

Calendar No. 166115TH CONGRESS
1ST SESSION**S. 1024****[Report No. 115–126]**

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

IN THE SENATE OF THE UNITED STATES

MAY 3, 2017

Mr. ISAKSON (for himself, Mr. BLUMENTHAL, Mr. TESTER, Mr. DAINES, Ms. HASSAN, Mr. UDALL, Mr. KING, Ms. BALDWIN, Mr. Kaine, Mr. HATCH, Mrs. CAPITO, Ms. COLLINS, Mr. DURBIN, Mr. THUNE, Mr. HELLER, Mr. CRAPO, Mr. COCHRAN, Mr. WARNER, Mr. MANCHIN, Ms. HIRONO, Mr. BROWN, Mr. ENZI, Mr. ROUNDS, Mr. NELSON, Mrs. McCASKILL, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

JULY 10, 2017

Reported by Mr. ISAKSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

13 “(34) The term ‘agency of original jurisdiction’
 14 means the activity which entered the original deter-
 15 mination with regard to a claim for benefits under
 16 laws administered by the Secretary.

17 “(35) The term ‘relevant evidence’ means evi-
 18 dence that tends to prove or disprove a matter in
 19 issue.

20 “(36) The term ‘supplemental claim’ means a
 21 claim for benefits under laws administered by the
 22 Secretary filed by a claimant who had previously
 23 filed a claim for the same or similar benefits on the
 24 same or similar basis.”.

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

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

6 (2) in paragraph (2)(B)(i) by striking “, a
7 claim for reopening a prior decision on a claim; or
8 a claim for an increase in benefits;” and inserting
9 “or a supplemental claim;” and

10 (3) by adding at the end the following new
11 paragraph:

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

17 (c) MODIFICATION OF RULE REGARDING DIS-
18 ALLOWED CLAIMS.—Section 5103A(f) of such title is
19 amended—

20 (1) by striking “reopen” and inserting “readju-
21 dicate”; and

22 (2) by striking “material” and inserting “rel-
23 evant”.

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

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

3 (2) by inserting after subsection (d) the fol-
4 lowing new subsections:

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

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

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

1 dicator shall return the claim for correction of such error
2 and readjudication.

3 ~~“(2)(A) If the Board of Veterans’ Appeals, during re-~~
4 ~~view on appeal of an agency of original jurisdiction deci-~~
5 ~~sion, identifies or learns of an error on the part of the~~
6 ~~agency of original jurisdiction to satisfy its duties under~~
7 ~~this section, and that error occurred prior to the agency~~
8 ~~of original jurisdiction decision on appeal, unless the claim~~
9 ~~can be granted in full, the Board shall remand the claim~~
10 ~~to the agency of original jurisdiction for correction of such~~
11 ~~error and readjudication.~~

12 ~~“(B) Remand for correction of such error may in-~~
13 ~~clude directing the agency of original jurisdiction to obtain~~
14 ~~an advisory medical opinion under section 5109 of this~~
15 ~~title.~~

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

22 (c) DECISIONS AND NOTICES OF DECISIONS.—Sub-
23 section (b) of section 5104 of such title is amended to read
24 as follows:

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

3 “(1) Identification of the issues adjudicated.

4 “(2) A summary of the evidence considered by
5 the Secretary.

6 “(3) A summary of the applicable laws and reg-
7 ulations.

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

10 “(5) In the case of a denial, identification of
11 elements not satisfied leading to the denial.

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

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

17 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

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

21 **“§ 5104A. Binding nature of favorable findings**

22 “Any finding favorable to the claimant as described
23 in section 5104(b)(4) of this title shall be binding on all
24 subsequent adjudicators within the Department, unless

1 clear and convincing evidence is shown to the contrary to
 2 rebut such favorable finding.”.

3 ~~(2) CLERICAL AMENDMENT.~~—The table of sec-
 4 tions at the beginning of chapter 51 of such title is
 5 amended by inserting after the item relating to sec-
 6 tion 5104 the following new item:

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

7 ~~(g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-~~
 8 ~~NAL JURISDICTION.~~—

9 ~~(1) IN GENERAL.~~—Chapter 51 of such title, as
 10 amended by subsection (f), is further amended by in-
 11 serting after section 5104A, as added by such sub-
 12 section, the following new section:

13 **“§ 5104B. Higher-level review by the agency of origi-**
 14 **nal jurisdiction**

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

19 ~~“(2) The Secretary shall approve each request for re-~~
 20 ~~view under paragraph (1).~~

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

24 ~~“(A) in writing in such form as the Secretary~~
 25 ~~may prescribe; and~~

1 ~~“(B) made within one year of the notice of the~~
 2 ~~agency of original jurisdiction’s decision.~~

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

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

13 ~~“(1) reflecting whether evidence was not consid-~~
 14 ~~ered pursuant to subsection (d); and~~

15 ~~“(2) noting the options available to the claim-~~
 16 ~~ant to have the evidence described in paragraph (1);~~
 17 ~~if any, considered by the Department.~~

18 ~~“(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-~~
 19 ~~dentiary record before the higher-level adjudicator shall be~~
 20 ~~limited to the evidence of record in the agency of original~~
 21 ~~jurisdiction decision being reviewed.~~

22 ~~“(e) DE NOVO REVIEW.—A review of the decision of~~
 23 ~~the agency of original jurisdiction by a higher-level adjudi-~~
 24 ~~cator within the agency of original jurisdiction shall be de~~
 25 ~~novi.”.~~

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

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

6 (h) OPTIONS FOLLOWING DECISION BY AGENCY OF
 7 ORIGINAL JURISDICTION.—

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

12 **“§ 5104C. Options following decision by agency of**
 13 **original jurisdiction**

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

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

22 “(B) File a supplemental claim under section
 23 5108 of this title.

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

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

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

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

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

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

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

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

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

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

1 “(b) ~~MORE THAN ONE YEAR AFTER DECISION.~~—In
 2 any case in which the Secretary renders a decision on a
 3 claim and more than one year has passed since the date
 4 on which the agency of original jurisdiction issues a deci-
 5 sion with respect to that claim, the claimant may file a
 6 supplemental claim under section 5108 of this title.”.

