14 would establish a commission tasked with creating a plan to eliminate the disability claims

backlog, improve the disability claims process, and reduce the number of appeals filed for disapproved claims. The commission would have 21 members plus a paid staff and would exist for about seven months. The commission would be required to submit interim reports and a final report within 180 days of the commission’s first meeting. Based on the costs of similar commissions, CBO estimates that implementing section 14 would cost about \$2 million over the 2017–2018 period.

Reports. Several provisions of H.R. 677 would require VA to submit reports to the Congress. CBO estimates that implementing H.R. 677 would increase costs for preparing reports by \$1 million over the 2016–2020 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 677 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS’ AFFAIRS ON SEPTEMBER 17, 2015

	By fiscal year, in millions of dollars—											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016–2020	2016–2025
NET DECREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	–24	–30	13	104	258	498	798	1,110	1,408	1,684	321	5,817

Increase in long term direct spending and deficits: CBO estimates that enacting the legislation would increase net direct spending and on-budget deficits by more than \$5 billion in each of the four consecutive 10-year periods beginning in 2026.

Intergovernmental and private-sector impact: H.R. 677 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On September 29, 2015, CBO transmitted a cost estimate for S. 2082, the Department of Veterans Affairs Expiring Authorities Act of 2015, as cleared by the Congress on September 25, 2015. Section 409 of S. 2082 extended the authority for contract physicians to conduct disability exams from December 31, 2015, to December 31, 2016. Section 11 of H.R. 677 would extend the authority from December 31, 2015, to December 31, 2017. Because S. 2082 is now Public Law 114–158, section 11 would extend the provision for one year instead of two years. The estimated difference in costs is reflected in this estimate.

Estimate prepared by: Federal costs: Dwayne M. Wright; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Paige Piper-Bach.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 677, as amended, prepared by the Director of

the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 677, as amended.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of Section 102(b)(3) of the Congressional Accountability Act.

#### STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 677, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 677, as amended, contains directed rule making at sections 4, 6, and 13 which would require the Secretary to prescribe regulations to carry out these sections.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1—Short title; Table of contents*

Section 1(a) would establish that this Act may be cited as the "American Heroes COLA Act of 2015."

Section 1(b) would contain the table of contents for this Act.

##### *Section 2—Expansion of eligibility for medallions*

Section 2 would authorize VA to furnish, upon request, a medallion or other device to signify a deceased individual's status as a veteran, to be attached to a headstone or marker furnished at private expense. To be eligible for such medallion or other device, the deceased individual must have served in the Armed Forces on or after April 6, 1917.

*Section 3—Definitions relating to claims for benefits under laws administered by the Secretary of Veterans Affairs*

Section 3(a) would define the terms “claimant,” “claim,” and “formal claim” and includes a clerical amendment.

Section 3(b) would establish that the effective date of Section 3 would be the date of enactment and would apply with respect to a claim submitted on or after such date.

*Section 4—Quarterly reports on formal and informal claims for benefits under laws administered by Secretary of Veterans Affairs*

Section 4(a) would require that VA submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives quarterly reports on formal and informal claims. Such report would include: (1) the total number of claims submitted to VA; (2) the total number of informal claims submitted to VA; (3) the total number of formal claims submitted to VA; (4) the total number of forms indicating an intent to file a claim for benefits submitted to VA; (5) the total number of claims notification letters sent by VA that included an invitation to the claimant to submit an additional formal claim; (6) and of those, the total number who submitted a formal claim in response to such notification letters; (6) the total number of electronically filed claims submitted to VA; and, (7) the total number of fully-developed claims submitted to VA.

Section 4(b) would express the sense of Congress that the Secretary should develop a designated form for a claim for an increased rating or reopening of a claim that does not require the resubmittal of information previously submitted on a formal claim form.

Section 4(c) would define the terms “informal claim” and “reasonably raised.”

*Section 5—Expedited payment of survivor’s benefits*

Section 5(a) would authorize VA to pay benefits under chapters 13 and 15 and sections 2302, 2307, and 5121 of title 38, U.S.C. to a survivor of a veteran who has not filed a formal claim if VA determines that the record contains sufficient evidence to establish the entitlement of the survivor to such benefits. Section 5(a) would also establish that the date on which a survivor of a veteran notifies VA of the death of the veteran would serve as the date of receipt of the survivor’s application for benefits.

Section 5(b) would, not later than one year after the date of enactment, require VA to submit a report to the Committees on Veterans’ Affairs of the Senate and the House of Representatives on benefits paid pursuant to covered claims.

Section 5(c) would establish that the amendments made by Section 5 would apply with respect to claims for benefits based on a death occurring on or after such date.

*Section 6—Priority for processing claims of the Department of Veterans Affairs*

Section 6(a) would add a new section to subchapter I of chapter 51 of title 38, U.S.C., which would require VA to prioritize disability benefits claims submitted by veterans who have attained the age of 70; are terminally ill; have life-threatening illnesses; are homeless; have received the Medal of Honor; were prisoners of war;

have claims being reviewed again in relation to a previously denied claim relating to military sexual trauma; and on a case-by-case basis, are seriously or very seriously injured. Additionally, this Section allows prioritization for good cause shown at the discretion of the Secretary on a case-by-case basis. Section 6(a) would also require VA to prescribe such regulations as would be necessary to carry out this section.

Section 6(b) would provide a clerical amendment.

*Section 7—Treatment of medical evidence provided by non-Department of Veterans Affairs medical professionals in support of claims for disability compensation*

Section 7(a) would require VA to accept a sufficiently complete medical opinion or report of a medical examination administered by a private physician in support of the veteran's claim. Furthermore, this Section would provide that if the veteran submits a medical opinion or report of a medical examination administered by a private physician in support of the veteran's claim, the Secretary would be prohibited from ordering a medical examination administered by VA, unless the Secretary provides the veteran with a thorough explanation of why the medical opinion or report submitted by the veteran was not sufficiently complete and the reason why additional medical evidence is necessary. Section 7(a) would also define the term "sufficiently complete."

Section 7(b) would establish that the effective date of Section 7 would apply with respect to medical evidence submitted after the date that is 90 days after the date of the enactment.

*Section 8—Automatic annual increase in rates of disability compensation and dependency and indemnity compensation*

Section 8(a) would make the cost-of-living adjustment for veterans' disability payments automatic whenever there is an increase in benefit amounts payable under Title II of the Social Security Act. Section 8(a) would also require the Secretary to publish any such increase in the Federal Register, and would require that each dollar amount increased, if not a whole dollar amount, be rounded to the next lower whole dollar amount. This Section would allow the Secretary to administratively adjust the rates of disability compensation payable to persons under section 10 of Public Law 85-857 (72 Stat. 1263) who have not received compensation under chapter 11 of title 38, U.S.C.

