

VETERANS APPEALS IMPROVEMENT AND  
MODERNIZATION ACT OF 2017

MAY 19, 2017.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans' Affairs,  
submitted the following

R E P O R T

[To accompany H.R. 2288]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2288) to amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## PURPOSE AND SUMMARY

H.R. 2288, the Veterans Appeals Improvement and Modernization Act of 2017, was introduced by Representative Mike Bost of Illinois on May 2, 2017. The purpose of H.R. 2288 is to expedite VA's appeals process while protecting veterans' due process rights.

Under H.R. 2288, a veteran who is dissatisfied with VA's decision on his or her claim for disability benefits would be able to appeal within one year of VA's decision. The bill gives veterans who file an appeal three procedural options:

- (1) Request a higher-level review by a regional office (RO) in which the adjudicator would review the same evidence considered by the original claims processor. The veteran may request that a VA employee located at another RO review the appeal, and the Department may not deny such request without good cause.

- (2) File a supplemental claim, which would allow the veteran to submit new evidence to the RO and/or have a hearing.

- (3) Transfer jurisdiction of the claim immediately to the Board of Veterans' Appeals (Board). At the Board, the veteran would have the opportunity to select an expedited review, in which the veteran would not have a hearing, but would be able to submit new evidence at certain stages in the appeals process. Alternatively, the veteran would have the option to submit new evidence and request a Board hearing.

The Board would maintain at least two dockets. One docket will be for cases in which the veteran waives a hearing and the ability to submit new evidence. A second docket will be for cases in which the veteran requests a hearing. The Board would have the flexibility to establish additional dockets, i.e., a docket for cases in which the veteran submits new evidence but waives a hearing. The Board would decide each case in regular order according to its respective place on the docket to which it is assigned. However, the Board may advance a case for earlier consideration if the veteran is seriously ill, is under severe financial hardship, or for other sufficient cause.

H.R. 2288 provides that if a veteran disagrees with VA's determination with respect to a claim with multiple issues, the veteran would be allowed to appeal VA's determination on each issue separately. The bill also clarifies that VA may allow veterans who choose one appeals option, but subsequently determines that they would prefer to change to another option, to do so. For example, under the bill, if a veteran requested a hearing at the Board, but later decides that he or she does not want a hearing, VA has the authorization to develop policies that would allow such veterans to switch to the no hearing docket. However, H.R. 2288 does not mandate that VA allow veterans to switch from one option to another. It is expected that the Secretary will use their discretion to develop policies that are in the best interest of veterans.

H.R. 2288 would allow a veteran to maintain the original effective date of their claim, regardless of the number of times the veteran appeals the decision, even if the veteran receives an adverse decision at the Court of Appeals for Veterans Claims (CAVC). However, to maintain the original effective date, veterans would be required to submit new and relevant evidence within a year of the

most recent decision. New and relevant evidence is a change from the previous standard of new and material evidence; the intent behind the change is to lower the current burden. VBA and the Board would be required to notify the veteran if VA does not consider evidence that the veteran did not file timely. Such notice would also detail any options that may be available to the claimant for having VA consider such evidence.

To streamline the process, VA's statutory duty to assist would terminate after VA issues the original rating decision. Nevertheless, if the Board or higher-level adjudicator discovers a duty to assist error that occurred in the rating decision, the claim would be sent back to the RO, unless the claim could be granted in full. If the claim is returned to the RO, the RO would have to correct any errors and readjudicate the claim. Additionally, H.R. 2288 would require VA to expedite appeals returned to the RO by a higher-level reviewer or the Board.

Moreover, the bill would allow veterans to retain the services of attorneys and accredited agents who charge a fee when the agency of original jurisdiction (AOJ) provides notice of the original decision. Current law allows attorneys and accredited agent to charge a fee for services rendered after the veteran files a notice of disagreement.

To help veterans better understand VA's decision on their claims, the bill includes a statutory requirement that VA issue detailed decision notification letters. Under the bill, a decision letter would include a summary of the evidence, a summary of applicable laws and regulations, an explanation of how the veteran may obtain a copy of the evidence used in making the decision, and VA's favorable findings, if any. If the veteran's claim is denied, the letter would also explain why the claim was denied, and describe the evidence VA would need to grant service connection or the next higher-level of compensation. The intent of this provision is to help better inform the veteran's decision regarding whether to appeal VA's rating decision.

Additionally, H.R. 2288 would allow certain veterans who initiated an appeal prior to the bill's effective date to opt-in to the modernized appeals system. To avoid overwhelming the new system, the bill limits the opt-in to claimants who receive a statement of the case (SOC) or a supplemental statement of the case (SSOC) after the effective date of the legislation. Claimants who receive their initial decision after the bill is enacted, but before the effective date of the law, may also be allowed to opt-in to the improved appeals system.

To address concerns raised by the Government Accountability Office (GAO) with respect to VA's readiness to implement appeals reform,<sup>1</sup> the bill would direct VA to provide a comprehensive plan for processing "legacy appeals"<sup>2</sup> and implementing the reform proposal to Congress and GAO within 90 days after the date of enactment. GAO would then assess such plan and submit written findings and recommendations to Congress 90 days after receipt of the plan. Moreover, H.R. 2288 would give VA the authority to test the new system prior to full implementation, including conducting a pilot

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<sup>1</sup> U.S. Government Accountability Office, *Additional Planning Would Enhance Efforts to Improve the Timeliness of Appeals Decisions* (GAO-17-234) (March 23, 2017).

<sup>2</sup> Legacy appeals are those appeals that will be pending as of the effective date of H.R. 2288.

program or phasing-in implementation. For example, the bill authorizes VA to establish a Fully Developed Appeals pilot program, but does not require VA to conduct such a pilot, otherwise perform testing of assumptions, or implement a phase-in for implementation.<sup>3</sup>

Before full implementation, the bill would mandate that the Secretary of the Department of Veterans Affairs (Secretary), without delegation, certify and confirm that the Department has sufficient resources, personnel, office space, procedures, and information technology to carry out the new appeals system and process appeals under both the modernized system and the legacy system. Before making such certification, the bill would require VA, at a minimum, to collaborate, partner with, and give weight to the advice of the three veterans service organizations (VSOs) with the most members, and such other stakeholders as the Secretary considers appropriate. The VA is encouraged to go beyond the minimum requirement and continue to work with all the VSOs they have previously partnered with to ensure diverse opinions to inform the VA during planning and implementation. The VA is also encouraged to continue hosting in person meetings with the VSOs. The effective date of the bill would be the later of either 540 days after the date of enactment or 30 days after the Secretary's positive certification. Finally, the Secretary would be required to submit periodic reports to Congress for 10 years following implementation.

The bill also contains specific reporting requirements on the VA to the Congressional Committees of jurisdiction to ensure proper oversight can be conducted and evaluations can be conducted on how the changes in law are affecting the current appeals backlog.

#### BACKGROUND AND NEED FOR LEGISLATION

Under VA's disability compensation procedures, a veteran initiates a claim by filing an application for benefits with VA. The claim describes the current disabilities or symptoms of disabilities that the veteran believes were caused, or aggravated, by his or her military service. Filing a claim triggers VA's "duty to assist" and VA is required to help the veteran develop evidence (i.e. obtaining service treatment records, private medical records, military discharge documents, etc. . . .) to support the claim. VA may also schedule a medical examination for the veteran. After reviewing the evidence, VA issues a "rating decision," which either grants or denies the claimed disabilities. If the application for benefits is granted, the rating decision assigns an evaluation of disability level of 0% to 100%, by 10% increments (i.e., 0%, 10%, 20% . . .) based on criteria set forth in federal regulations; and, establishes an effective date, which is usually the date that the claim was submitted.

If a veteran disagrees with VA's rating decision, he or she may file a notice of disagreement (NOD) with the regional office (RO). The RO will then review the rating decision and either revise or uphold the decision. The RO will also issue a statement of the case (SOC), which explains the new decision, provides a list of the evi-

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<sup>3</sup>Fully Developed Appeals are appeals in which the veteran waives a hearing and does not submit additional evidence.

dence reviewed, and attaches a list of the laws and regulations applicable to the decision.

A veteran who is dissatisfied with the SOC may file a substantive appeal, or VA Form 9, within 60 days from the issuance of the SOC. If a veteran chooses to file a substantive appeal, the RO subsequently certifies the claim and then send it to the Board of Veterans' Appeals (Board) for a de novo review.<sup>4</sup> If the veteran disagrees with the Board decision, the veteran can file a Notice of Appeal (NOA) with the Court of Appeals for Veterans Claims (CAVC). If the veteran does not appeal to the CAVC, the Board decision becomes final.