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

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

12 (i) ~~SUPPLEMENTAL CLAIMS.~~—

13 (1) ~~IN GENERAL.~~—Section 5108 of such title is
 14 amended to read as follows:

15 **“§ 5108. Supplemental claims**

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

21 (2) ~~CLERICAL AMENDMENT.~~—The table of sec-
 22 tions at the beginning of chapter 51 of such title is
 23 amended by striking the item relating to section
 24 5108 and inserting the following new item:

“5108. Supplemental claims.”.

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

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

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

13 (k) RESTATEMENT OF REQUIREMENT FOR EXPE-
 14 DITED TREATMENT OF RETURNED AND REMANDED
 15 CLAIMS.—

16 (1) IN GENERAL.—Section 5109B of such title
 17 is amended to read as follows:

18 **“§ 5109B. Expedited treatment of returned and re-**
 19 **manded claims**

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

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 51 of such title is
 3 amended by striking the item relating to section
 4 5109B and inserting the following new item:

“5109B. Expedited treatment of returned and remanded claims.”.

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

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

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

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

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

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

1 after the date on which the agency of original juris-
 2 diction issues a decision.

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

6 ~~“(D) A supplemental claim under section 5108~~
 7 ~~of this title on or before the date that is one year~~
 8 ~~after the date on which the Board of Veterans’ Ap-~~
 9 ~~peals issues a decision.~~

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

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

21 ~~(2) in subsection (i), in the first sentence—~~

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

24 ~~(B) by striking “material” and inserting~~
 25 ~~“relevant”; and~~

1 (C) by striking “reopening” and inserting
2 “readjudication”.

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

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

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

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

24 (q) MODIFICATION OF PROCEDURES FOR APPEALS
25 TO BOARD OF VETERANS’ APPEALS.—

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

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

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

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

14 “~~(B)~~ A notice of disagreement postmarked before the
15 expiration of the one-year period shall be accepted as time-
16 ly filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“7105. Filing of appeal.”.

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

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

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

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

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

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

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

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

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

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

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

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

7 “(B) Cases described in this paragraph are the fol-
 8 lowing:

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

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

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

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

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

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

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

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

5 “(C) for other sufficient cause shown.

6 “(e) MANNER AND SCHEDULING OF HEARINGS FOR
7 CASES ON A DOCKET THAT MAY INCLUDE A HEARING.—

8 (1) For cases on a docket maintained by the Board under
9 subsection (a) that may include a hearing, in which a
10 hearing is requested in the notice of disagreement, the
11 Board shall notify the appellant whether a Board hearing
12 will be held—

13 “(A) at its principal location; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~“(A) Evidence submitted by the appellant and~~
 22 ~~his or her representative, if any, at the Board hear-~~
 23 ~~ing.~~

24 ~~“(B) Evidence submitted by the appellant and~~
 25 ~~his or her representative, if any, within 90 days fol-~~
 26 ~~lowing the Board hearing.~~

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

9 ~~“(2) The evidentiary record before the Board for~~
 10 ~~cases described in paragraph (1) shall include each of the~~
 11 ~~following, which the Board shall consider in the first in-~~
 12 ~~stance:~~

13 ~~“(A) Evidence submitted by the appellant and~~
 14 ~~his or her representative, if any, with the notice of~~
 15 ~~disagreement.~~

16 ~~“(B) Evidence submitted by the appellant and~~
 17 ~~his or her representative, if any, within 90 days fol-~~
 18 ~~lowing receipt of the notice of disagreement.”.~~

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

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

24 ~~(B) by redesignating paragraph (2) as~~
 25 ~~paragraph (3); and~~

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

~~“(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”.~~

~~(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of such title is amended by inserting after the item relating to section 7112 the following new item:~~

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

~~(x) APPLICABILITY.—~~

~~(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to all claims for which notice of a decision under section 5104 of title 38, United States Code, is provided by the Secretary of Veterans Affairs on or after the later of—~~

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

~~(B) the date that is 30 days after the date on which the Secretary of Veterans Affairs sub-~~

mits to the appropriate committees of Congress
 a certification that the Secretary confirms,
 without delegation, that the Department of Vet-
 erans Affairs has the resources, personnel, of-
 fice space, procedures, and information tech-
 nology required—

(i) to carry out the new appeals sys-
 tem; and

(ii) to timely address both appeals of
 decisions on legacy claims and appeals
 under the new appeals system.

~~(2) COLLABORATION.~~—In determining whether
 and when to make a certification under paragraph
~~(1)(B)~~, the Secretary shall collaborate with, partner
 with, and give weight to the advice of veterans serv-
 ice organizations and such other stakeholders as the
 Secretary considers appropriate.

~~(3) EARLY APPLICABILITY.~~—The Secretary
 may apply the new appeals system to a claim with
 respect to which the claimant—

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

1 (B) elects to subject the claim to the new
2 appeals system.

3 (4) PHASED ROLLOUT.—The Secretary may
4 begin implementation of the new appeals system in
5 phases, with the first phase of such phased imple-
6 mentation beginning on the applicability date set
7 forth in paragraph (1).

8 (5) TREATMENT OF LEGACY CLAIMS.—With re-
9 spect to legacy claims, upon the issuance to a claim-
10 ant of a statement of the case or supplemental state-
11 ment of the case occurring on or after the applica-
12 bility date specified in paragraph (1), a claimant
13 may elect to participate in the new appeals system.

14 (6) PUBLICATION OF APPLICABILITY DATE.—
15 Not later than the date on which the new appeals
16 system goes into effect (or the first phase of the new
17 appeals system goes into effect under paragraph (4),
18 as the case may be), the Secretary shall publish in
19 the Federal Register such date.

20 (7) DEFINITIONS.—In this subsection:

21 (A) APPROPRIATE COMMITTEES OF CON-
22 GRESS.—The term “appropriate committees of
23 Congress” means—

1 (i) the Committee on Veterans' Af-
 2 fairs and the Committee on Appropriations
 3 of the Senate; and

4 (ii) the Committee on Veterans' Af-
 5 fairs and the Committee on Appropriations
 6 of the House of Representatives.

7 ~~(B) VETERANS SERVICE ORGANIZATION.—~~

8 The term “veterans service organization”
 9 means any organization recognized by the Sec-
 10 retary for the representation of veterans under
 11 section 5902 of title 38, United States Code.

12 ~~(y) RULE OF CONSTRUCTION.—~~Nothing in this sec-
 13 tion or any of the amendments made by this section shall
 14 be construed to limit the ability of a claimant to request
 15 a revision of a decision under section 5109A or 7111 of
 16 title 38, United States Code.