Section 8(b) would establish that the effective date of section 8 would be December 1, 2015.

*Section 9—Improvement of fiduciaries for veterans*

Section 9(a) would revise the process for appointment of fiduciaries. Section 9(a) would require VA to provide a written statement to the veteran detailing the reasons for the appointment of a fiduciary and implement an appeals process which would allow a veteran to challenge the finding of mental incompetence. This Section would also allow a veteran to predesignate a fiduciary, request the modification of an appointed fiduciary, and establish that a fiduciary operates independently of VA to act in the best interest of the beneficiary.

Section 9(b) would decrease the commission appointed fiduciaries may receive to the lesser of 3 percent of monthly benefits or \$35. It would also allow VA attorneys to appear in a court of appropriate jurisdiction against any fiduciary who has failed to execute the duties of a VA appointed fiduciary. Section 9(b) would permit VA to temporarily make payments to the person or institution having custody and control of an incompetent or minor beneficiary. Upon the death of a beneficiary, Section 9(b) would direct fiduciaries to pay all remaining funds overseen by fiduciaries to any surviving spouse, or in equal parts to any children, or in equal parts to any dependent parents. It would also require that if a beneficiary did not have a spouse, children, or dependent parents and lived in a state where the beneficiary's assets would then escheat to the state, any funds derived from VA benefits would then escheat to the United States.

Section 9(c) would require VA to expand the definition of a person eligible to serve as a fiduciary to include state and local government agencies and nonprofits, and compel VA to maintain a list of state or local agencies and nonprofit social agencies who qualify to act as a fiduciary.

Section 9(d) would mandate that VA investigate each fiduciary before appointment and allow VA to expedite the investigation for certain proposed fiduciaries. The investigation would include a face-to-face interview no more than 30 days after the investigation begins and a background check which would include a criminal background check and a credit check. The background check would be performed each time a person is proposed as a fiduciary. It would also require VA to notify the beneficiary if a fiduciary is convicted of certain crimes. This Section would also require VA to maintain records of any person who previously served as a fiduciary and any fiduciary whose status was revoked and would require each regional office to maintain a list with the name and contact information of each fiduciary and include pertinent information related to each fiduciary's background investigation, bond payment, and the amount the fiduciary controls for each beneficiary served.

Section 9(d) would also require VA to investigate alleged misuse of benefits, and, if substantiated, to transmit the results of the investigation to the Attorney General and each head of a federal department or agency that pays benefits to fiduciaries or beneficiaries. It would also require VA to ensure that any bond furnished by a fiduciary was not paid using funds from the beneficiary and to consider the care a proposed fiduciary has taken to protect the interests of the beneficiary while also considering the capacity of the proposed fiduciary to meet the financial requirements of the bond.

Section 9(e) would require fiduciaries to file an annual report to include the amount of benefits the beneficiary accrued during the year, if the fiduciary serves the beneficiary for non-VA benefits, an accounting of all other sources of income the fiduciary oversees for the beneficiary, and whether the fiduciary was convicted of any crime, filed bankruptcy, and any judgments entered against the fiduciary. It would also require VA to perform random audits of fiduciaries who receive a commission.

Section 9(f) would clarify that the Secretary would pay to the beneficiary an amount equal to the amounts of benefits that were misused in any case in which actual negligence is shown by the Secretary not acting in accordance with section 5507 of chapter 55, title 38, U.S.C.

Section 9(g) would mandate VA provide the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the implementation of the new policies and procedures outlined in Section 9 and a discussion on whether VA should offer fiduciaries standardized financial software to comply with reporting requirements.

Section 9(h) would require that not later than two years after the date of enactment, the Secretary would submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the implementation of the amendments made by the Act.

Section 9(i) would establish that the effective date of Section 9 is one year after the date of enactment.

*Section 10—Board of Veterans' appeals video hearings*

Section 10 would require that the Board, upon request for a hearing, determine whether such hearing will be held at the principle location, or VA facility, or other appropriate Federal facility. The Board would also be required to determine whether to provide a hearing that would enable participation through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principle location. However, if the appellant requests a different location or type of hearing, the Board shall grant the appellant's request and ensure that the hearing is scheduled at the earliest possible date without any undue delay or other prejudice to the appellant.

*Section 11—Improvements to authority for performance of medical disabilities examinations by contract physicians*

Section 11(a) would extend until December 31, 2017, the temporary authority to conduct examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary of VA by persons other than employees of the Department.

Section 11(b) would authorize non-VA physicians with a current unrestricted license to conduct medical disability examinations in any location in any state, the District of Columbia, or a commonwealth, territory or possession of the United States, notwithstanding any law regarding the licensure of physicians. However, such authority is limited to the scope of authorized duties under such contract. Furthermore, the authority would not authorize a physician to conduct disability examinations if such physician is barred from conducting such an examination in any state, the District of Columbia, or a commonwealth, territory or possession of the United States.

*Section 12—Pilot program on fully developed appeals*

Section 12(a) would authorize VA to carry out a pilot program to provide the option of an alternative appeals process that would

more quickly determine such appeals in accordance with this Section.

Section 12(b) would allow a claimant to elect to file a fully developed appeal (FDA). The claimant would be required to elect to file a FDA at the time the claimant files the Notice of Disagreement. At the time the claimant would elect to file a FDA, the claimant would submit all evidence that the claimant believes is needed for the appeal as of the date of filing, and a statement of the argument in support of the claim, if any. Section 12(b) would clarify that the claimant may elect to revert to the standard appeals process at any time, but such reversion would be final. Furthermore, a claimant who is determined to be ineligible for the pilot program would revert to the standard appeals process without any penalty. During the period in which the pilot program is carried out, VA would be required to provide information to the claimant and the claimant's representative of record, if any, notice about the pilot program, including the advantages and disadvantages of such program, how to elect to participate in the pilot program, the limitation on the use of new evidence and development of information, and the ability of the claimant to seek advice from VSOs, attorneys, and claims agents. Finally, this Section would require VA to collaborate with and give weight to the advice of the three VSOs with the most members to stand up an online tutorial explaining the advantages and disadvantages of the pilot program.