Unfortunately, VA's current appeals process is broken. In the last few years, the quantity of undecided appeals at VA has risen significantly over the past few years. In January 2015, there were approximately 375,000 pending appeals at VA. This number increased to approximately 470,000 as of March 31, 2017—a 20% increase in little more than 2 years.

Furthermore, veterans currently wait an average three years for their appeal to be resolved at the RO level. Veterans who file an appeal with the Board wait an average five years for a final decision, inclusive of the time at both VBA and BVA. Even worse, VA projects that, if the current appeals process is not changed, claimants will wait an average ten years for a final appeals decision by the end of 2027.<sup>5</sup>

To help ensure that veterans receive timely appeals decisions in the future, VA negotiated with VSOs and other veterans advocates to craft a proposal that would streamline VA's appeals process while protecting veterans' due process rights. The resulting appeals reform proposal was incorporated into H.R. 2288. The new appeals procedures created by this bill would reduce VA's appeals workload and help ensure that the process is both timely and fair.

#### HEARINGS

There were no Subcommittee hearings on H.R. 2288.

On May 2, 2017, the Committee on Veterans' Affairs conducted a legislative hearing on draft legislation entitled the "Veterans Appeals Improvement and Modernization Act." Such draft legislation was revised and introduced as H.R. 2288.

The following witnesses testified:

Mr. David S. Spickler, Acting Vice Chairman, Executive in Charge, Board of Veterans' Appeals, U.S. Department of Veterans Affairs, *accompanied by* Mr. David R. McLenachen, Director, Appeals Management Office, Veterans Benefits Administration, U. S. Department of Veterans Affairs; Mr. Louis J. Celli, Jr., Director, National Veterans Affairs and Rehabilitation Division, The American Legion; Mr. Jim Marszalek, National Service Director, Disabled Veterans of America; and, Mr. Ryan M. Gallucci, Director, National Veterans Service, Veterans of Foreign Wars of the United States.

Statements for the record were submitted by:

<sup>4</sup>A de novo review is a fresh look at the case.

<sup>5</sup>Gibson, Sloan P., Deputy Secretary, 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.

The Military Officers Association of America, the National Association of State Directors of Veterans Affairs, the National Organization of Veterans' Advocates, the National Veterans Legal Services Program, the Paralyzed Veterans of America, the Vietnam Veterans of America, and Military-Veterans Advocacy Inc.

#### SUBCOMMITTEE CONSIDERATION

H.R. 2288 was not considered before the Subcommittee.

#### COMMITTEE CONSIDERATION

On May 17, 2017, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 2288 reported favorably to the House of Representatives.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 2288 reported to the House. A motion by Ranking Member Timothy J. Walz of Minnesota to report H.R. 2288 favorably to the House of Representatives was agreed to 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.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to provide the Department of Veterans Affairs the authority to change its current appeals process.

#### 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. 2288 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. 2288 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. 2288 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, May 19, 2017.*

Hon. PHIL ROE, M.D.,  
*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. 2288, the Veterans Appeals Improvement and Modernization Act of 2017.

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. 2288—Veterans Appeals Improvement and Modernization Act of 2017*

Summary: H.R. 2288 would modify the appeals process for benefit claims at the Department of Veterans Affairs (VA) and would require several reports from VA and the Government Accountability Office (GAO). CBO estimates that implementing H.R. 2288 would cost about \$2 million over the 2017–2022 period; such spending would be subject to the availability of appropriated funds.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2288 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2288 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act 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. 2288 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level .....	0	1	*	*	*	*	2
Estimated Outlays .....	0	1	*	*	*	*	2

Note: Annual amounts do not sum to total because of rounding; \* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 2288 will be enacted near the beginning of fiscal year 2018, that sufficient funds will be available each year, and that outlays will follow historical spending patterns for the affected programs.

#### *Appeals reform*

Section 2 would direct VA to implement a new process to handle appeals of claims for veterans' benefits. As described below, the current system allows for repeated revisions and resubmissions of claims while maintaining an effective date for benefits based upon the original filing date of the claim. As a result, VA reports that under current law final decisions on appeals take an average of three years, with some appeals taking more than six years. The current backlog for appeals exceeds 470,000 claims and is growing.

The proposed changes are intended to significantly streamline the appeal process, which would allow appeals to be finalized in a shorter period of time and require the efforts of fewer employees. VA reports that no additional personnel would be required for training, modifications to information technology, or outreach. VA also expects that the efficiencies of the new system would allow the agency to continue processing legacy appeals under the current system, very gradually reducing the existing backlog, without the need for additional employees. (Reducing the backlog in a more expedited manner would require more employees and would have a substantial cost.) Based on an analysis of information from VA and our understanding of the appeals process, CBO expects that VA could implement that change without an increase in workload. Therefore, CBO estimates that implementing section 2 would have no significant cost over the 2017–2022 period.

#### *Comprehensive plan*

Section 3 would require VA to create a comprehensive plan to implement the new appeals process. That plan would include information about the existing process, including timeliness and the number of appeals, and would discuss how that information would differ under the new process. VA would be required to evaluate the potential costs for all facets of the new appeals process as well as to provide quarterly reports on VA's implementation of that process. The bill also would require GAO to conduct an assessment of VA's comprehensive plan. CBO estimates that implementing this provision would cost about \$2 million to prepare the reports over the 2017–2022 period.

#### *Pilot program on fully developed appeals*

Section 4 would grant VA the authority to implement a pilot program for some appeals until the new appeals process could be implemented. VA indicates that it would not use this authority; therefore, CBO estimates that implementing section 4 would have no budgetary effects.

#### *VA appeals data*

Section 5 would require VA to publish data monthly about the new appeals process on their website. CBO estimates that implementing section 5 would cost less than \$500,000 over the 2017–2022 period.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 2288 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 2288 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Dwayne M. Wright; Impact on state, local, and tribal governments: Leo Lex; 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. 2288 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. 2288.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 2288 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 H.R. 2288 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 clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2288 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, 115th Cong. (2017), the Committee estimates that H.R. 2288 contains no directed rule making that would require the Secretary to prescribe regulations.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Sec. 1. Short title*

Section 1 would establish the short title of the Act.

*Sec. 2. Reform of rights and processes relating to appeals of decisions regarding claims for benefits under laws administered by Secretary of Veterans Affairs*

Section 2 would:

(a) Define “Agency of Jurisdiction (AOJ),” “relevant evidence,” and “supplemental claim.”

(b) Amend section 5103(a) to require the Secretary to provide notice of required information and evidence to claimants to submit a supplemental claim.

(c) Specify that VA would not be required to readjudicate a disallowed claim unless a veteran submits new and relevant evidence.

(d) Eliminate VA’s duty to assist after the AOJ issues notice of the decision with respect to a claim or supplemental claim. However, clarifies that if a duty to assist error is discovered during the higher-level or Board review, unless the claim is granted in full, the claim shall be returned for correction of such error and readjudication.

(e) Require that VA decision letters include certain information.

(f) Establish that any finding favorable to the claimant shall be binding on all subsequent adjudicators, unless clear and convincing evidence rebuts such favorable finding.

(g) Require VA to grant a claimant’s written request for a review by a higher-level adjudicator within the same office within the RO or a different RO. Clarify that the Secretary may not deny a request for review by an adjudicator at a different RO without good cause. Require that VA notify a claimant if the Department did not consider submitted evidence when deciding the claimant’s appeal and describe the claimant’s option to have such evidence considered by the Department. Establish that the review of a decision by a higher-level adjudicator shall be de novo.

(h) Establish that the claimant may file a request for a higher-level review, a supplemental claim, or a notice of disagreement within one year of a decision. However, a claimant may not take another action until such appeal is either adjudicated or withdrawn. Clarify that the claimant may take successive actions with respect to a claim. Clarify that the claimant may take different actions with respect to different claims. Establish that VA may allow claimants to withdraw a pending appeal before it is adjudicated and the claimant would then be able to take a different action. Clarify that in any case in which more than one year has passed in which the AOJ has issued a decision denying a claim, the claimant may file a supplemental claim. Clarify that nothing in this Act limits the claimant’s option to request a revision of a decision based on Clear and Unmistakable Error.

(i) Establish that VA would be required to readjudicate the claim if new and relevant evidence is presented or secured with respect to a supplemental claim.

(j) Authorize the Board to remand a claim to the AOJ to obtain an advisory medical opinion from an independent medical expert if the Board finds that the AOJ should have exercised its discretion

to obtain such an opinion. Require that the Board's remand instructions include questions to be posed to such independent medical expert.

(k) Require the AOJ to provide expeditious treatment of any claim that is remanded by a higher-level adjudicator or the Board.

(l) Establish the effective date of an award based on an initial claim or a supplemental claim is fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application. Clarify that if a claimant continuously pursues a claim by filing an appeal within one year of a decision issued by the AOJ, Board, or the Court of Appeals for Veterans Claims, the application date shall be considered the date the claimant filed the initial claim.