17 **SEC. 3. COMPREHENSIVE PLAN FOR PROCESSING OF LEG-**

18 **ACY APPEALS AND IMPLEMENTING NEW AP-**

19 **PEALS SYSTEM.**

20 ~~(a) PLAN REQUIRED.—~~Not later than 90 days after
 21 the date of the enactment of this Act, the Secretary of
 22 Veterans Affairs shall submit to the appropriate commit-
 23 tees of Congress and the Comptroller General of the
 24 United States a comprehensive plan for—

- 1 (1) the processing of appeals of decisions on
- 2 legacy claims that the Secretary considers pending;
- 3 (2) implementing the new appeals system;
- 4 (3) timely processing, under the new appeals
- 5 system, of—
- 6 (A) supplemental claims under section
- 7 5108 of title 38, United States Code, as amend-
- 8 ed by section 2(i);
- 9 (B) requests for higher-level review under
- 10 section 5104B of such title, as added by section
- 11 2(g); and
- 12 (C) appeals on any docket maintained
- 13 under section 7107 of such title, as amended by
- 14 section 2(t); and
- 15 (4) monitoring the implementation of the new
- 16 appeals system, including metrics and goals—
- 17 (A) to track the progress of the implemen-
- 18 tation;
- 19 (B) to evaluate the efficiency and effective-
- 20 ness of the implementation; and
- 21 (C) to identify potential issues relating to
- 22 the implementation.
- 23 (b) ELEMENTS.—The plan required by subsection (a)
- 24 shall include, at a minimum, the following:

1 (1) Delineation of the total resource require-
 2 ments of the Veterans Benefits Administration and
 3 the Board of Veterans' Appeals, disaggregated by
 4 resources required to implement and administer the
 5 new appeals system and resources required to ad-
 6 dress the appeals of decisions on legacy claims.

7 (2) Delineation of the personnel requirements
 8 of the Administration and the Board, including
 9 staffing levels during the—

10 (A) period in which the Administration and
 11 the Board are concurrently processing—

12 (i) appeals of decisions on legacy
 13 claims; and

14 (ii) appeals of decisions on non-legacy
 15 claims under the new appeals system; and

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

19 (3) Identification of the legal authorities under
 20 which the Administration or the Board may—

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

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

1 once the Administration and the Board are no
2 longer processing any appeals of decisions on
3 legacy claims.

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

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

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

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

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

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

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

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

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

3 (B) timelines for completing such outreach.

4 (9) Identification of and a timeline for—

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

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

12 (10) Identification of the costs to the Depart-
13 ment of the training identified under paragraph (9)
14 and any additional training staff and any additional
15 training facilities that will be required to provide
16 such training.

17 (11) Timelines for updating any policy guid-
18 ance, Internet websites, and official forms that may
19 be necessary to carry out the new appeals system;
20 including—

21 (A) identification of which offices and enti-
22 ties will be involved in efforts relating to such
23 updating; and

24 (B) historical information about how long
25 similar update efforts have taken.

1 (12) A timeline, including interim milestones,
2 for promulgating such regulations as may be nec-
3 essary to carry out the new appeals system and a
4 comparison with historical averages for time re-
5 quired to promulgate regulations of similar com-
6 plexity and scope.

7 (13) An outline of the circumstances under
8 which claimants with pending appeals of decisions
9 on legacy claims would be authorized to have their
10 appeals reviewed under the new appeals system.

11 (14) A delineation of the key goals and mile-
12 stones for reducing the number of pending appeals
13 that are not processed under the new appeals sys-
14 tem, including the expected number of appeals, re-
15 mands, and hearing requests at the Administration
16 and the Board each year, beginning with the one
17 year period beginning on the date of the enactment
18 of this Act, until there are no longer any appeals
19 pending before the Administration or the Board for
20 a decision on a legacy claim.

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

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

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

5 (A) assess such plan; and

6 (B) notify the appropriate committees of
 7 Congress of the findings of the Comptroller
 8 General with respect to the assessment con-
 9 ducted under subparagraph (A).

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

12 (A) An assessment of whether the plan
 13 comports with sound planning practices.

14 (B) Identification of any gaps in the plan.

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

18 (d) PERIODIC PROGRESS REPORTS.—Not later than
 19 90 days after the date on which the Secretary submits
 20 the plan under subsection (a), not less frequently than
 21 once every 90 days thereafter until the applicability date
 22 set forth in section 2(x)(1), and not less frequently than
 23 once every 180 days thereafter for the 10-year period fol-
 24 lowing such applicability date, the Secretary shall submit
 25 to the appropriate committees of Congress and the Comp-

1 troller General a report on the progress of the Secretary
2 in carrying out the plan.

3 (c) APPROPRIATE COMMITTEES OF CONGRESS DE-
4 FINED.—In this section, the term “appropriate commit-
5 tees of Congress” means—

6 (1) the Committee on Veterans’ Affairs and the
7 Committee on Appropriations of the Senate; and

8 (2) the Committee on Veterans’ Affairs and the
9 Committee on Appropriations of the House of Rep-
10 resentatives.

11 **SEC. 4. PROGRAMS TO TEST ASSUMPTIONS RELIED ON IN**
12 **DEVELOPMENT OF COMPREHENSIVE PLAN**
13 **FOR PROCESSING OF LEGACY APPEALS AND**
14 **SUPPORTING NEW APPEALS SYSTEM.**

15 (a) AUTHORIZATION.—

16 (1) IN GENERAL.—The Secretary of Veterans
17 Affairs may carry out such programs as the Sec-
18 retary considers appropriate to test any assumptions
19 relied upon in developing the comprehensive plan re-
20 quired by section 3(a) and to test the feasibility and
21 advisability of any facet of the new appeals system.

22 (2) REPORTING REQUIRED.—Whenever the Sec-
23 retary determines, based on the conduct of a pro-
24 gram under paragraph (1), that legislative changes
25 to the new appeals system are necessary, the Sec-

1 retary shall submit to the Committee on Veterans'
 2 Affairs of the Senate and the Committee on Vet-
 3 erans' Affairs of the House of Representatives notice
 4 of such determination.

5 (b) DEPARTMENT OF VETERANS AFFAIRS PROGRAM
 6 ON FULLY DEVELOPED APPEALS.—

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

12 (2) ELECTION.—

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

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

22 (ii) All evidence that the claimant be-
 23 lieves is needed for the appeal as of the
 24 date of the filing.