Section 12(c) would transfer jurisdiction over the FDA directly to the Board. VA would not provide the claimant with a statement of the case or require the claimant to file a substantive appeal. Further, Section 12(c) would require the Board to (1) maintain the FDA on a separate docket; (2) decide FDAs in the order received; (3) decide not more than one FDA for each four traditional appeals decided, though this ratio may be adjusted for fairness purposes beginning one year after the pilot program begins; and, (4) decide, to the extent practicable, each FDA within one year of a claimant's filing the Notice of Disagreement. Section 12(c) would clarify that the claimant may not submit any new evidence related to a FDA, unless the claimant reverts to the standard appeals process. If a claimant does submit or identify new evidence, such submission or identification would be deemed to be an election to make a reversion to the standard appeals process.

If the Board determines that a FDA requires additional evidence, Section 12(c) would grant the Board authority to develop such evidence without remand to the VBA. This Section would also clarify that any new evidence developed by the Board would be considered by the Board in the first instance. Further, this section would ensure the claimant and the representative of record, if any, receives a copy of such newly developed evidence. Ninety days after the claimant received such newly developed evidence, the claimant may provide the Board with additional evidence, without requiring the claimant to make a reversion to the standard appeals process. Section 12(c) would require the Board to establish an office to develop evidence needed to decide a FDA. The VBA would transfer employees who were responsible for processing claims remanded by the Board to positions within the office of the Board in a number the Secretary determines sufficient. Section 12(c) would prohibit the Board from providing hearings for FDAs.



Section 12(d) would establish that the Secretary shall carry out the pilot program for a five year period beginning one year after the date of enactment. This Section would apply only to FDAs that are filed during such period.

Section 12(e) would require the Secretary to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the implementation of the pilot program. The first such report would be submitted not later than 180 days after the date on which the pilot program commences. Such reports would include: (1) the number of claimants who filed a FDA under the pilot program; (2) the average processing time for each such appeal; (3) a summary of reasons for which development of evidence was required by the Board; (4) the number of issues decided, listed by the disposition of the issue; (5) the number of issues decided and the number of issues for which evidence was not developed; (6) the number of FDAs decided by the Board, the number of cases from each agency of original jurisdiction, listed by the disposition of the issue; (7) the number of FDAs appealed to the CAVC, listed by the disposition of the case; (8) the number of reversions; and, (9) any reasons why a claimant was determined to be ineligible to participate in the pilot program. Additionally, the report would include a review, made in conjunction with VSOs, of the efforts of VA to provide clear rating decisions and improve disability rating notification letters, including with respect to: (1) the opinions of VSOs regarding such efforts; and (2) how the pilot program improves such efforts. The report would also include a recommendation for any changes to improve the pilot program and an assessment of the feasibility and advisability of expanding the pilot program.

Section 12(f) would require that the Secretary publish interim guidance on the pilot program not later than one day after the date of enactment. Not later than 90 days after the date of enactment, the Secretary would prescribe regulations to carry out such pilot program.

Section 12(g) would define the terms "claimant," "compensation," "fully developed appeal," and "standard appeal."

*Section 13—Deadline for certification of appeals forms by regional offices of the Department of Veterans Affairs*

Section 13 would require VA regional benefits offices to certify a form submitted by the veteran to appeal a VA determination to the Board within one year after receiving such form.

*Section 14—Evaluation of backlog of disability claims and appeals of claims of Department of Veterans Affairs*

Section 14(a) would establish a commission or taskforce to evaluate and assess the backlog of VA disability claims and the backlog of appeals claims.

Section 14(b) would require such commission or taskforce to carry out a study on the backlog of claims. Such study would be a comprehensive evaluation and assessment of the backlog of claims, an analysis of possible improvements to the procedures used to process such claims, and any related issues that such commission or task force considers relevant. This Section would also set out the matters the commission or task force would examine define the role of the commission or task force.

Section 14(c) would require the commission or task force to submit periodic reports to the President and Congress.

Section 14(d) would establish membership requirements for such commission or task force.

Section 14(e) would clarify the meeting requirements for the commission or task force.

Section 14(f) would define the powers of the commission or task force.

Section 14(g) would authorize compensation, travel expenses, staff, detail or government employees, and procurement of temporary and intermittent services.

Section 14(h) would authorize the termination of the commission or task force within 60 days after which the commission or taskforce submits the final comprehensive report.

Section 14(i) would authorize VA to make available to the commission or task force such amounts as the commission or task force may require to carry out the duties of such commission or task force.

Section 14(j) would define the terms “appeals process,” “Board,” and “strategic plan.”

*Section 15—Methods for validating certain World War II Merchant Mariner service considered to be active service by the Secretary of Veterans Affairs*

Section 15(a) would direct the Secretary of Homeland Security to accept additional documentation when considering the application for veterans’ status of an individual who performed service as a coastwise merchant seaman during World War II.

Section 15(b) would provide that other documentation accepted by the Secretary of Homeland Security pursuant to this Section shall satisfy all requirements for eligibility of service during the period beginning on December 7, 1941, and ending on December 31, 1946.

Section 15(c) would provide that qualified merchant mariners would be honored as veterans and would be entitled to veteran designation, burial benefits, and military decoration, that they shall not be entitled by reason of such recognized service to any benefit that is not described in this subsection.

Section 15(d) would require the Secretary of Homeland Security to verify that an individual performed service under honorable conditions that satisfies the requirements of a coastwise merchant seaman pursuant to this Section without regard to the sex, age, or disability of the individual during the period in which the individual served as such a coastwise merchant seaman.

Section 15(e) would define the term “primary next of kin.”

Section 15(f) would establish that the effective date of Section 15 would be 90 days after the date of enactment.

*Section 16—Designation of American World War II Cities*

Section 16(a) would require the Secretary of Veterans Affairs to designate at least one city in the United States each year as an “American World War II City.”

Section 16(b) would provide criteria for consideration of the designation as an “American World War II City.”

Section 16(c) would establish that the city of Wilmington, North Carolina, would be designated as the first American World War II City.

*Section 17—Sense of Congress regarding American veterans disabled for life*

Section 17(a) would establish Congressional findings.

Section 17(b) would provide that Congress expresses its appreciation to the men and women left permanently wounded, ill, or injured, as a result of their service in the Armed Forces; supports the annual recognition of American veterans disabled for life each year; and, encourages the American people to honor American veterans disabled for life each year with appropriate programs and activities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

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**PART II—GENERAL BENEFITS**

\* \* \* \* \*

**CHAPTER 23—BURIAL BENEFITS**

\* \* \* \* \*

**§ 2306. Headstones, markers, and burial receptacles**

(a) The Secretary shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 2402(a)(4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(4) Any individual described in section 2402(a)(5) of this title who is buried in a veterans' cemetery owned by a State.