(m) Make a technical change.

(n) Allow recognized agents or attorneys to charge a fee for services after the claimant is provided with notice of the AOJ's initial decision.

(o) Make a technical change.

(p) Make a technical change.

(q) Establish that except in the case of simultaneously contested claims, a notice of disagreement (NOD) shall be filed within one year of the date the AOJ mailed the notice of the initial decision to the veteran. Clarify that the Board shall accept a NOD as timely filed if it is postmarked before the expiration of the one-year period following a decision of the AOJ. Clarify that the Board will decide any question as to timeliness or adequacy of the NOD. Establish that a NOD shall be in writing and include specific information. Clarify that a claimant may be represented by only one recognized organization, attorney, or agent at any one time. Authorize VA to develop a policy to permit a claimant to modify the information in the notice of disagreement after the veteran files such notice of disagreement. Establish that the Board may dismiss any appeal that fails to identify the specific determination with which the claimant disagrees. Clarify that if a veteran does not file a notice of disagreement within the prescribed period, the AOJ's decision becomes final.

(r) Establish that the substance of the NOD shall be communicated to other party or parties in interest and allows such party of parties 30 days for filing a brief or argument in response. Specify that such notice shall be forwarded to the last known of record of the parties concerned and such action shall constitute sufficient evidence of notice.

(s) Make a clerical amendment.

(t) Require the Board to maintain at least two separate dockets. However, if the Board maintains more than two separate dockets, the Board must provide notice, including a justification for maintaining more than two dockets, to Committees on Veterans' Affairs of the House of Representatives and the Senate. Establish that the Board may assign such cases as the Board considers appropriate to each docket. Establish that the Board will decide each case in regular order according to its respective place on the docket. However, under certain circumstances, a case may be advanced for earlier consideration and determination. Clarify that a veteran requests a hearing, the Board will hold such hearing at its principal location or via videoconferencing, as requested by the appellant. Authorize

the Board to screen cases for purposes of determining the adequacy of the record. Establish that VA may allow a claimant to move the case from one docket to another docket, however VA would not be required to do so. Require VA to submit a report describing the docket in which no hearing is requested but the appellant submits new evidence to the Committees on Veterans' Affairs of the House of Representatives and the Senate.

(u) Repeal the Board's authority to request an independent medical opinion.

(v) Establish that the Board may review decisions on the grounds of clear and unmistakable error (CUE) without referral to any adjudicative or hearing official.

(w) Establish that in the docket for cases in which the veteran does not request a hearing before the Board, the notice of disagreement and the evidentiary record shall be limited to the evidence of record at the time of the decision of the AOJ, unless the claimant requested to submit evidence when filing the NOD. Establish that for cases in which the veteran requests a hearing, the evidentiary record before the Board shall be limited to the evidence of record at the time of the initial decision, except the Board shall consider evidence submitted by the appellant at the Board hearing and/or within 90 days following the Board hearing. Establish that the Board shall provide written notice to the appellant if the Board does not review evidence that the veteran did not submit timely; such written notice must include an explanation of options that may be available for having the evidence considered by VA.

(x) Establish that the effective date is the later of 540 days after the date of enactment of this act; or 30 days after the Secretary submits to the Committees on Veterans' Affairs of the Senate and the House of Representatives a certification that the Secretary confirms, without delegation, that VA has the resources, personnel, office space, procedures, and information technology needed to carry out this Act and to timely address both legacy appeals and appeals processed under the modernized appeals system. Such certification shall include a description of the collaboration with the three largest veterans service organizations and any other stakeholders the Secretary deems appropriate in making such certification. Authorize VA to allow a certain claimants who have an appeal pending before the effective date of this Act to opt-in to the modernized appeals system. Authorize VA to phase-in implementation of the modernized appeals system. Require VA to publish in the Federal Register the date on which the modernized appeals system goes into effect.

*Sec. 3. Comprehensive plan and reports for processing of legacy appeals and implementing modernized appeals system*

Section 3 would:

(a) Not later than 90 days after the date of enactment of this Act, require VA to submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate, and the Comptroller General of the United States, a comprehensive plan for resolving pending legacy appeals; implementing the modernized appeals system; and, timely processing of appeals under the modernized appeals system.

(b) Describe the elements of such report.

(c) Require the Comptroller General of the United States to assess such plan and submit written findings and recommendations, as appropriate, to the Committees on Veterans' Affairs in the House of Representatives and the Senate.

(d) Require VA to submit reports on a quarterly basis during the period beginning 90 days after the date on which the Secretary submits the comprehensive plan required under Section (3)(a), and on a semi-annual basis during the ten-year period following the date of implementation of this Act to the Committees on Veterans' Affairs of the House of Representatives and the Senate and to the Comptroller General.

*Sec. 4. Programs to test assumptions relied on in development of comprehensive plan for processing of legacy appeals and supporting modernized appeals system*

Section 4 would:

(a) Authorize VA to carry out pilot programs to test the modernized appeals system. Require VA to notify the Committees on Veterans' Affairs in the House of Representatives and the Senate if VA conducts such pilot program.

(b)(1) If VA chooses to carry out a pilot program, authorize VA to carry out a pilot program to provide the option of an alternative appeals process that would more quickly resolve appeals.

(b)(2) Authorize VA to carry out a pilot program that would allow a claimant to elect to file a fully developed appeal (FDA). Under such program, the claimant would be required to elect to file a FDA at the time the claimant files the NOD. At the time the claimant elects 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. VA must assess whether the FDA appeal satisfies the requirements for an appeal under this section and notify the claimant of the results of such assessment. 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 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.

(b)(3) Transfer jurisdiction of 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, the bill 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 prac-

licable, each FDA within one year of a claimant’s filing the NOD. 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, H.R. 2288 provides the Board with the authority to develop such evidence without remand to the AOJ. The Board would consider any new evidence developed by the Board in the first instance. Further, the Board must provide claimant and the representative of record, if any, with 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. The Board would be required to establish an office to develop evidence needed to decide a FDA. The AOJ 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. The Board would be prohibited from providing hearings for FDAs.

(b)(4) Establish that the Secretary shall carry out the pilot program during such period as the Secretary considers appropriate. This Section would apply only to FDAs that are filed during such period.

(b)(5) Define the terms “claimant,” “compensation,” “fully developed appeal,” and “standard appeal.”

*Sec. 5. Periodic publication of metrics relating to processing of appeals by Department of Veterans Affairs*

Section 5 would require, on the first business day of the month, the Secretary to publish on certain information on VA’s website regarding the processing of legacy appeals and appeals in the modernized appeals system

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, existing law in which no change is proposed is shown in roman):

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**

\* \* \* \* \*

## PART I—GENERAL PROVISIONS

\* \* \* \* \*

### CHAPTER 1—GENERAL

#### § 101. Definitions

For the purposes of this title—

(1) The terms “Secretary” and “Department” mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.

(2) The term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(3) The term “surviving spouse” means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

(4)(A) The term “child” means (except for purposes of chapter 19 of this title (other than with respect to a child who is an insurable dependent under subparagraph (B) or (C) of section 1965(10) of such chapter) and section 8502(b) of this title) a person who is unmarried and—

(i) who is under the age of eighteen years;

(ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or

(iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution;

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran’s household or was a member at the time of the veteran’s death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child’s support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Secretary to be the father of such child. A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran’s death living in the veteran’s household and was legally adopted by the veteran’s surviving spouse before August 26, 1961, or within two years after the veteran’s death; however, this sentence shall not apply if at the time of the veteran’s death, such person was receiving regular contributions toward the person’s support from some individual other than the veteran or the veteran’s spouse, or from any public or private welfare organization which furnishes services or assistance for children. A person with respect

to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally adopted child, unless and until that decree is rescinded, if the child remains in the custody of the adopting parent or parents during the interlocutory period. A person who has been placed for adoption under an agreement entered into by the adopting parent or parents with any agency authorized under law to so act shall be recognized thereafter as a legally adopted child, unless and until such agreement is terminated, if the child remains in the custody of the adopting parent or parents during the period of placement for adoption under such agreement. A person described in clause (ii) of the first sentence of this subparagraph who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran shall be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of adoption.