1 (iii) A statement of the argument in
 2 support of the claim, if any.

3 (B) ~~TIMING.~~—A claimant shall make an
 4 election under subparagraph (A) as part of the
 5 notice of disagreement filed by the claimant in
 6 accordance with subparagraph (A)(i).

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

15 (D) ~~REVERSION.~~—

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

21 (ii) ~~AUTOMATIC REVERSION.~~—A
 22 claimant described in clause (i), or a claim-
 23 ant who makes an election under subpara-
 24 graph (A) but is later determined to be in-
 25 eligible for the program under paragraph

1 ~~(1)~~, shall revert to the standard appeals
 2 process without any penalty to the claim-
 3 ant other than the loss of the docket num-
 4 ber associated with the fully developed ap-
 5 peal.

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

11 (i) The Secretary shall provide to the
 12 claimant ~~(and to the representative of~~
 13 record of the claimant, if any) information
 14 regarding—

15 ~~(I)~~ the program, including the
 16 advantages and disadvantages of the
 17 program;

18 ~~(II)~~ how to make an election
 19 under subparagraph ~~(A)~~;

20 ~~(III)~~ the limitation on the use of
 21 new evidence described in subpara-
 22 graph ~~(C)~~ of paragraph ~~(3)~~ and the
 23 development of information under
 24 subparagraph ~~(D)~~ of such paragraph;

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

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

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

22 (3) TREATMENT BY DEPARTMENT AND
23 BOARD.—

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

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

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

10 ~~(B) DOCKET.~~—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (E) DEVELOPMENT UNIT.—

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

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

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

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

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

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

such section 7107, such request shall be deemed to be an election to revert to the standard appeals process pursuant to paragraph (2)(D).

(4) DURATION; APPLICABILITY.—

(A) DURATION.—Subject to subsection (e), the Secretary may carry out the program during such period as the Secretary considers appropriate.

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

(5) DEFINITIONS.—In this subsection:

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

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

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

(ii) considered in accordance with this subsection.

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

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

3 ~~(c) TERMINATION OF AUTHORITY.—~~The Secretary of
4 Veterans Affairs may not carry out a program under this
5 section after the applicability date set forth in section
6 ~~2(x)(1)~~.

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

10 The Secretary of Veterans Affairs shall periodically
11 publish on an Internet website of the Department of Vet-
12 erans Affairs the following:

13 (1) With respect to the processing by the Sec-
14 retary of appeals under the new appeals system of
15 decisions regarding claims for benefits under laws
16 administered by the Secretary, the following:

17 (A) For the Veterans Benefits Administra-
18 tion and, to the extent practicable, each re-
19 gional office of the Department of Veterans Af-
20 fairs, the number of—

21 (i) supplemental claims under section
22 5108 of title 38, United States Code, as
23 amended by section 2(i), that are pending;
24 and

1 (ii) requests for higher-level review
2 under section 5104B of such title, as
3 added by section 2(g), that are pending.

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

7 (C) The average duration for processing
8 claims and supplemental claims, disaggregated
9 by regional office.

10 (D) The average duration for processing
11 requests for higher-level review under section
12 5104B of such title, as added by section 2(g),
13 disaggregated by regional office.

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

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

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

4 (H) In the case that the Secretary develops
 5 and implements a policy under section 7107(e)
 6 of such title, as amended by section 2(t)—

7 (i) the number of cases moved from
 8 one docket to another pursuant to such
 9 policy;

10 (ii) the average time cases were pend-
 11 ing prior to moving from one docket to an-
 12 other; and

13 (iii) the average time to adjudicate the
 14 cases after so moving.

15 (I) The total number of remands to obtain
 16 advisory medical opinions under section
 17 5109(d) of title 38, United States Code, as
 18 added by section 2(j).

19 (J) The average number of days between
 20 the date on which the Board remands a claim
 21 to obtain an advisory medical opinion under
 22 section 5109(d) of such title, as so added, and
 23 the date on which the advisory medical opinion
 24 is obtained.

1 ~~(K)~~ The average number of days between
2 the date on which the Board remands a claim
3 to obtain an advisory medical opinion under
4 section ~~5109~~(d) of such title, as so added, and
5 the date on which the agency of original juris-
6 diction issues a decision taking that advisory
7 opinion into account.

8 ~~(L)~~ The number of appeals that are grant-
9 ed, the number of appeals that are remanded,
10 and the number of appeals that are denied by
11 the Board disaggregated by docket.

12 ~~(M)~~ The number of claimants each year
13 that take action within the period set forth in
14 section ~~5110~~(a)(2) of such title, as added by
15 section 2(l), to protect their effective date under
16 such section ~~5110~~(a)(2), disaggregated by the
17 status of the claimants taking the actions, such
18 as whether the claimant is represented by a vet-
19 erans service organization, the claimant is rep-
20 resented by an attorney, or the claimant is tak-
21 ing such action pro se.

22 ~~(N)~~ The total number of times on average
23 each claimant files under section ~~5110~~(a)(2) of
24 such title, as so added, to protect their effective
25 date under such section, disaggregated by the

1 subparagraph of such section under which they
2 file.

3 ~~(O) The average duration, from the filing~~
4 ~~of an initial claim until the claim is resolved~~
5 ~~and claimants no longer take any action to pro-~~
6 ~~tect their effective date under section~~
7 ~~5110(a)(2) of such title, as so added—~~

8 ~~(i) of claims under the new appeals~~
9 ~~system, excluding legacy claims that opt in~~
10 ~~to the new appeals system; and~~

11 ~~(ii) of legacy claims that opt in to the~~
12 ~~new appeals system.~~

13 ~~(P) How frequently an action taken within~~
14 ~~one year to protect an effective date under sec-~~
15 ~~tion 5110(a)(2) of such title, as so added, leads~~
16 ~~to additional grant of benefits, disaggregated by~~
17 ~~action taken.~~

18 ~~(Q) The average of how long it takes to~~
19 ~~complete each segment of the claims process~~
20 ~~while claimants are protecting the effective date~~
21 ~~under such section, disaggregated by the time~~
22 ~~waiting for the claimant to take an action and~~
23 ~~the time waiting for the Secretary to take an~~
24 ~~action.~~

1 (R) The number and the average amount
2 of retroactive awards of benefits from the Sec-
3 retary as a result of protected effective dates
4 under such section, disaggregated by action
5 taken.