(5) Any individual who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(b)(1) The Secretary shall furnish, when requested, an appropriate memorial headstone or marker for the purpose of commemorating an eligible individual whose remains are unavailable. Such a headstone or marker shall be furnished for placement in a na-

tional cemetery area reserved for that purpose under section 2403 of this title, a veterans' cemetery owned by a State, or, in the case of a veteran, in a State, local, or private cemetery.

(2) For purposes of paragraph (1), an eligible individual is any of the following:

- (A) A veteran.
- (B) The spouse or surviving spouse of a veteran.
- (C) An eligible dependent child of a veteran.

(3) For purposes of paragraph (1), the remains of an individual shall be considered to be unavailable if the individual's remains—

- (A) have not been recovered or identified;
- (B) were buried at sea, whether by the individual's own choice or otherwise;
- (C) were donated to science; or
- (D) were cremated and the ashes scattered without interment of any portion of the ashes.

(4) For purposes of this subsection:

- (A) The term "veteran" includes an individual who dies in the active military, naval, or air service.
- (B) The term "surviving spouse" includes a surviving spouse who had a subsequent remarriage.

(5) For purposes of this section, the term "eligible dependent child" means a child—

- (A) who is under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution; or
- (B) who is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

(c) A headstone or marker furnished under subsection (a), (b), or (d) of this section may be of any material, including but not limited to marble, granite, bronze, or slate, requested by the person entitled to request such headstone or marker if the material requested is determined by the Secretary (1) to be cost effective, and (2) in a case in which the headstone or marker is to be placed in a national cemetery, to be aesthetically compatible with the area of the cemetery in which it is to be placed.

(d)(1) The Secretary shall furnish, when requested, an appropriate Government headstone or marker at the expense of the United States for the grave of an individual described in paragraph (2) or (5) of subsection (a) who is buried in a private cemetery, notwithstanding that the grave is marked by a headstone or marker furnished at private expense. Such a headstone or marker may be furnished only if the individual making the request for the Government headstone or marker certifies to the Secretary that the headstone or marker will be placed on the grave for which the headstone or marker is requested, or, if placement on the grave is impossible or impracticable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

(2) Any headstone or marker furnished under this subsection shall be delivered by the Secretary directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(3) The headstone or marker furnished under this subsection shall be the headstone or marker selected by the individual making the request from among all the headstones and markers made available by the Government for selection.

[(4) In lieu of furnishing a headstone or marker under this subsection, the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased's status as a veteran, to be attached to a headstone or marker furnished at private expense.]

*(4)(A) In lieu of furnishing a headstone or marker under this subsection to a deceased individual described in subparagraph (B), the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased individual's status as a veteran, to be attached to a headstone or marker furnished at private expense.*

*(B) A deceased individual described in this subsection is an individual who—*

*(i) served in the Armed Forces on or after April 6, 1917; and*

*(ii) is eligible for a headstone or marker furnished under paragraph (1) (or would be so eligible but for the date of the death of the individual).*

(e)(1) The Secretary of Veterans Affairs shall provide an outer burial receptacle for each new grave in an open cemetery under the control of the National Cemetery Administration in which remains are interred in a casket. The Secretary of the Army may provide an outer burial receptacle for such a grave in the Arlington National Cemetery.

(2) The use of outer burial receptacles in a cemetery under the control of the National Cemetery Administration or in the Arlington National Cemetery shall be in accordance with regulations or procedures approved by the Secretary of Veterans Affairs or Secretary of the Army, respectively.

(3) Regulations or procedures under paragraph (2) may specify that—

(A) an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and

(B) if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required—

(i) to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and

(ii) to pay the amount of the administrative costs incurred by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army) in providing the outer burial receptacle in lieu of such grave liner.

(4) Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army), for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.

(f) The Secretary may furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial in a national cemetery of a deceased veteran in any case in which the Secretary—

- (1) is unable to identify the veteran’s next of kin, if any; and
- (2) determines that sufficient resources for the furnishing of a casket or urn for the burial of the veteran in a national cemetery are not otherwise available.

(g)(1) When the Secretary has furnished a headstone or marker under subsection (a) for the unmarked grave of an individual, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(2) When the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate memorial headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(h)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

(3) A headstone or marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.

(4) A casket or urn may not be furnished under subsection (f) for burial of a person described in section 2411(b) of this title.

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**PART IV—GENERAL ADMINISTRATIVE PROVISIONS**

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**CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS**

SUBCHAPTER I—CLAIMS

Sec.  
**[5100. Definition of “claimant”.]**  
*5100. Definitions.*

\* \* \* \* \*

*5109C. Priority for processing claims.*

SUBCHAPTER I—CLAIMS

**[§ 5100. Definition of “claimant”**

For purposes of this chapter, the term “claimant” means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.]

### § 5100. Definitions

In this chapter:

(1) The term “claimant” means any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.

(2) The term “claim” means a communication in writing requesting a determination of entitlement or evidencing a belief in entitlement to a benefit under the laws administered by the Secretary.

(3) The term “formal claim” means a claim submitted on an application form prescribed by the Secretary.

### § 5101. Claims and forms

(a)(1) [A specific] (A) Except as provided in subparagraph (B), a specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by section 5105 of this title) must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary.

(B)(i) The Secretary may pay benefits under chapters 13 and 15 and sections 2302, 2307, and 5121 of this title to a survivor of a veteran who has not filed a formal claim if the Secretary determines that the record contains sufficient evidence to establish the entitlement of the survivor to such benefits.

(ii) For purposes of this subparagraph and section 5110 of this title, the earlier of the following dates shall be treated as the date of the receipt of the survivor’s application for benefits described in clause (i):

(I) The date on which the survivor of a veteran (or the representative of such a survivor) notifies the Secretary of the death of the veteran through a death certificate or other relevant medical evidence indicating that the death was due to a service-connected or compensable disability.

(II) The head of any other department or agency of the Federal Government notifies the Secretary of the death of the veteran.

(iii) In notifying the Secretary of the death of a veteran as described in clause (ii)(I), the survivor (or the representative of such a survivor) may submit to the Secretary additional documents relating to such death without being required to file a formal claim.

(2) If an individual has not attained the age of 18 years, is mentally incompetent, or is physically unable to sign a form, a form filed under paragraph (1) for the individual may be signed by a court-appointed representative, a person who is responsible for the care of the individual, including a spouse or other relative, or an attorney in fact or agent authorized to act on behalf of the individual under a durable power of attorney. If the individual is in the care of an institution, the manager or principal officer of the institution may sign the form.

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation shall also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension shall be considered to be a claim for death compensation (or dependency and indemnity compensation) and accrued benefits.