(B) For the purposes of subparagraph (A) of this paragraph, in the case of an adoption under the laws of any jurisdiction other than a State (as defined in section 101(20) of this title and including the Commonwealth of the Northern Mariana Islands)—

(i) a person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of such veteran (including for purposes of this subparagraph a Commonwealth Army veteran or new Philippine Scout, as defined in section 3566 of this title) unless such person—

(I) was less than eighteen years of age at the time of adoption;

(II) is receiving one-half or more of such person's annual support from such veteran;

(III) is not in the custody of such person's natural parent, unless such natural parent is such veteran's spouse; and

(IV) is residing with such veteran (or in the case of divorce following adoption, with the divorced spouse who is also an adoptive or natural parent) except for periods during which such person is residing apart from such veteran (or such divorced spouse) for purposes of full-time attendance at an educational institution or during which such person or such veteran (or such divorced spouse) is confined in a hospital, nursing home, other health-care facility, or other institution; and

(ii) a person shall not be considered to have been a legally adopted child of a veteran as of the date of such veteran's death and thereafter unless—

(I) at any time within the one-year period immediately preceding such veteran's death, such veteran was entitled to and was receiving a dependent's allowance or similar monetary benefit under this title for such person; or

(II) for a period of at least one year prior to such veteran's death, such person met the requirements of clause (i) of this subparagraph.

(5) The term "parent" means (except for purposes of chapter 19 of this title) a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran at

any time before the veteran's entry into active military, naval, or air service or if two persons stood in the relationship of a father or a mother for one year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active military, naval, or air service.

(6) The term "Spanish-American War" (A) means the period beginning on April 21, 1898, and ending on July 4, 1902, (B) includes the Philippine Insurrection and the Boxer Rebellion, and (C) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on April 21, 1898, and ending on July 15, 1903.

(7) The term "World War I" (A) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (B) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.

(8) The term "World War II" means (except for purposes of chapters 31 and 37 of this title) the period beginning on December 7, 1941, and ending on December 31, 1946.

(9) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(10) The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(11) The term "period of war" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(12) The term "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war.

(13) The term "compensation" means a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.

(14) The term "dependency and indemnity compensation" means a monthly payment made by the Secretary to a surviving spouse, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly or other periodic payment made by the Secretary to a veteran because of service, age, or non-service-connected disability, or to a surviving spouse or child of a veteran because of the non-service-connected death of the veteran.

(16) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(17) The term "non-service-connected" means, with respect to disability or death, that such disability was not incurred or aggra-

vated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(18) The term “discharge or release” includes (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(19) The term “State home” means a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living. Such term also includes such a home which furnishes nursing home care for veterans.

(20) The term “State” means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. For the purpose of section 2303 and chapters 34 and 35 of this title, such term also includes the Canal Zone.

(21) The term “active duty” means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to “full military benefits” or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term “active duty for training” means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to “full military benefits”, or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

(24) The term "active military, naval, or air service" includes—

(A) active duty;

(B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and

(C) any period of inactive duty training during which the individual concerned was disabled or died—

(i) from an injury incurred or aggravated in line of duty;

or

(ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

(25) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard;

(E) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(F) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey.

(26) The term “Reserve” means a member of a reserve component of one of the Armed Forces.

(27) The term “reserve component” means, with respect to the Armed Forces—

(A) the Army Reserve;

(B) the Navy Reserve;

(C) the Marine Corps Reserve;

(D) the Air Force Reserve;

(E) the Coast Guard Reserve;

(F) the Army National Guard of the United States; and

(G) the Air National Guard of the United States.

(28) The term “nursing home care” means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. Such term includes services furnished in skilled nursing care facilities, in intermediate care facilities, and in combined facilities. It does not include domiciliary care.

(29) The term “Vietnam era” means the following:

(A) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

(B) The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.

(30) The term “Mexican border period” means the period beginning on May 9, 1916, and ending on April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(31) The term “spouse” means a person of the opposite sex who is a wife or husband.

(32) The term “former prisoner of war” means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty—

(A) by an enemy government or its agents, or a hostile force, during a period of war; or

(B) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(33) The term “Persian Gulf War” means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(34) *The term “agency of original jurisdiction” means the activity which entered the original determination with regard to a claim for benefits under laws administered by the Secretary.*

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

(36) The term “supplemental claim” means any claim for benefits under laws administered by the Secretary filed by a claimant who had previously filed a claim for the same or similar benefits on the same or similar basis.

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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”.

\* \* \* \* \*

5104A. Binding nature of favorable findings.  
5104B. Higher-level review by the agency of original jurisdiction.  
5104C. Options following decision by agency of original jurisdiction.

\* \* \* \* \*

**[5108. Reopening disallowed claims.]**  
5108. Supplemental claims.

SUBCHAPTER I—CLAIMS

\* \* \* \* \*

**§ 5103. Notice to claimants of required information and evidence**

(a) REQUIRED INFORMATION AND EVIDENCE.—(1) **[The]** *Except as provided in paragraph (3), the Secretary shall provide to the claimant and the claimant’s representative, if any, by the most effective means available, including electronic communication or notification in writing, notice of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.*

(2)(A) The Secretary shall prescribe in regulations requirements relating to the contents of notice to be provided under this subsection.

(B) The regulations required by this paragraph—

(i) shall specify different contents for notice based on whether the claim concerned is an original claim**[, a claim for reopening a prior decision on a claim, or a claim for an increase in benefits;]** or a supplemental claim;

(ii) shall provide that the contents for such notice be appropriate to the type of benefits or services sought under the claim;

(iii) shall specify for each type of claim for benefits the general information and evidence required to substantiate the basic elements of such type of claim; and

(iv) shall specify the time period limitations required pursuant to subsection (b).

(3) *The requirement to provide notice under paragraph (1) shall not apply with respect to a supplemental claim that is filed within the timeframe set forth in subparagraphs (B) and (D) of section 5110(a)(2) of this title.*

(b) TIME LIMITATION.—(1) In the case of information or evidence that the claimant is notified under subsection (a) is to be provided by the claimant, such information or evidence must be received by the Secretary within one year from the date such notice is sent.

(2) This subsection shall not apply to any application or claim for Government life insurance benefits.

(3) Nothing in paragraph (1) shall be construed to prohibit the Secretary from making a decision on a claim before the expiration of the period referred to in that subsection.

(4) Nothing in this section shall require the Secretary to provide notice for a subsequent claim that is filed while a previous claim is pending if the notice previously provided for such pending claim—

(A) provides sufficient notice of the information and evidence necessary to substantiate such subsequent claim; and

(B) was sent within one year of the date on which the subsequent claim was filed.

(5)(A) This section shall not apply to any claim or issue where the Secretary may award the maximum benefit in accordance with this title based on the evidence of record.

(B) For purposes of this paragraph, the term “maximum benefit” means the highest evaluation assignable in accordance with the evidence of record, as long as such evidence is adequate for rating purposes and sufficient to grant the earliest possible effective date in accordance with section 5110 of this title.

### **§ 5103A. Duty to assist claimants**

(a) DUTY TO ASSIST.—(1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant’s claim for a benefit under a law administered by the Secretary.

(2) The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

(3) The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant’s application.

(b) ASSISTANCE IN OBTAINING PRIVATE RECORDS.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant private records that the claimant adequately identifies to the Secretary.

(2)(A) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall—

(i) identify the records the Secretary is unable to obtain;

(ii) briefly explain the efforts that the Secretary made to obtain such records; and

(iii) explain that the Secretary will decide the claim based on the evidence of record but that this section does not prohibit the submission of records at a later date if such submission is otherwise allowed.

(B) The Secretary shall make not less than two requests to a custodian of a private record in order for an effort to obtain relevant private records to be treated as reasonable under this section, unless it is made evident by the first request that a second request would be futile in obtaining such records.

(3)(A) This section shall not apply if the evidence of record allows for the Secretary to award the maximum benefit in accordance with this title based on the evidence of record.

(B) For purposes of this paragraph, the term “maximum benefit” means the highest evaluation assignable in accordance with the evidence of record, as long as such evidence is adequate for rating purposes and sufficient to grant the earliest possible effective date in accordance with section 5110 of this title.

(4) Under regulations prescribed by the Secretary, the Secretary—

(A) shall encourage claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant; and

(B) in obtaining relevant private records under paragraph (1), may require the claimant to authorize the Secretary to obtain such records if such authorization is required to comply with Federal, State, or local law.

(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under this section shall include obtaining the following records if relevant to the claim:

(A) The claimant’s service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant’s active military, naval, or air service that are held or maintained by a governmental entity.