6 (S) The average number of times claim-
7 ants submit to the Secretary different claims
8 with respect to same condition, such as an ini-
9 tial claim and a supplemental claim.

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

17 (U) In the case that the Secretary develops
18 and implements a policy under section
19 5104C(a)(2)(D) of such title, as amended by
20 section 2(h)(1), the number of actions with-
21 drawn and new actions taken pursuant to such
22 policy.

23 (V) The number of times the Secretary re-
24 ceived evidence relating to an appeal or higher-
25 level review at a time not authorized under the

1 new appeals system, disaggregated by actions
2 taken by the Secretary to deal with the evidence
3 and how long on average it took to take those
4 actions.

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

16 (X) An assessment of the productivity of
17 employees at the regional offices and at the
18 Board, disaggregated by level of experience of
19 the employees.

20 (2) With respect to the processing by the Sec-
21 retary of appeals of decisions on legacy claims, the
22 following:

23 (A) The average duration of each segment
24 of the appeals process, disaggregated by periods
25 in which the Secretary is waiting for a claimant

1 to take an action and periods in which the
2 claimant is waiting for the Secretary to take an
3 action.

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

9 (C) The number and average amount of
10 retroactive awards of benefits resulting from an
11 appeal.

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

16 (E) The average number of times claim-
17 ants submit to the Secretary different claims
18 with respect to same condition, such as an ini-
19 tial claim, new and material evidence, or a
20 claim for an increase in benefits.

21 (F) An assessment of the productivity of
22 employees at the regional offices and at the
23 Board, disaggregated by level of experience of
24 the employees.

(G) The average number of days the duration of an appeal is extended because the Secretary secured or attempted to secure an advisory medical opinion under section 5109 of title 38, United States Code, or section 7109 of such title (as in effect on the day before the date of the enactment of this Act).

(3) With respect to the processing by the Secretary of appeals of decisions on legacy claims that opt in to the new appeals system, the following:

(A) The cumulative number of such legacy claims.

(B) The portion of work in the new appeals system attributable to appeals of decisions on such legacy claims.

(C) The average period such legacy claims were pending before opting in to the new appeals system and the average period required to adjudicate such legacy claims on average after opting in—

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

- 1 (I) supplemental claims under
 2 section 5108 of title 38, United States
 3 Code, as amended by section 2(i); and
 4 (H) requests for higher-level re-
 5 view under section 5104B of such
 6 title, as added by section 2(g); and
 7 (ii) with respect to appeals;
 8 disaggregated by docket of the Board
 9 maintained under section 7107 of such
 10 title, as amended by section 2(t).

11 **SEC. 6. DEFINITIONS.**

12 In this Act:

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

16 (2) LEGACY CLAIMS.—The term “legacy claim”
 17 means a claim—

18 (A) that was submitted to the Secretary of
 19 Veterans Affairs for a benefit under a law ad-
 20 ministered by the Secretary; and

21 (B) for which notice of a decision under
 22 section 5104 of title 38, United States Code,
 23 was provided by the Secretary before the date
 24 set forth in section 2(x).

1 ~~(3)~~ OPT IN.—The term “opt in” means, with
 2 respect to a legacy claim of a claimant, that the
 3 claimant elects to subject the claim to the new ap-
 4 peals system pursuant to—

5 (A) section 2(x)~~(3)~~; or

6 (B) such other mechanism as the Secretary
 7 may prescribe for purposes of carrying out this
 8 Act and the amendments made by this Act.

9 ~~(4)~~ NEW APPEALS SYSTEM.—The term “new
 10 appeals system” means the set of processes and
 11 mechanisms by which the Secretary processes, pur-
 12 suant to the authorities and requirements modified
 13 by section 2, claims for benefits under laws adminis-
 14 tered by the Secretary.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Veterans Appeals Im-*
 17 *provement and Modernization Act of 2017”.*

18 **SEC. 2. REFORM OF RIGHTS AND PROCESSES RELATING TO**
 19 **APPEALS OF DECISIONS REGARDING CLAIMS**
 20 **FOR BENEFITS UNDER LAWS ADMINISTERED**
 21 **BY SECRETARY OF VETERANS AFFAIRS.**

22 (a) DEFINITIONS.—Section 101 of title 38, United
 23 States Code, is amended by adding at the end the following
 24 new paragraphs:

1 “(34) The term ‘agency of original jurisdiction’
 2 means the activity which entered the original deter-
 3 mination with regard to a claim for benefits under
 4 laws administered by the Secretary.

5 “(35) The term ‘relevant evidence’ means evi-
 6 dence that tends to prove or disprove a matter in
 7 issue.

8 “(36) The term ‘supplemental claim’ means a
 9 claim for benefits under laws administered by the
 10 Secretary filed by a claimant who had previously
 11 filed a claim for the same or similar benefits on the
 12 same or similar basis.”.

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

15 (1) in paragraph (1), in the first sentence, by
 16 striking “The” and inserting “Except as provided in
 17 paragraph (3), the”;

18 (2) in paragraph (2)(B)(i) by striking “, a
 19 claim for reopening a prior decision on a claim, or
 20 a claim for an increase in benefits;” and inserting
 21 “or a supplemental claim;”; and

22 (3) by adding at the end the following new para-
 23 graph:

24 “(3) The requirement to provide notice under para-
 25 graph (1) shall not apply with respect to a supplemental

1 *claim that is filed within the timeframe set forth in sub-*
 2 *paragraphs (B) and (D) of section 5110(a)(2) of this title.”.*

3 *(c) MODIFICATION OF RULE REGARDING DISALLOWED*
 4 *CLAIMS.—Section 5103A(f) of such title is amended—*

5 *(1) by striking “reopen” and inserting “readju-*
 6 *dicate”; and*

7 *(2) by striking “material” and inserting “rel-*
 8 *evant”.*

9 *(d) MODIFICATION OF DUTY TO ASSIST CLAIMANTS.—*
 10 *Section 5103A of such title is amended—*

11 *(1) by redesignating subsections (e) through (g)*
 12 *as subsections (g) through (i), respectively; and*