(2) A claim by a parent for compensation or dependency and indemnity compensation shall also be considered to be a claim for accrued benefits.

(c)(1) Any person who applies for, signs a form on behalf of an individual to apply for, or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person, or TIN in the case that the person is not an individual, and the social security number of any claimant, dependent, or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number or TIN required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number or TIN.

(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(d) In this section:

(1) The term “mentally incompetent” with respect to an individual means that the individual lacks the mental capacity—

(A) to provide substantially accurate information needed to complete a form; or

(B) to certify that the statements made on a form are true and complete.

(2) The term “TIN” has the meaning given the term in section 7701(a)(41) of the Internal Revenue Code of 1986.

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### **§ 5109C. Priority for processing claims**

(a) *PRIORITY.*—*In processing claims for compensation under this chapter, the Secretary shall provide the following claimants with priority over other claimants:*

(1) *Veterans who have attained the age of 70.*

(2) *Veterans who are terminally ill.*

(3) *Veterans with life-threatening illnesses.*

(4) *Homeless veterans (as defined in section 2002 of this title).*

(5) *Veterans who were awarded the Medal of Honor.*

(6) *Veterans who are former prisoners of war.*

(7) *Veterans whose claims are being reviewed again in relation to a previously denied claim relating to military sexual trauma.*

(8) *Veterans whom the Secretary determines, on a case-by-case basis, are seriously or very seriously injured.*

(9) *Veterans whom the Secretary determines, on a case-by-case basis, should be given priority under this section based on an application for good cause established by the Secretary.*



(b) *REGULATIONS.*—The Secretary shall prescribe regulations to carry out subsection (a).

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### SUBCHAPTER III—PAYMENT OF BENEFITS

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#### § 5125. Acceptance of reports of private physician examinations

**[For purposes]** (a) *IN GENERAL.*—For purposes of establishing any claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim.

(b) *SUFFICIENCY OF EVIDENCE.*—If a veteran has submitted a medical opinion or report of a medical examination administered by a private physician in support of the veteran's claim, the Secretary may not order a medical examination to be administered by a Department physician unless the Secretary provides the veteran with a thorough explanation of why the medical opinion or report submitted by the veteran was not sufficiently complete and the reason why additional medical evidence is necessary.

(c) *SUFFICIENTLY COMPLETE DEFINED.*—For purposes of a medical opinion or report described in subsection (a), the term "sufficiently complete" means competent, credible, probative, and containing such information as may be required to make a decision on the claim for which the medical opinion or report is provided.

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### CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

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#### § 5312. Annual adjustment of certain benefit rates

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 1521, 1541, and 1542 of this title, the rate of increased pension paid under such sections 1521 and 1541 on account of children, and each rate of monthly allowance paid under section 1805 of this title, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act

(42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 1315 of this title and the annual income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title, as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2)(A) Whenever there is an increase under paragraph (1) of this subsection in such rates and annual income limitations, the Secretary shall, effective on the date of such increase in such rates and limitations, adjust (as provided in subparagraph (B) of this paragraph) the rates of dependency and indemnity compensation payable under subsection (b)(1) or (c)(1) of section 1315 of this title to any parent whose annual income is more than \$800 but not more than the annual income limitation in effect under subsection (b)(3) or (c)(3) of such section, as appropriate, and adjust the rates of such compensation payable under subsection (d)(1) of such section to any parent whose annual income is more than \$1,000 but not more than the annual income limitation in effect under subsection (d)(3) of such section.

(B) The adjustment in rates of dependency and indemnity compensation referred to in subparagraph (A) of this paragraph shall be made by the Secretary in accordance with regulations which the Secretary shall prescribe.

(c)(1) Whenever there is an increase under subsection (a) in benefit rates payable under sections 1521, 1541, 1542, and 1805 of this title and an increase under subsection (b) in benefit rates and annual income limitations under section 1315 of this title, the Secretary shall publish such rates and limitations (including those rates adjusted by the Secretary under subsection (b)(2) of this section), as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) Whenever such rates and income limitations are so increased, the Secretary may round such rates and income limitations in such manner as the Secretary considers equitable and appropriate for ease of administration.

*(d)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Secretary shall, effective on the date of such increase in benefit amounts, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in paragraph (2), as such amounts were in effect immediately before the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.*

(2) *The dollar amounts to be increased pursuant to paragraph (1) are the following:*

(A) *WARTIME DISABILITY COMPENSATION.—Each of the dollar amounts in effect under section 1114 of this title.*

(B) *ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of this title.*

(C) *CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of this title.*

(D) *DEPENDENCY AND INDEMNITY COMPENSATION TO SURVIVING SPOUSE.—Each of the dollar amounts in effect under subsections (a) through (d) of section 1311 of such title.*

(E) *DEPENDENCY AND INDEMNITY COMPENSATION TO CHILDREN.—Each of the dollar amounts in effect under sections 1313(a) and 1314 of such title.*

(3) *Whenever there is an increase under paragraph (1) in amounts in effect for the payment of disability compensation and dependency and indemnity compensation, the Secretary shall publish such amounts, as increased pursuant to such paragraph, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).*

(4) *Each dollar amount increased under paragraph (1), if not a whole dollar amount, shall be rounded to the next lower whole dollar amount.*

(5) *The Secretary of Veterans Affairs may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons under section 10 of Public Law 85–857 (72 Stat. 1263) who have not received compensation under chapter 11 of this title.*

\* \* \* \* \*

**CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS**

Sec.

5501. Commitment actions.

**[5502. Payments to and supervision of fiduciaries.]**

5502. *Appointment of fiduciaries.*

5502A. *Supervision of fiduciaries.*

\* \* \* \* \*

**[5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.]**

5509. *Annual reports and accountings of fiduciaries.*

\* \* \* \* \*

\* \* \* \* \*

**[§ 5502. Payments to and supervision of fiduciaries**

**[(a)(1)** Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is

acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

[(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

[(b) Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

[(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

[(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if

any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

[(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.]

#### **§ 5502. Appointment of fiduciaries**

(a) *APPOINTMENT.*—Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.