(B) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(C) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

(2) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection, the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

(d) MEDICAL EXAMINATIONS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

(2) The Secretary shall treat an examination or opinion as being necessary to make a decision on a claim for purposes of paragraph (1) if the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but

(C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

(e) *APPLICABILITY OF DUTY TO ASSIST.*—(1) *The Secretary's duty to assist under this section shall apply only to a claim, or supplemental claim, for a benefit under a law administered by the Secretary until the time that a claimant is provided notice of the agency of original jurisdiction's decision with respect to such claim, or supplemental claim, under section 5104 of this title.*

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

(f) *CORRECTION OF DUTY TO ASSIST ERRORS.*—(1) *If, during review of the agency of original jurisdiction decision under section 5104B of this title, the higher-level adjudicator identifies or learns of an error on the part of the agency of original jurisdiction to satisfy its duties under this section, and that error occurred prior to the agency of original jurisdiction decision being reviewed, unless the claim can be granted in full, the higher-level adjudicator shall return the claim for correction of such error and readjudication.*

(2)(A) *If the Board of Veterans' Appeals, during review on appeal of an agency of original jurisdiction decision, identifies or learns of an error on the part of the agency of original jurisdiction to satisfy its duties under this section, and that error occurred prior to the agency of original jurisdiction decision on appeal, unless the claim can be granted in full, the Board shall remand the claim to the agency of original jurisdiction for correction of such error and readjudication.*

(B) *Remand for correction of such error may include directing the agency of original jurisdiction to obtain an advisory medical opinion under section 5109 of this title.*

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

[(e)] (g) *REGULATIONS.*—The Secretary shall prescribe regulations to carry out this section.

[(f)] (h) *RULE WITH RESPECT TO DISALLOWED CLAIMS.*—Nothing in this section shall be construed to require the Secretary to [re-open] *readjudicate* a claim that has been disallowed except when new and [material] *relevant* evidence is presented or secured, as described in section 5108 of this title.

[(g)] (i) OTHER ASSISTANCE NOT PRECLUDED.—Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.

**§ 5104. Decisions and notices of decisions**

(a) In the case of a decision by the Secretary under section 511 of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

[(b) In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary.]

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

- (1) Identification of the issues adjudicated.
- (2) A summary of the evidence considered by the Secretary.
- (3) A summary of the applicable laws and regulations.
- (4) Identification of findings favorable to the claimant.
- (5) In the case of a denial of a claim, identification of elements not satisfied leading to the denial.
- (6) An explanation of how to obtain or access evidence used in making the decision.
- (7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.

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

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

**§ 5104B. Higher-level review by the agency of original jurisdiction**

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

(2) The Secretary shall approve each request for review under paragraph (1).

(b) TIME AND MANNER OF REQUEST.—(1) A request for higher-level review by the agency of original jurisdiction shall be—

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

(B) made within one year of the notice of the agency of original jurisdiction's decision.

(2) Such request may specifically indicate whether such review is requested by a higher-level adjudicator at the same office within the agency of original jurisdiction or by an adjudicator at a different office of the agency of original jurisdiction. The Secretary shall not deny such a request for review by an adjudicator at a different office of the agency of original jurisdiction without good cause.

(c) *DECISION.*—Notice of a higher-level review decision under this section shall be provided in writing and shall include a general statement—

(1) reflecting whether evidence was not considered pursuant to subsection (d); and

(2) noting the options available to the claimant to have the evidence described in paragraph (1), if any, considered by the Department.

(d) *EVIDENTIARY RECORD FOR REVIEW.*—The evidentiary record before the higher-level adjudicator shall be limited to the evidence of record in the agency of original jurisdiction decision being reviewed.

(e) *DE NOVO REVIEW.*—A review of the decision of the agency of original jurisdiction by a higher-level adjudicator within the agency of original jurisdiction shall be de novo.

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

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

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

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

(C) File a notice of disagreement under section 7105 of this title.

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

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

(ii) the request for higher-level review, supplemental claim, or notice of disagreement is withdrawn.

(B) Nothing in this subsection shall prohibit a claimant from taking any of the actions set forth in paragraph (1) in succession with respect to a claim.

(C) Nothing in this subsection shall prohibit a claimant from taking different actions set forth in paragraph (1) with respect to different claims.

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

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

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

(iii) in lieu of such action take a different action under paragraph (1).

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

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

\* \* \* \* \*

**§ 5108. Reopening disallowed claims**

**¶** If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary shall reopen the claim and review the former disposition of the claim. **¶**

**§ 5108. Supplemental claims**

*If new and relevant evidence is presented or secured with respect to a supplemental claim, the Secretary shall readjudicate the claim taking into consideration any evidence added to the record prior to the former disposition of the claim.*

**§ 5109. Independent medical opinions**

(a) When, in the judgment of the Secretary, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in a case being considered by the Department, the Secretary may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Secretary shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant’s case and shall furnish the claimant with a copy of such opinion when it is received by the Secretary.

*(d)(1) The Board of Veterans’ Appeals shall remand a claim to direct the agency of original jurisdiction to obtain an advisory medical opinion from an independent medical expert under this section if the Board finds that the Veterans Benefits Administration should have exercised its discretion to obtain such an opinion.*

*(2) The Board’s remand instructions shall include the questions to be posed to the independent medical expert providing the advisory medical opinion.*

\* \* \* \* \*

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

**¶** The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans’ Appeals. **¶**

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

*The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Veterans Benefits Administration of any claim that is returned by a higher level adjudicator*

*under section 5104B of this title or remanded by the Board of Veterans' Appeals.*

## SUBCHAPTER II—EFFECTIVE DATES

### § 5110. Effective dates of awards

[(a) Unless specifically provided otherwise in this chapter, the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.]

*(a)(1) Unless specifically provided otherwise in this chapter, the effective date of an award based on an initial claim, or a supplemental claim, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.*

*(2) For purposes of determining the effective date of an award under this section, the date of application shall be considered the date of the filing of the initial application for a benefit if the claim is continuously pursued by filing any of the following, either alone or in succession:*

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

*(B) A supplemental claim under section 5108 of this title on or before the date that is one year after the date on which the agency of original jurisdiction issues a decision.*

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

*(D) A supplemental claim under section 5108 of this title on or before the date that is one year after the date on which the Board of Veterans' Appeals issues a decision.*

*(E) A supplemental claim under section 5108 of this title on or before the date that is one year after the date on which the Court of Appeals for Veterans Claims issues a decision.*

*(3) Except as otherwise provided in this section, for supplemental claims received more than one year after the date on which the agency of original jurisdiction issued a decision or the Board of Veterans' Appeals issued a decision, the effective date shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of the supplemental claim.*

*(b)(1) The effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release.*

*(2)(A) The effective date of an award of disability compensation to a veteran who submits an application therefor that sets forth an original claim that is fully-developed (as determined by the Secretary) as of the date of submittal shall be fixed in accordance with the facts found, but shall not be earlier than the date that is one year before the date of receipt of the application.*

(B) For purposes of this paragraph, an original claim is an initial claim filed by a veteran for disability compensation.

(C) This paragraph shall take effect on the date that is one year after the date of the enactment of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 and shall not apply with respect to claims filed after the date that is three years after the date of the enactment of such Act.

(3) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

(4)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

(c) The effective date of an award of disability compensation by reason of section 1151 of this title shall be the date such injury or aggravation was suffered if an application therefor is received within one year from such date.

(d) The effective date of an award of death compensation, dependency and indemnity compensation, or death pension for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(e)(1) Except as provided in paragraph (2) of this subsection, the effective date of an award of dependency and indemnity compensation to a child shall be the first day of the month in which the child's entitlement arose if application therefor is received within one year from such date.

(2) In the case of a child who is eighteen years of age or over and who immediately before becoming eighteen years of age was counted under section 1311(b) of this title in determining the amount of the dependency and indemnity compensation of a surviving spouse, the effective date of an award of dependency and indemnity compensation to such child shall be the date the child attains the age of eighteen years if application therefor is received within one year from such date.

(f) An award of additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating; but only if proof of dependents is received within one year from the date of notification of such rating action.

(g) Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue. In no event shall

such award or increase be retroactive for more than one year from the date of application therefor or the date of administrative determination of entitlement, whichever is earlier.

(h) Where an award of pension has been deferred or pension has been awarded at a rate based on anticipated income for a year and the claimant later establishes that income for that year was at a rate warranting entitlement or increased entitlement, the effective date of such entitlement or increase shall be fixed in accordance with the facts found if satisfactory evidence is received before the expiration of the next calendar year.

(i) Whenever any disallowed claim is [reopened] *readjudicated* and thereafter allowed on the basis of new and [material] *relevant* evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of [reopening] *readjudication* of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

(j) Where a report or a finding of death of any person in the active military, naval, or air service has been made by the Secretary concerned, the effective date of an award of death compensation, dependency and indemnity compensation, or death pension, as applicable, shall be the first day of the month fixed by that Secretary as the month of death in such report or finding, if application therefor is received within one year from the date such report or finding has been made; however, such benefits shall not be payable to any person for any period for which such person has received, or was entitled to receive, an allowance, allotment, or service pay of the deceased.

(k) The effective date of the award of benefits to a surviving spouse or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(l) The effective date of an award of benefits to a surviving spouse based upon a termination of a remarriage by death or divorce, or of an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce, shall be the date of death or the date the judicial decree or divorce becomes final, if an application therefor is received within one year from such termination.