13 *(2) by inserting after subsection (d) the following*
 14 *new subsections:*

15 *“(e) APPLICABILITY OF DUTY TO ASSIST.—(1) The*
 16 *Secretary’s duty to assist under this section shall apply*
 17 *only to a claim, or supplemental claim, for a benefit under*
 18 *a law administered by the Secretary until the time that*
 19 *a claimant is provided notice of the agency of original juris-*
 20 *isdiction’s decision with respect to such claim, or supple-*
 21 *mental claim, under section 5104 of this title.*

22 *“(2) The Secretary’s duty to assist under this section*
 23 *shall not apply to higher-level review by the agency of origi-*
 24 *nal jurisdiction, pursuant to section 5104B of this title, or*
 25 *to review on appeal by the Board of Veterans’ Appeals.*

1 “(f) *CORRECTION OF DUTY TO ASSIST ERRORS.—(1)*
2 *If, during review of the agency of original jurisdiction deci-*
3 *sion under section 5104B of this title, the higher-level adju-*
4 *dicator identifies or learns of an error on the part of the*
5 *agency of original jurisdiction to satisfy its duties under*
6 *this section, and that error occurred prior to the agency*
7 *of original jurisdiction decision being reviewed, unless the*
8 *Secretary may award the maximum benefit in accordance*
9 *with this title based on the evidence of record, the higher-*
10 *level adjudicator shall return the claim for correction of*
11 *such error and readjudication.*

12 “(2)(A) *If the Board of Veterans’ Appeals, during re-*
13 *view on appeal of an agency of original jurisdiction deci-*
14 *sion, identifies or learns of an error on the part of the agen-*
15 *cy of original jurisdiction to satisfy its duties under this*
16 *section, and that error occurred prior to the agency of origi-*
17 *nal jurisdiction decision on appeal, unless the Secretary*
18 *may award the maximum benefit in accordance with this*
19 *title based on the evidence of record, the Board shall remand*
20 *the claim to the agency of original jurisdiction for correc-*
21 *tion of such error and readjudication.*

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

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

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

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

12 “(1) *Identification of the issues adjudicated.*

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

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

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

19 “(5) *In the case of a denial, identification of ele-*
 20 *ments not satisfied leading to the denial.*

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

23 “(7) *If applicable, identification of the criteria*
 24 *that must be satisfied to grant service connection or*
 25 *the next higher level of compensation.*”.

1 (f) *BINDING NATURE OF FAVORABLE FINDINGS.*—

2 (1) *IN GENERAL.*—Chapter 51 of such title is
3 amended by inserting after section 5104 the following
4 new section:

5 **“§ 5104A. Binding nature of favorable findings**

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

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

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

15 (g) *HIGHER-LEVEL REVIEW BY AGENCY OF ORIGINAL*
16 *JURISDICTION.*—

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

21 **“§ 5104B. Higher-level review by the agency of original**
22 ***jurisdiction***

23 “(a) *IN GENERAL.*—(1) A claimant may request a re-
24 view of the decision of the agency of original jurisdiction

1 *by a higher-level adjudicator within the agency of original*
2 *jurisdiction.*

3 “(2) *The Secretary shall approve each request for re-*
4 *view under paragraph (1).*

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

8 “(A) *in writing in such form as the Secretary*
9 *may prescribe; and*

10 “(B) *made within one year of the notice of the*
11 *agency of original jurisdiction’s decision.*

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

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

22 “(1) *reflecting whether evidence was not consid-*
23 *ered pursuant to subsection (d); and*

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

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

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

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

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

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

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

1 **“§5104C. Options following decision by agency of**
 2 **original jurisdiction**

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

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

11 “(B) *File a supplemental claim under section*
 12 *5108 of this title.*

13 “(C) *File a notice of disagreement under section*
 14 *7105 of this title.*

15 “(2)(A) *Once a claimant takes an action set forth in*
 16 *paragraph (1), the claimant may not take another action*
 17 *set forth in that paragraph with respect to the same claim*
 18 *or same issue contained within the claim until—*

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

21 “(ii) *the request for higher-level review, supple-*
 22 *mental claim, or notice of disagreement is withdrawn.*

23 “(B) *Nothing in this subsection shall prohibit a claim-*
 24 *ant from taking any of the actions set forth in paragraph*
 25 *(1) in succession with respect to a claim or an issue con-*
 26 *tained within the claim.*

1 “(C) *Nothing in this subsection shall prohibit a claim-*
 2 *ant from taking different actions set forth in paragraph (1)*
 3 *with respect to different claims or different issues contained*
 4 *within a claim.*

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

8 “(i) *take an action under paragraph (1);*

9 “(ii) *wish to withdraw the action before the high-*
 10 *er-level review, supplemental claim, or notice of dis-*
 11 *agreement is adjudicated; and*

12 “(iii) *in lieu of such action take a different ac-*
 13 *tion under paragraph (1).*

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

20 “(2) *CLERICAL AMENDMENT.—The table of sec-*
 21 *tions at the beginning of chapter 51 of such title, as*
 22 *amended by subsection (g), is further amended by in-*
 23 *serting after the item relating to section 5104B, as*
 24 *added by such subsection, the following new item:*

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

25 “(i) *SUPPLEMENTAL CLAIMS.—*

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

3 **“§5108. Supplemental claims**

4 “(a) *IN GENERAL.*—If new and relevant evidence is
5 presented or secured with respect to a supplemental claim,
6 the Secretary shall readjudicate the claim taking into con-
7 sideration all of the evidence of record.

8 “(b) *DUTY TO ASSIST.*—(1) If a claimant, in connec-
9 tion with a supplemental claim, reasonably identifies exist-
10 ing records, whether or not in the custody of a Federal de-
11 partment or agency, the Secretary shall assist the claimant
12 in obtaining the records in accordance with section 5103A
13 of this title.

14 “(2) Assistance under paragraph (1) shall not be
15 predicated upon a finding that new and relevant evidence
16 has been presented or secured.”.

17 (2) *RULE OF CONSTRUCTION.*—Section 5108 of
18 such title, as amended by paragraph (1), shall not be
19 construed to impose a higher evidentiary threshold
20 than the new and material evidence standard that
21 was in effect pursuant to such section on the day be-
22 fore the date of the enactment of this Act.

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

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

“5108. Supplemental claims.”.