(b) *APPEALS.*—(1) *If the Secretary determines a beneficiary to be mentally incompetent for purposes of appointing a fiduciary under this chapter, the Secretary shall provide such beneficiary with a written statement detailing the reasons for such determination.*

(2) *A beneficiary whom the Secretary has determined to be mentally incompetent for purposes of appointing a fiduciary under this chapter may appeal such determination.*

(c) *MODIFICATION.*—(1) *A beneficiary for whom the Secretary appoints a fiduciary under this chapter may, at any time, request the Secretary to—*

(A) *remove the fiduciary so appointed; and*

(B) *have a new fiduciary appointed.*

(2) *The Secretary shall comply with a request under paragraph (1) if the Secretary determines that the request is made in good faith and—*

(A) *the fiduciary requested to be removed receives a fee from the beneficiary and a suitable volunteer fiduciary is available to assist the beneficiary; or*

(B) *the beneficiary provides credible information that the fiduciary requested to be removed is—*

(i) *not acting in the interest of the beneficiary; or*

(ii) *unable to effectively serve the beneficiary because of an irreconcilable personality conflict or disagreement.*

(3) *The Secretary shall ensure that any removal or new appointment of a fiduciary under paragraph (1) does not delay or interrupt the beneficiary's receipt of benefits administered by the Secretary.*

(d) *INDEPENDENCE.*—*A fiduciary appointed by the Secretary shall operate independently of the Department to determine the actions that are in the interest of the beneficiary.*

(e) *PREDESIGNATION.*—*A veteran may predesignate a fiduciary by—*

(1) *submitting written notice to the Secretary of the predesignated fiduciary; or*

(2) *submitting a form provided by the Secretary for such purpose.*

(f) *APPOINTMENT OF NON-PREDESIGNATED FIDUCIARY.*—*If a beneficiary designates an individual to serve as a fiduciary under subsection (e) and the Secretary appoints an individual not so designated as the fiduciary for such beneficiary, the Secretary shall notify such beneficiary of—*

(1) *the reason why such designated individual was not appointed; and*

(2) *the ability of the beneficiary to modify the appointed fiduciary under subsection (c).*

(g) *PRIORITY OF APPOINTMENT.*—*In appointing a fiduciary under this chapter, if a beneficiary does not designate a fiduciary pursuant to subsection (e), to the extent possible the Secretary shall appoint a person who is—*

(1) *a relative of the beneficiary;*

(2) *appointed as guardian of the beneficiary by a court of competent jurisdiction; or*

(3) *authorized to act on behalf of the beneficiary under a durable power of attorney.*

**§5502A. Supervision of fiduciaries**

(a) COMMISSION.—(1)(A) *In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the monthly benefits provided to the beneficiary a reasonable commission for fiduciary services rendered, but the commission for any month may not exceed the lesser of the following amounts:*

(i) *The amount that equals three percent of the monthly monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary.*

(ii) *\$35.*

(B) *A commission paid under this paragraph may not be derived from any award to a beneficiary regarding back pay or retroactive benefits payments.*

(C) *A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.*

(D) *In accordance with section 6106 of this title, a commission may not be paid to a fiduciary if the Secretary determines that the fiduciary misused any benefit payments of a beneficiary.*

(E) *If the Secretary determines that the fiduciary has misused any benefit or payments of a beneficiary, the Secretary may revoke the fiduciary status of the fiduciary.*

(2) *Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.*

(b) COURT.—*Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.*

(c) *PAYMENT OF CERTAIN EXPENSES.*—Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) *TEMPORARY PAYMENT OF BENEFITS.*—All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patient's trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) *ESCHEATMENT.*—Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would



*escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.*

*(f) ASSISTANCE.—The Secretary shall provide to a fiduciary appointed under section 5502 of this title materials and tools to assist the fiduciary in carrying out the responsibilities of the fiduciary under this chapter, including—*

- (1) handbooks, brochures, or other written material that explain the responsibilities of a fiduciary under this chapter;*
- (2) tools located on an Internet website, including forms to submit to the Secretary required information; and*
- (3) assistance provided by telephone.*

\* \* \* \* \*

#### **§ 5506. Definition of “fiduciary”**

**[For purposes]** *(a) For purposes of this chapter and chapter 61 of this title, the term “fiduciary” means—*

- (1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant’s estate) or of a beneficiary (or a beneficiary’s estate); or*
- (2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary.*

*(b)(1) For purposes of subsection (a), the term “person” includes any—*

- (A) State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;*
- (B) any State or local government agency with fiduciary responsibilities; or*
- (C) any nonprofit social service agency that the Secretary determines—*
  - (i) regularly provides services as a fiduciary concurrently to five or more individuals; and*
  - (ii) is not a creditor of any such individual.*

*(2) The Secretary shall maintain a list of State or local agencies and nonprofit social service agencies under paragraph (1) that are qualified to act as a fiduciary under this chapter. In maintaining such list, the Secretary may consult the lists maintained under section 807(h) of the Social Security Act (42 U.S.C. 1007(h)).*

#### **[§ 5507. Inquiry, investigations, and qualification of fiduciaries**

**[a]** Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary’s fiduciary under section 5502 of this title shall be made on the basis of—

[(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

[(A) to be conducted in advance of such certification;

[(B) to the extent practicable, to include a face-to-face interview with such person; and

[(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

[(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

[(3) the furnishing of any bond that may be required by the Secretary.

[(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

[(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

[(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

[(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

[(B) the spouse or parent of an incompetent beneficiary;

[(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

[(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title.

[(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.]

**§5507. Inquiry, investigations, and qualification of fiduciaries**

(a) *INVESTIGATION.*—Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary to be conducted in advance of such certification and in accordance with subsection (b);

(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations);

(3) adequate evidence that the person to serve as fiduciary protects the private information of a beneficiary in accordance with subsection (d)(1); and

(4) the furnishing of any bond that may be required by the Secretary in accordance with subsection (f).

(b) *ELEMENTS OF INVESTIGATION.*—(1) In conducting an inquiry or investigation of a proposed fiduciary under subsection (a)(1), the Secretary shall conduct—

(A) a face-to-face interview with the proposed fiduciary by not later than 30 days after the date on which such inquiry or investigation begins; and

(B) a background check of the proposed fiduciary to—

(i) in accordance with paragraph (2), determine whether the proposed fiduciary has been convicted of a crime; and

(ii) determine whether the proposed fiduciary will serve the best interest of the beneficiary, including by conducting a credit check of the proposed fiduciary and checking the records under paragraph (5).

(2) The Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

(3) The Secretary shall conduct the background check described in paragraph (1)(B)—

(A) each time a person is proposed to be a fiduciary, regardless of whether the person is serving or has served as a fiduciary; and

(B) at no expense to the beneficiary.

(4) Each proposed fiduciary shall disclose to the Secretary the number of beneficiaries that the fiduciary acts on behalf of.

(5) The Secretary shall maintain records of any person who has—

(A) previously served as a fiduciary; and

(B) had such fiduciary status revoked by the Secretary.