(n) The effective date of the award of any benefit or any increase therein by reason of marriage or the birth or adoption of a child shall be the date of such event if proof of such event is received by the Secretary within one year from the date of the marriage, birth, or adoption.

**§ 5111. Commencement of period of payment**

(a)(1) Notwithstanding section 5110 of this title or any other provision of law and except as provided in paragraph (2) and subsection (c), payment of monetary benefits based on an award or an increased award of compensation, dependency and indemnity compensation, or pension may not be made to an individual for any period before the first day of the calendar month following the month in which the award or increased award became effective as provided under section 5110 of this title or such other provision of law.

(2)(A) In the case of a veteran who is retired or separated from the active military, naval, or air service for a catastrophic disability or disabilities, payment of monetary benefits based on an award of compensation based on an original claim shall be made as of the date on which such award becomes effective as provided under section 5110 of this title or another applicable provision of law.

(B) For the purposes of this paragraph, the term “catastrophic disability”, with respect to a veteran, means a permanent, severely disabling injury, disorder, or disease that compromises the ability of the veteran to carry out the activities of daily living to such a degree that the veteran requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.

(b)(1) Except as provided in paragraph (2) of this subsection, during the period between the effective date of an award or increased award as provided under section 5110 of this title or other provision of law and the commencement of the period of payment based on such award as provided under subsection (a) of this section, an individual entitled to receive monetary benefits shall be deemed to be in receipt of such benefits for the purpose of all laws administered by the Secretary.

(2) If any person who is in receipt of retired or retirement pay would also be eligible to receive compensation or pension upon the filing of a waiver of such pay in accordance with section 5305 of this title, such waiver shall not become effective until the first day of the month following the month in which such waiver is filed, and nothing in this section shall prohibit the receipt of retired or retirement pay for any period before such effective date.

(c)(1) This section shall not apply to payments made pursuant to section 5310 of this title.

(2) In the case of a temporary increase in compensation for hospitalization or treatment where such hospitalization or treatment commences and terminates within the same calendar month, the period of payment shall commence on the first day of such month.

(d) For the purposes of this section, the term “award or increased award” means—

(1) an original [or reopened award] *award or award based on a supplemental claim*; or

(2) an award that is increased because of an added dependent, increase in disability or disability rating, or reduction in income.

\* \* \* \* \*

**CHAPTER 57—RECORDS AND INVESTIGATIONS****SUBCHAPTER I—RECORDS****§ 5701. Confidential nature of claims**

(a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the Department shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.

(b) The Secretary shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:

(1) To a claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone when, in the judgment of the Secretary, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 5109 [or 7109] of this title.

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental competency of a claimant.

(5) In any suit or other judicial proceeding when in the judgment of the Secretary such disclosure is deemed necessary and proper.

(6) In connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Secretary when in the judgment of the Secretary such disclosure is deemed necessary and proper.

(c)(1) The amount of any payment made by the Secretary to any person receiving benefits under a program administered by the Secretary shall be made known to any person who applies for such information.

(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Secretary in connection with any loan guaranteed, insured, or made under chapter 37 of this title shall be made available to any person who applies for such report or certificate.

(3) Subject to the approval of the President, the Secretary may publish at any time and in any manner any or all information of record pertaining to any claim filed with the Secretary if the Secretary determines that the public interest warrants or requires such publication.

(d) The Secretary as a matter of discretion may authorize an inspection of Department records by duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Secretary may release information, statistics, or reports to individuals or organizations when in

the Secretary's judgment such release would serve a useful purpose.

(f) The Secretary may, pursuant to regulations the Secretary shall prescribe, release the name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces, (1) to any non-profit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Secretary pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of any subsequent offense.

(g)(1) Subject to the provisions of this subsection, and under regulations which the Secretary shall prescribe, the Secretary may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a dependent of a present or former member of the Armed Forces, to a consumer reporting agency if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection concerning a person described in such paragraph may be made for the purpose of—

(A) locating such a person—

(i) who has been administratively determined to be indebted to the United States by virtue of the person's participation in a benefits program administered by the Secretary; or

(ii) if the Secretary has determined under such regulations that (I) it is necessary to locate such person in order to conduct a study pursuant to section 527 of this title or a study required by any other provision of law, and (II) all reasonable steps have been taken to assure that the release of such information to such reporting agency will not have an adverse effect on such person; or

(B) Obtaining a consumer report in order to assess the ability of a person described in subparagraph (A)(i) of this paragraph to repay the indebtedness of such person to the United States, but the Secretary may release the name or address of such person for the purpose stated in this clause only if the Secretary determines under such regulations that such person has failed to respond appropriately to administrative efforts to collect such indebtedness.

(3) The Secretary may also release to a consumer reporting agency, for the purposes specified in subparagraph (A) or (B) of paragraph (2) of this subsection, such other information as the Secretary determines under such regulations is reasonably necessary to identify a person described in such paragraph, except that the

Secretary may not release to a consumer reporting agency any information which indicates any indebtedness on the part of such person to the United States or any information which reflects adversely on such person. Before releasing any information under this paragraph, the Secretary shall, under such regulations, take reasonable steps to provide for the protection of the personal privacy of persons about whom information is proposed to be released under this paragraph.

(4)(A) If the Secretary determines, under regulations which the Secretary shall prescribe, that a person described in paragraph (1) of this subsection has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness of such person described in paragraph (2)(A)(i) of this subsection, the Secretary may release information concerning the indebtedness, including the name and address of such person, to a consumer reporting agency for the purpose of making such information available for inclusion in consumer reports regarding such person and, if necessary, for the purpose of locating such person, if—

(i) the Secretary has (I) made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 5302 of this title, (II) afforded such person a reasonable opportunity to exercise such rights, and (III) made a determination with respect to any such dispute or request; and

(ii) thirty calendar days have elapsed after the day on which the Secretary has made a determination that reasonable efforts have been made to notify such person (I) that the Secretary intends to release such information for such purpose or purposes, and (II) that, upon the request of such person, the Secretary shall inform such person of whether such information has been so released and of the name and address of each consumer reporting agency to which such information was released by the Secretary and of the specific information so released.

(B) After release of any information under subparagraph (A) of this paragraph concerning the indebtedness of any person, the Secretary shall promptly notify—

(i) each consumer reporting agency to which such information has been released by the Secretary; and

(ii) each consumer reporting agency described in subsection (i)(3)(B)(i) of this section to which such information has been transmitted by the Secretary through a consumer reporting agency described in subsection (i)(3)(B)(ii)(I) of this section, of any substantial change in the status or amount of such indebtedness and, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly verify or correct, as appropriate, such information. The Secretary shall also, after the release of such information, inform such person, upon the request of such person, of the name and address of each consumer reporting agency described in clause (i) or (ii) of this subparagraph to which such information was released or transmitted by the Secretary and of the specific information so released or transmitted.

(h)(1) Under regulations which the Secretary shall prescribe, the Secretary may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a dependent of a present or former member of the Armed Forces (and other information relating to the identity of such person), to any person in a category of persons described in such regulations and specified in such regulations as a category of persons to whom such information may be released, if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection may be made for the purpose of—

(A) determining the creditworthiness, credit capacity, income, or financial resources of a person who has (i) applied for any benefit under chapter 37 of this title, or (ii) submitted an offer to the Secretary for the purchase of property acquired by the Secretary under section 3720(a)(5) of this title;

(B) verifying, either before or after the Secretary has approved a person's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title, information submitted by a lender to the Secretary regarding the creditworthiness, credit capacity, income, or financial resources of such person;

(C) offering for sale or other disposition by the Secretary, pursuant to section 3720 of this title, any loan or installment sale contract owned or held by the Secretary; or

(D) providing assistance to any applicant for benefits under chapter 37 of this title or administering such benefits if the Secretary promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made.

(i)(1) No contract entered into for any of the purposes of subsection (g) or (h) of this section, and no action taken pursuant to any such contract or either such subsection, shall result in the application of section 552a of title 5 to any consumer reporting agency or any employee of a consumer reporting agency.

(2) The Secretary shall take reasonable steps to provide for the protection of the personal privacy of persons about whom information is disclosed under subsection (g) or (h) of this section.

(3) For the purposes of this subsection and of subsection (g) of this section—

(A) The term "consumer report" has the meaning provided such term in subsection (d) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

(B) The term "consumer reporting agency" means—

(i) a consumer reporting agency as such term is defined in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or

(ii) any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies (as defined in clause (i) of this paragraph), or (II) serving as a marketing

agent under arrangements enabling third parties to obtain such information from such reporting agencies.

(j) Except as provided in subsection (i)(1) of this section, any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.