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

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

12 *“(2) The Board’s remand instructions shall include the*
 13 *questions to be posed to the independent medical expert pro-*
 14 *viding the advisory medical opinion.”.*

15 *(k) RESTATEMENT OF REQUIREMENT FOR EXPEDITED*
 16 *TREATMENT OF RETURNED AND REMANDED CLAIMS.—*

17 *(1) IN GENERAL.—Section 5109B of such title is*
 18 *amended to read as follows:*

19 ***“§5109B. Expedited treatment of returned and re-***
 20 ***manded claims***

21 *“The Secretary shall take such actions as may be nec-*
 22 *essary to provide for the expeditious treatment by the Vet-*
 23 *erans Benefits Administration of any claim that is returned*
 24 *by a higher-level adjudicator under section 5104B of this*
 25 *title or remanded by the Board of Veterans’ Appeals.”.*

1 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
 2 *tions at the beginning of chapter 51 of such title is*
 3 *amended by striking the item relating to section*
 4 *5109B and inserting the following new item:*

“5109B. Expedited treatment of returned and remanded claims.”.

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

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

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

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

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

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

1 *the date on which the agency of original jurisdiction*
 2 *issues a decision.*

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

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

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

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

21 (2) *in subsection (i), in the first sentence—*

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

24 (B) *by striking “material” and inserting*
 25 *“relevant”;* and

1 (C) by striking “reopening” and inserting
2 “readjudication”.

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

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

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

21 (p) *CONFORMING AMENDMENT RELATING TO READJU-*
22 *DICATION.*—Section 7104(b) of such title is amended by
23 striking “reopened” and inserting “readjudicated”.

24 (q) *MODIFICATION OF PROCEDURES FOR APPEALS TO*
25 *BOARD OF VETERANS’ APPEALS.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or decision of the agency of original jurisdiction shall be-
 2 come final and the claim shall not thereafter be readjudi-
 3 cated or allowed, except—

4 “(1) in the case of a readjudication or allowance
 5 pursuant to a higher-level review that was requested
 6 in accordance with section 5104B of this title;

7 “(2) as may otherwise be provided by section
 8 5108 of this title; or

9 “(3) as may otherwise be provided in such regu-
 10 lations as are consistent with this title.”;

11 (D) by striking subsection (d) and inserting
 12 the following new subsection (d):

13 “(d) The Board may dismiss any appeal which fails
 14 to identify the specific determination with which the claim-
 15 ant disagrees.”;

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

17 (F) in the section heading, by striking “**no-**
 18 **tice of disagreement and**”.

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

“7105. Filing of appeal.”.

23 (r) MODIFICATION OF PROCEDURES AND REQUIRE-
 24 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—Sub-

1 *section (b) of section 7105A of such title is amended to read*
 2 *as follows:*

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

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

10 *(s) REPEAL OF PROCEDURES FOR ADMINISTRATIVE*
 11 *APPEALS.—*

12 *(1) IN GENERAL.—Chapter 71 of such title is*
 13 *amended by striking section 7106.*

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

17 *(t) MODIFICATIONS RELATING TO APPEALS: DOCKETS;*
 18 *HEARINGS.—Section 7107 of such title is amended to read*
 19 *as follows:*

20 **“§ 7107. Appeals: dockets; hearings**

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

23 “(2) *The Board may not maintain more than two sep-*
 24 *arate dockets unless the Board notifies the Committee on*
 25 *Veterans’ Affairs of the Senate and the Committee on Vet-*

1 *erans' Affairs of the House of Representatives of any addi-*
 2 *tional docket, including a justification for maintaining*
 3 *such additional docket.*

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

10 “(B) *Cases described in this paragraph are the fol-*
 11 *lowing:*

12 “(i) *Cases in which no Board hearing is re-*
 13 *quested.*

14 “(ii) *Cases in which a Board hearing is re-*
 15 *quested in the notice of disagreement.*

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

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

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

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

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

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

6 “(C) *for other sufficient cause shown.*

7 “(c) *MANNER AND SCHEDULING OF HEARINGS FOR*
8 *CASES ON A DOCKET THAT MAY INCLUDE A HEARING.—*

9 (1) *For cases on a docket maintained by the Board under*
10 *subsection (a) that may include a hearing, in which a hear-*
11 *ing is requested in the notice of disagreement, the Board*
12 *shall notify the appellant whether a Board hearing will be*
13 *held—*

14 “(A) *at its principal location; or*

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

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

1 “(B) Upon notification of a Board hearing by picture
 2 and voice transmission as described in subparagraph (B)
 3 of paragraph (1), the appellant may alternatively request
 4 a hearing as described in subparagraph (A) of such para-
 5 graph. If so requested, the Board shall grant such request.

6 “(d) SCREENING OF CASES.—Nothing in this section
 7 shall be construed to preclude the screening of cases for pur-
 8 poses of—

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

11 “(2) the development, or attempted development,
 12 of a record found to be inadequate for decisional pur-
 13 poses.

14 “(e) POLICY ON CHANGING DOCKETS.—The Secretary
 15 shall develop and implement a policy allowing an appellant
 16 to move the appellant’s case from one docket to another
 17 docket.”.

18 (u) REPEAL OF CERTAIN AUTHORITY FOR INDE-
 19 PENDENT MEDICAL OPINIONS.—

20 (1) IN GENERAL.—Section 7109 of such title is
 21 repealed.

22 (2) CONFORMING AMENDMENT.—Section
 23 5701(b)(1) of such title is amended by striking “or
 24 7109”.

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

4 (v) *CLARIFICATION OF PROCEDURES FOR REVIEW OF*
 5 *DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE*
 6 *ERROR.*—*Section 7111(e) of such title is amended by strik-*
 7 *ing “, without referral to any adjudicative or hearing offi-*
 8 *cial acting on behalf of the Secretary”.*

9 (w) *EVIDENTIARY RECORD BEFORE BOARD OF VET-*
 10 *ERANS’ APPEALS.*—

11 (1) *IN GENERAL.*—*Chapter 71 of such title is*
 12 *amended by adding at the end the following new sec-*
 13 *tion:*

14 **“§ 7113. Evidentiary record before the Board of Vet-**
 15 **erans’ Appeals**

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

23 “(b) *CASES WITH A REQUEST FOR A HEARING.*—(1)
 24 *Except as provided in paragraph (2), for cases in which*
 25 *a hearing is requested in the notice of disagreement, the*

1 *evidentiary record before the Board shall be limited to the*
 2 *evidence of record at the time of the decision of the agency*
 3 *of original jurisdiction on appeal.*