(6)(A) If a fiduciary appointed by the Secretary is convicted of a crime described in subparagraph (B), the Secretary shall notify the beneficiary of such conviction by not later than 14 days after the date on which the Secretary learns of such conviction.

(B) A crime described in this subparagraph is a crime—

(i) for which the fiduciary is convicted while serving as a fiduciary for any person;

(ii) that is not included in a report submitted by the fiduciary under section 5509(a) of this title; and

(iii) that the Secretary determines could affect the ability of the fiduciary to act on behalf of the beneficiary.

(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include giving priority to conducting such inquiry or investigation. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

(B) the spouse or parent of an incompetent beneficiary;

(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction;

(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title; or

(E) a person who is authorized to act on behalf of the beneficiary under a durable power of attorney.

(d) PROTECTION OF PRIVATE INFORMATION.—(1) A fiduciary shall take all reasonable precautions to—

(A) protect the private information of a beneficiary, including personally identifiable information; and

(B) securely conducts financial transactions.

(2) A fiduciary shall notify the Secretary of any action of the fiduciary that compromises or potentially compromises the private information of a beneficiary.

(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Secretary has reason to believe that a fiduciary may be misusing all or part of the benefit of a beneficiary, the Secretary shall—

(A) conduct a thorough investigation to determine the veracity of such belief; and

(B) if such veracity is established, transmit to the officials described in paragraph (2) a report of such investigation.

(2) The officials described in this paragraph are the following:

(A) The Attorney General.

(B) Each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.

(f) BOND.—In determining whether a proposed fiduciary is required to furnish a bond under subsection (a)(4), the Secretary shall consider—

(1) the existence of any familial or other personal relationship between the proposed fiduciary and the beneficiary; and

(2) the care the proposed fiduciary has taken to protect the interests of the beneficiary.

(g) LIST OF FIDUCIARIES.—Each regional office of the Veterans Benefits Administration shall maintain a list of the following:

(1) *The name and contact information of each fiduciary, including address, telephone number, and email address.*

(2) *With respect to each fiduciary described in paragraph (1)—*

(A) *the date of the most recent background check and credit check performed by the Secretary under this section;*

(B) *the date that any bond was paid under this section;*

(C) *the name, address, and telephone number of each beneficiary the fiduciary acts on behalf of; and*

(D) *the amount that the fiduciary controls with respect to each beneficiary described in subparagraph (C).*

\* \* \* \* \*

**§ 5509. [Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting] *Annual reports and accountings of fiduciaries***

(a) **REQUIRED REPORTS AND ACCOUNTINGS.**—The Secretary [may require a fiduciary to file a] *shall require a fiduciary to file an annual report or accounting pursuant to regulations prescribed by the Secretary. The Secretary shall transmit such annual report or accounting to the beneficiary and any legal guardian of such beneficiary.*

(b) **ACTIONS UPON FAILURE TO FILE.**—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.

(c) **MATTERS INCLUDED.**—*Except as provided by subsection (f), an annual report or accounting under subsection (a) shall include the following:*

(1) *For each beneficiary that a fiduciary acts on behalf of—*

(A) *the amount of the benefits of the beneficiary provided under any law administered by the Secretary accrued during the year, the amount spent, and the amount remaining; and*

(B) *if the fiduciary serves the beneficiary with respect to benefits not administered by the Secretary, an accounting of all sources of benefits or other income the fiduciary oversees for the beneficiary.*

(2) *A list of events that occurred during the year covered by the report that could affect the ability of the fiduciary to act on behalf of the beneficiary, including—*

(A) *the fiduciary being convicted of any crime;*

(B) *the fiduciary declaring bankruptcy; and*

(C) *any judgments entered against the fiduciary.*

(d) **RANDOM AUDITS.**—*The Secretary shall annually conduct random audits of fiduciaries who receive a commission pursuant to subsection 5502A(a)(1) of this title.*

(e) **STATUS OF FIDUCIARY.**—*If a fiduciary includes in the annual report events described in subsection (c)(2), the Secretary may take appropriate action to adjust the status of the fiduciary as the Sec-*

retary determines appropriate, including by revoking the fiduciary status of the fiduciary.

(f) CAREGIVERS AND CERTAIN OTHER FIDUCIARIES.—(1)(A) In carrying out this section, the Secretary shall ensure that a caregiver fiduciary is required only to file an annual report or accounting under subsection (a) with respect to the amount of the benefits of the beneficiary provided under any law administered by the Secretary—

(i) spent on—

(I) food and housing for the beneficiary; and

(II) clothing, health-related expenses, recreation, and other personal items for the beneficiary; and

(ii) saved for the beneficiary.

(B) The Secretary shall coordinate with the Under Secretary for Benefits and the Under Secretary for Health to—

(i) minimize the frequency with which employees of the Department visit the home of a caregiver fiduciary and beneficiary; and

(ii) limit the extent of supervision by such Under Secretaries with respect to such a fiduciary and beneficiary.

(C) In this paragraph, the term “caregiver fiduciary” means a fiduciary who—

(i) in addition to acting as a fiduciary for a beneficiary, is approved by the Secretary to be a provider of personal care services for the beneficiary under paragraph (3)(A)(i) of section 1720G(a) of this title;

(ii) in carrying out such care services to such beneficiary, has undergone not less than four home visits under paragraph (9)(A) of such section; and

(iii) has not been required by the Secretary to take corrective action pursuant to paragraph (9)(C) of such section.

(2) In carrying out this section, the Secretary may adjust the matters required under an annual report or accounting under subsection (a) with respect to a fiduciary whom the Secretary determines to have effectively protected the interests of the beneficiary over a sustained period.

#### **§ 5510. Annual report**

【The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary’s Annual Performance and Accountability Report】 *Not later than July 1 of each year, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a separate report containing information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following:*

(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

(4) The number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payees.

(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

(6) How such cases of misuse of benefits were addressed by the Secretary.

(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits re-issued to beneficiaries.

(8) The number of fiduciary cases referred to the Office of the Inspector General and the nature of the actions taken by the Inspector General.

(9) The total amount of money recovered by the Government in cases arising from the misuse of benefits by a fiduciary.

(10) Such other information as the Secretary considers appropriate.

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**CHAPTER 61—PENAL AND FORFEITURE PROVISIONS**

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**§ 6107. Reissuance of benefits**

(a) **NEGLIGENT FAILURE BY SECRETARY.**—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary’s successor fiduciary an amount equal to the amount of benefits that were so misused.

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) A case in which the Secretary failed to review a fiduciary’s accounting within 60 days of the date on which that accounting is scheduled for review.