(k)(1)(A) Under regulations that the Secretary shall prescribe, the Secretary may disclose the name and address of any individual described in subparagraph (C) to an entity described in subparagraph (B) in order to facilitate the determination by such entity whether the individual is, or after death will be, a suitable organ, tissue, or eye donor if—

(i) the individual is near death (as determined by the Secretary) or is deceased; and

(ii) the disclosure is permitted under regulations promulgated pursuant to section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).

(B) An entity described in this subparagraph is—

(i) an organ procurement organization, including eye and tissue banks; or

(ii) an entity that the Secretary has determined—

(I) is substantially similar in function, professionalism, and reliability to an organ procurement organization; and

(II) should be treated for purposes of this subsection in the same manner as an organ procurement organization.

(C) An individual described in this subparagraph is—

(i) a veteran; or

(ii) a dependent of veteran.

(2) In this subsection, the term “organ procurement organization” has the meaning given the term “qualified organ procurement organization” in section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)).

(1) Under regulations the Secretary shall prescribe, the Secretary shall disclose information about a veteran or the dependent of a veteran to a State controlled substance monitoring program, including a program approved by the Secretary of Health and Human Services under section 3990 of the Public Health Service Act (42 U.S.C. 280g-3), to the extent necessary to prevent misuse and diversion of prescription medicines.

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**CHAPTER 59—AGENTS AND ATTORNEYS**

\* \* \* \* \*

**§ 5904. Recognition of agents and attorneys generally**

(a) RECOGNITION.—(1) Except as provided in paragraph (4), the Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary shall prescribe in regulations (consistent with the Model Rules of Professional Conduct of the American Bar Association) qualifications and standards of conduct for individuals recognized under this section, including a requirement that, as a condition of being so recognized, an individual must—

(A) show that such individual is of good moral character and in good repute, is qualified to render claimants valuable service, and is otherwise competent to assist claimants in presenting claims;

(B) have such level of experience or specialized training as the Secretary shall specify; and

(C) certify to the Secretary that the individual has satisfied any qualifications and standards prescribed by the Secretary under this section.

(3) The Secretary shall prescribe in regulations requirements that each agent or attorney recognized under this section provide annually to the Secretary information about any court, bar, or Federal or State agency to which such agent or attorney is admitted to practice or otherwise authorized to appear, any relevant identification number or numbers, and a certification by such agent or attorney that such agent or attorney is in good standing in every jurisdiction where the agent or attorney is admitted to practice or otherwise authorized to appear.

(4) The Secretary may not recognize an individual as an agent or attorney under paragraph (1) if such individual has been suspended or disbarred by any court, bar, or Federal or State agency to which the individual was previously admitted to practice and has not been subsequently reinstated.

(5) The Secretary may prescribe in regulations reasonable restrictions on the amount of fees that an agent or attorney may charge a claimant for services rendered in the preparation, presentation, and prosecution of a claim before the Department. A fee that does not exceed 20 percent of the past due amount of benefits awarded on a claim shall be presumed to be reasonable.

(6)(A) The Secretary may charge and collect an assessment from an individual recognized as an agent or attorney under this section in any case in which the Secretary pays to the agent or attorney, from past-due benefits owed to a claimant represented by the agent or attorney, an amount as a fee in accordance with a fee arrangement between the claimant and the agent or attorney.

(B) The amount of an assessment under subparagraph (A) shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, except that the amount of such an assessment may not exceed \$100.

(C) The Secretary may collect an assessment under subparagraph (A) by offsetting the amount of the fee otherwise required to be paid to the agent or attorney from the past-due benefits owed to the claimant represented by the agent or attorney.

(D) An agent or attorney who is charged an assessment under subparagraph (A) may not, directly or indirectly, request, receive, or obtain reimbursement for such assessment from the claimant represented by the agent or attorney.

(E) Amounts collected under this paragraph shall be deposited in the account available for administrative expenses for veterans' benefits programs. Amounts so deposited shall be merged with amounts in such account and shall be available for the same purpose, and subject to the same conditions and limitations, as amounts otherwise in such account.

(b) **SUSPENSION OF AGENTS AND ATTORNEYS.**—The Secretary, after notice and opportunity for a hearing, may suspend or exclude

from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney—

(1) has engaged in any unlawful, unprofessional, or dishonest practice;

(2) has been guilty of disreputable conduct;

(3) is incompetent;

(4) has violated or refused to comply with any of the laws administered by the Secretary, or with any of the regulations or instructions governing practice before the Department;

(5) has in any manner deceived, misled, or threatened any actual or prospective claimant;

(6) has presented to the Secretary a frivolous claim, issue, or argument, involving conduct inconsistent with ethical standards for the practice of law;

(7) has been suspended or disbarred by any court or bar to which such agent or attorney was previously admitted to practice, or has been disqualified from participating in or appearing before any Federal agency, and has not been subsequently reinstated;

(8) has charged excessive or unreasonable fees, as determined by the Secretary in accordance with subsection (c)(3)(A); or

(9) has failed to comply with any other condition specified in regulations prescribed by the Secretary for purposes of this subsection.

(c)(1) Except as provided in paragraph (4), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which a [notice of disagreement is filed] *claimant is provided notice of the agency of original jurisdiction's initial decision under section 5104 of this title* with respect to the case. The limitation in the preceding sentence does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court.

(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of this subsection, represents a person before the Department or the Board of Veterans' Appeals after a [notice of disagreement is filed] *claimant is provided notice of the agency of original jurisdiction's initial decision under section 5104 of this title* with respect to the case shall file a copy of any fee agreement between them with the Secretary pursuant to regulations prescribed by the Secretary.

(3)(A) The Secretary may, upon the Secretary's own motion or at the request of the claimant, review a fee agreement filed pursuant to paragraph (2) and may order a reduction in the fee called for in the agreement if the Secretary finds that the fee is excessive or unreasonable.

(B) A finding or order of the Secretary under subparagraph (A) may be reviewed by the Board of Veterans' Appeals under section 7104 of this title.

(C) If the Secretary under subsection (b) suspends or excludes from further practice before the Department any agent or attorney who collects or receives a fee in excess of the amount authorized

under this section, the suspension shall continue until the agent or attorney makes full restitution to each claimant from whom the agent or attorney collected or received an excessive fee. If the agent or attorney makes such restitution, the Secretary may reinstate such agent or attorney under such rules as the Secretary may prescribe.

(4) A reasonable fee may be charged or paid in connection with any proceeding before the Department in a case arising out of a loan made, guaranteed, or insured under chapter 37 of this title. A person who charges a fee under this paragraph shall enter into a written agreement with the person represented and shall file a copy of the fee agreement with the Secretary at such time, and in such manner, as may be specified by the Secretary.

(d) PAYMENT OF FEES OUT OF PAST-DUE BENEFITS.—(1) When a claimant and an agent or attorney have entered into a fee agreement described in paragraph (2), the total fee payable to the agent or attorney may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim.

(2)(A) A fee agreement referred to in paragraph (1) is one under which the total amount of the fee payable to the agent or attorney—

(i) is to be paid to the agent or attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim; and

(ii) is contingent on whether or not the matter is resolved in a manner favorable to the claimant.

(B) For purposes of subparagraph (A), a claim shall be considered to have been resolved in a manner favorable to the claimant if all or any part of the relief sought is granted.

(3) To the extent that past-due benefits are awarded in any proceeding before the Secretary, the Board of Veterans' Appeals, or the United States Court of Appeals for Veterans Claims, the Secretary may direct that payment of any fee to an agent or attorney under a fee arrangement described in paragraph (1) be made out of such past-due benefits. In no event may the Secretary withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Secretary, the Board of Veterans' Appeals, or Court of Appeals for Veterans Claims making (or ordering the making of) the award.

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**PART V—BOARDS, ADMINISTRATIONS, AND SERVICES**

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**CHAPTER 71—BOARD OF VETERANS' APPEALS**

Sec.

7101. Composition of Board of Veterans' Appeals.

\* \* \* \* \*

**[7105. Filing of notice of disagreement and appeal.]**

7105. *Filing of appeal.*

\* \* \* \* \*

**[7106. Administrative appeals.]**

\* \* \* \* \*

**[7109. Independent medical opinions.]**

\* \* \* \* \*

*7113. Evidentiary record before the Board of Veterans' Appeals.*

\* \* \* \* \*

**§ 7103. Reconsideration; correction of obvious errors**

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

(A) in the case of a matter originally **[heard]** *decided* by a single member of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally **[heard]** *decided* by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

**§ 7104. Jurisdiction of the Board**

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be **[reopened]** *readjudicated* and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record**;** and**;**

(2) a *general statement*—

(A) reflecting whether evidence was not considered in making the decision because the evidence was received at a time when not permitted under section 7113 of this title; and

(B) noting such options as may be available for having the evidence considered by the Department; and

[(2)] (3) an order granting appropriate relief or denying relief.