(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

(C) In any other case in which actual negligence is shown, *including by the Secretary not acting in accordance with section 5507 of this title.*

(b) **REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.**—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual’s benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary’s successor fiduciary an amount equal to the amount of such benefit so misused.

(2) Paragraph (1) applies to a fiduciary that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary’s successor fiduciary as the case may be.

(c) **LIMITATION ON TOTAL AMOUNT PAID.**—The total of the amounts paid to a beneficiary (or a beneficiary’s successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

(d) **RECOUPMENT OF AMOUNTS REISSUED.**—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

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**PART V—BOARDS, ADMINISTRATIONS, AND SERVICES**

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**CHAPTER 71—BOARD OF VETERANS’ APPEALS**

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

(a)(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

(2) A case referred to in paragraph (1) may, for cause shown, be advanced on motion for earlier consideration and determination. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

- (A) if the case involves interpretation of law of general application affecting other claims;
- (B) if the appellant is seriously ill or is under severe financial hardship; or
- (C) for other sufficient cause shown.

(3) A case referred to in paragraph (1) may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(b) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

(c) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing shall, except in the case of a reconsideration of a decision under section 7103 of this title, participate in making the final determination of the claim.

(d) [(1) An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department.] *(1)(A) Upon request for a hearing, the Board shall determine, for purposes of scheduling the hearing for the earliest possible date, whether a hearing before the Board will be held at its principal location or at a facility of the Department or other appropriate Federal facility located within the area served by a regional office of the Department. The Board shall also determine whether to provide a hearing through the use of the facilities and equipment de-*



*scribed in subsection (e)(1) or by the appellant personally appearing before a Board member or panel.*

*(B) The Board shall notify the appellant of the determinations of the location and type of hearing made under subparagraph (A). Upon notification, the appellant may request a different location or type of hearing as described in such subparagraph. If so requested, the Board shall grant such request and ensure that the hearing is scheduled at the earliest possible date without any undue delay or other prejudice to the appellant.*

(2) A hearing to be held within an area served by a regional office of the Department shall (except as provided in paragraph (3)) be scheduled to be held in accordance with the place of the case on the docket under subsection (a) relative to other cases on the docket for which hearings are scheduled to be held within that area.

(3) A hearing to be held within an area served by a regional office of the Department may, for cause shown, be advanced on motion for an earlier hearing. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

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

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

(C) for other sufficient cause shown.

(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location.

[(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected.]

*(2) Any hearing provided through the use of the facilities and equipment described in paragraph (1) shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing.*

(f) Nothing in this section shall preclude the screening of cases for purposes of—

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

(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.

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**VETERANS BENEFITS ACT OF 2003**

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**TITLE VII—OTHER MATTERS**

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**SEC. 704. TEMPORARY AUTHORITY FOR PERFORMANCE OF MEDICAL DISABILITIES EXAMINATIONS BY CONTRACT PHYSICIANS.**

(a) **AUTHORITY.**—Using appropriated funds, other than funds available for compensation and pension, the Secretary of Veterans Affairs may provide for the conduct of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary by persons other than Department of Veterans Affairs employees. The authority under this section is in addition to the authority provided in section 504(b) of the Veterans' Benefits Improvement Act of 1996 (Public Law 104-275; 38 U.S.C. 5101 note).

(b) **PERFORMANCE BY CONTRACT.**—Examinations under the authority provided in subsection (a) shall be conducted pursuant to contracts entered into and administered by the Under Secretary for Benefits.

(c) **EXPIRATION.**—The authority in subsection (a) shall expire on **[December 31, 2015]** *December 31, 2017*. No examination may be carried out under the authority provided in that subsection after that date.

(d) **LICENSURE OF CONTRACT PHYSICIANS.**—

(1) **IN GENERAL.**—*Notwithstanding any law regarding the licensure of physicians, a physician described in paragraph (2) may conduct an examination pursuant to a contract entered into under subsection (b) at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract.*

(2) **PHYSICIAN DESCRIBED.**—*A physician described in this paragraph is a physician who—*

*(A) has a current unrestricted license to practice the health care profession of the physician;*

*(B) is not barred from practicing such health care profession in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States; and*

*(C) is performing authorized duties for the Department of Veterans Affairs pursuant to a contract entered into under subsection (b).*

**[(d)] (e) REPORT.**—Not later than four years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the use of the authority provided in subsection (a). The Secretary shall include in the report an assessment of the effect of examinations under that authority on the cost, timeliness, and thoroughness of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary.

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**SECTION 504 OF THE VETERANS' BENEFITS  
IMPROVEMENT ACT OF 1996**

**SEC. 504 PILOT PROGRAM FOR USE OF CONTRACT PHYSICIANS FOR  
DISABILITY EXAMINATIONS.**

(a) **AUTHORITY.**—The Secretary of Veterans Affairs, acting through the Under Secretary for Benefits, may conduct a pilot program under this section under which examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary that are carried out through the Under Secretary for Benefits may be made by persons other than employees of the Department of Veterans Affairs. Any such examination shall be performed pursuant to contracts entered into by the Under Secretary for Benefits with those persons.

(b) **LIMITATION.**—The Secretary may carry out the pilot program under this section as follows:

(1) In fiscal years before fiscal year 2015, through not more than 10 regional offices of the Department of Veterans Affairs.

(2) In fiscal year 2015, through not more than 12 regional offices of the Department.

(3) In fiscal year 2016, through not more than 15 regional offices of the Department.

(4) In fiscal year 2017 and each fiscal year thereafter, through such regional offices of the Department as the Secretary considers appropriate.

(c) **LICENSURE OF CONTRACT PHYSICIANS.**—

(1) **IN GENERAL.**—*Notwithstanding any law regarding the licensure of physicians, a physician described in paragraph (2) may conduct an examination pursuant to a contract entered into under subsection (a) at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract.*

(2) **PHYSICIAN DESCRIBED.**—*A physician described in this paragraph is a physician who—*

*(A) has a current unrestricted license to practice the health care profession of the physician;*

*(B) is not barred from practicing such health care profession in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States; and*

*(C) is performing authorized duties for the Department of Veterans Affairs pursuant to a contract entered into under subsection (a).*

[(c)] (d) **SOURCE OF FUNDS.**—Payments for contracts under the pilot program under this section shall be made from amounts available to the Secretary of Veterans Affairs for payment of compensation and pensions.

[(d)] (e) **REPORT TO CONGRESS.**—Not later than three years after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the effect of the use of the authority provided by subsection (a) on the cost, timeliness, and thoroughness of medical disability examinations.