(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

(2) If the claimant has an authorized representative, the Board shall—

(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

#### **§ 7105. Filing of [notice of disagreement and] appeal**

(a) [Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section.] *Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary.* Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

[(b)(1)] Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of mailing of notice of the result of initial review or determination. Such notice, and appeals, must be in writing and be filed with the activity which entered the determination with which disagreement is expressed (hereinafter referred to as the “agency of original jurisdiction”). A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed.

[(2)] Notices of disagreement, and appeals, must be in writing and may be filed by the claimant, the claimant’s legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim.

[(c)] If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or determination shall become final and the claim will not thereafter be reopened or allowed, except as may otherwise be provided by regulations not inconsistent with this title.

[(d)(1)] Where the claimant, or the claimant’s representative, within the time specified in this chapter, files a notice of disagreement with the decision of the agency of original jurisdiction, such agency will take such development or review action as it deems proper under the provisions of regulations not inconsistent with this title. If such action does not resolve the disagreement either

by granting the benefit sought or through withdrawal of the notice of disagreement, such agency shall prepare a statement of the case. A statement of the case shall include the following:

[(A) A summary of the evidence in the case pertinent to the issue or issues with which disagreement has been expressed.

[(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision.

[(C) The decision on each issue and a summary of the reasons for such decision.

[(2) A statement of the case, as required by this subsection, will not disclose matters that would be contrary to section 5701 of this title or otherwise contrary to the public interest. Such matters may be disclosed to a designated representative unless the relationship between the claimant and the representative is such that disclosure to the representative would be as harmful as if made to the claimant.

[(3) Copies of the "statement of the case" prescribed in paragraph (1) of this subsection will be submitted to the claimant and to the claimant's representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of Veterans' Appeals.

[(4) The claimant in any case may not be presumed to agree with any statement of fact contained in the statement of the case to which the claimant does not specifically express agreement.

[(5) The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

[(e)(1) If, either at the time or after the agency of original jurisdiction receives a substantive appeal, the claimant or the claimant's representative, if any, submits evidence to either the agency of original jurisdiction or the Board of Veterans' Appeals for consideration in connection with the issue or issues with which disagreement has been expressed, such evidence shall be subject to initial review by the Board unless the claimant or the claimant's representative, as the case may be, requests in writing that the agency of original jurisdiction initially review such evidence.

[(2) A request for review of evidence under paragraph (1) shall accompany the submittal of the evidence.]

*(b)(1)(A) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within one year from the date of the mailing of notice of the decision of the agency of original jurisdiction pursuant to section 5104, 5104B, or 5108 of this title.*

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

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

(2)(A) *Notices of disagreement shall be in writing, shall identify the specific determination with which the claimant disagrees, and may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian.*

(B) *Not more than one recognized organization, attorney, or agent may be recognized at any one time in the prosecution of a claim.*

(C) *Notices of disagreement shall be filed with the Board.*

(3) *The notice of disagreement shall indicate whether the claimant requests—*

(A) *a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(b) of this title;*

(B) *an opportunity to submit additional evidence without a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(c) of this title;*  
or

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

(4) *The Secretary may develop a policy to permit a claimant to modify the information identified in the notice of disagreement after the notice of disagreement has been filed under this section pursuant to such requirements as the Secretary may prescribe.*

(c) *If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or decision of the agency of original jurisdiction shall become final and the claim shall not thereafter be readjudicated or allowed, except as may otherwise be provided by section 5104B or 5108 of this title or such regulations as are consistent with this title.*

(d) *The Board of Veterans' Appeals may dismiss any appeal which fails to identify the specific determination with which the claimant disagrees.*

#### **§ 7105A. Simultaneously contested claims**

(a) In simultaneously contested claims where one is allowed and one rejected, the time allowed for the filing of a notice of disagreement shall be sixty days from the date notice of the adverse action is mailed. In such cases the agency of original jurisdiction shall promptly notify all parties in interest at the last known address of the action taken, expressly inviting attention to the fact that notice of disagreement will not be entertained unless filed within the sixty-day period prescribed by this subsection.

[(b) Upon the filing of a notice of disagreement, all parties in interest will be furnished with a statement of the case in the same manner as is prescribed in section 7105. The party in interest who filed a notice of disagreement will be allowed thirty days from the date of mailing of such statement of the case in which to file a formal appeal. Extension of time may be granted for good cause shown but with consideration to the interests of the other parties involved. The substance of the appeal will be communicated to the other party or parties in interest and a period of thirty days will be allowed for filing a brief or argument in answer thereto. Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.]

*(b)(1) The substance of the notice of disagreement shall be communicated to the other party or parties in interest and a period of thirty days shall be allowed for filing a brief or argument in response thereto.*

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

#### **【§ 7106. Administrative appeals**

【Application for review on appeal may be made within the one-year period prescribed in section 7105 of this title by such officials of the Department as may be designated by the Secretary. An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

#### **【§ 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)(A)(i) 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.

【(ii) 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)(i) The Board shall notify the appellant of the determinations of the location and type of hearing made under subparagraph (A).

[(ii) Upon notification, the appellant may request a different location or type of hearing as described in such subparagraph.

[(iii) 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) 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.]

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

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

(2) *The Board may not maintain more than two separate dockets unless the Board notifies the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives of any additional docket, including a justification for maintaining such additional docket.*

(3)(A) *The Board may assign to each docket maintained under paragraph (1) such cases as the Board considers appropriate, except that cases described in clause (i) of subparagraph (B) may not be assigned to any docket to which cases described in clause (ii) of such paragraph are assigned.*

(B) *Cases described in this subparagraph are the following:*

(i) *Cases in which no Board hearing is requested and no additional evidence will be submitted.*

(ii) *Cases in which a Board hearing is requested in the notice of disagreement.*

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

(b) *ADVANCEMENT ON THE DOCKET.—(1) A case on one of the dockets of the Board maintained under subsection (a) may, for cause shown, be advanced on motion for earlier consideration and determination.*

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

(3) *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.*

(c) *MANNER AND SCHEDULING OF HEARINGS FOR CASES ON DOCKET THAT MAY INCLUDE HEARING.—(1) For cases on a docket maintained by the Board under subsection (a) that may include a hearing, in which a hearing is requested in the notice of disagreement, the Board shall notify the appellant whether a Board hearing will be held—*

(A) *at its principal location; or*

(B) *by picture and voice transmission at a facility of the Department where the Secretary has provided suitable facilities and equipment to conduct such hearings.*

(2)(A) *Upon notification of a Board hearing at the Board's principal location as described in subparagraph (A) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (B) of such paragraph. If so requested, the Board shall grant such request.*

(B) *Upon notification of a Board hearing by picture and voice transmission as described in subparagraph (B) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (A) of such paragraph. If so requested, the Board shall grant such request.*

(d) *SCREENING OF CASES.—Nothing in this section shall be construed to 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.*

(e) *POLICY ON CHANGING DOCKETS.—The Secretary may develop and implement a policy allowing a claimant to move the claimant's case from one docket to another docket.*

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### **【§ 7109. Independent medical opinions**

[(a) When, in the judgment of the Board, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

[(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.]

[(c) The Board shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Board.]

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**§ 7111. Revision of decisions on grounds of clear and unmistakable error**

(a) A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

(b) For the purposes of authorizing benefits, a rating or other adjudicative decision of the Board that constitutes a reversal or revision of a prior decision of the Board on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Board on the Board's own motion or upon request of the claimant.

(d) A request for revision of a decision of the Board based on clear and unmistakable error may be made at any time after that decision is made.

(e) Such a request shall be submitted directly to the Board and shall be decided by the Board on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.]

(f) A claim filed with the Secretary that requests reversal or revision of a previous Board decision due to clear and unmistakable error shall be considered to be a request to the Board under this section, and the Secretary shall promptly transmit any such request to the Board for its consideration under this section.

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**§ 7113. Evidentiary record before the Board of Veterans' Appeals**

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

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

(2) *The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:*

(A) *Evidence submitted by the appellant and the representative of the appellant, if any, at the Board hearing.*

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

(c) *CASES WITH NO REQUEST FOR A HEARING AND WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Except as provided in paragraph (2), for cases in which a hearing is not requested in the notice of disagreement but an opportunity to submit evidence is requested, the evidentiary record before the Board shall be limited to the evidence considered by the agency of original jurisdiction in the decision on appeal.*

(2) *The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:*

(A) *Evidence submitted by the appellant and the representative of the appellant, if any, with the notice of disagreement.*

(B) *Evidence submitted by the appellant and the representative of the appellant, if any, within 90 days following receipt of the notice of disagreement.*

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