4 “(2) *The evidentiary record before the Board for cases*
 5 *described in paragraph (1) shall include each of the fol-*
 6 *lowing, which the Board shall consider in the first instance:*

7 “(A) *Evidence submitted by the appellant and*
 8 *his or her representative, if any, at the Board hear-*
 9 *ing.*

10 “(B) *Evidence submitted by the appellant and*
 11 *his or her representative, if any, within 90 days fol-*
 12 *lowing the Board hearing.*

13 “(c) *CASES WITH NO REQUEST FOR A HEARING AND*
 14 *WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Ex-*
 15 *cept as provided in paragraph (2), for cases in which a*
 16 *hearing is not requested in the notice of disagreement but*
 17 *an opportunity to submit evidence is requested, the evi-*
 18 *dentiary record before the Board shall be limited to the evi-*
 19 *dence considered by the agency of original jurisdiction in*
 20 *the decision on appeal.*

21 “(2) *The evidentiary record before the Board for cases*
 22 *described in paragraph (1) shall include each of the fol-*
 23 *lowing, which the Board shall consider in the first instance:*

1 “(A) Evidence submitted by the appellant and
2 his or her representative, if any, with the notice of
3 disagreement.

4 “(B) Evidence submitted by the appellant and
5 his or her representative, if any, within 90 days fol-
6 lowing receipt of the notice of disagreement.”.

7 (2) NOTIFICATION WHEN EVIDENCE NOT CONSID-
8 ERED.—Section 7104(d) of such title is amended—

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

11 (B) by redesignating paragraph (2) as
12 paragraph (3); and

13 (C) by inserting after paragraph (1) the fol-
14 lowing new paragraph (2):

15 “(2) a general statement—

16 “(A) reflecting whether evidence was not
17 considered in making the decision because the
18 evidence was received at a time when not per-
19 mitted under section 7113 of this title; and

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

23 (3) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of chapter 71 of such title is

1 *amended by inserting after the item relating to sec-*
 2 *tion 7112 the following new item:*

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

3 *(x) APPLICABILITY.—*

4 *(1) IN GENERAL.—Except as otherwise provided*
 5 *in this subsection, the amendments made by this sec-*
 6 *tion shall apply to all claims for which notice of a*
 7 *decision under section 5104 of title 38, United States*
 8 *Code, is provided by the Secretary of Veterans Affairs*
 9 *on or after the later of—*

10 *(A) the date that is 540 days after the date*
 11 *of the enactment of this Act; and*

12 *(B) the date that is 30 days after the date*
 13 *on which the Secretary of Veterans Affairs sub-*
 14 *mits to the appropriate committees of Con-*
 15 *gress—*

16 *(i) a certification that the Secretary*
 17 *confirms, without delegation, that the De-*
 18 *partment of Veterans Affairs has the re-*
 19 *sources, personnel, office space, procedures,*
 20 *and information technology required—*

21 *(I) to carry out the new appeals*
 22 *system;*

23 *(II) to timely address appeals*
 24 *under the new appeals system; and*

1 (III) to timely address appeals of
 2 decisions on legacy claims; and
 3 (ii) a summary of the expectations for
 4 performance outcomes that the Secretary
 5 used in making the certification under
 6 clause (i)(III) and a comparison of such ex-
 7 pected performance outcomes with actual
 8 performance outcomes with respect to ap-
 9 peals of legacy claims before the effective
 10 date of the new appeals system.

11 (2) *COLLABORATION.*—In determining whether
 12 and when to make a certification under paragraph
 13 (1)(B), the Secretary shall collaborate with, partner
 14 with, and give weight to the advice of veterans service
 15 organizations and such other stakeholders as the Sec-
 16 retary considers appropriate.

17 (3) *EARLY APPLICABILITY.*—The Secretary may
 18 apply the new appeals system to a claim with respect
 19 to which the claimant—

20 (A) receives a notice of a decision under sec-
 21 tion 5104 of such title after the date of the enact-
 22 ment of this Act and before the applicability date
 23 set forth in paragraph (1); and

24 (B) elects to subject the claim to the new ap-
 25 peals system.

1 (4) *PHASED ROLLOUT.*—*The Secretary may*
 2 *begin implementation of the new appeals system in*
 3 *phases, with the first phase of such phased implemen-*
 4 *tation beginning on the applicability date set forth in*
 5 *paragraph (1).*

6 (5) *TREATMENT OF LEGACY CLAIMS.*—*With re-*
 7 *spect to legacy claims, upon the issuance to a claim-*
 8 *ant of a statement of the case or supplemental state-*
 9 *ment of the case occurring on or after the applica-*
 10 *bility date specified in paragraph (1), a claimant*
 11 *may elect to participate in the new appeals system.*

12 (6) *PUBLICATION OF APPLICABILITY DATE.*—*Not*
 13 *later than the date on which the new appeals system*
 14 *goes into effect (or the first phase of the new appeals*
 15 *system goes into effect under paragraph (4), as the*
 16 *case may be), the Secretary shall publish in the Fed-*
 17 *eral Register such date.*

18 (7) *DEFINITIONS.*—*In this subsection:*

19 (A) *APPROPRIATE COMMITTEES OF CON-*
 20 *GRESS.*—*The term “appropriate committees of*
 21 *Congress” means—*

22 (i) *the Committee on Veterans’ Affairs*
 23 *and the Committee on Appropriations of the*
 24 *Senate; and*

1 (ii) the Committee on Veterans' Affairs
 2 and the Committee on Appropriations of the
 3 House of Representatives.

4 (B) VETERANS SERVICE ORGANIZATION.—
 5 The term “veterans service organization” means
 6 any organization recognized by the Secretary for
 7 the representation of veterans under section 5902
 8 of title 38, United States Code.

9 (y) RULE OF CONSTRUCTION.—Nothing in this section
 10 or any of the amendments made by this section shall be
 11 construed to limit the ability of a claimant to request a
 12 revision of a decision under section 5109A or 7111 of title
 13 38, United States Code.

14 **SEC. 3. COMPREHENSIVE PLAN FOR PROCESSING OF LEG-**
 15 **ACY APPEALS AND IMPLEMENTING NEW AP-**
 16 **PEALS SYSTEM.**

17 (a) PLAN REQUIRED.—Not later than 90 days after
 18 the date of the enactment of this Act, the Secretary of Vet-
 19 erans Affairs shall submit to the appropriate committees
 20 of Congress and the Comptroller General of the United
 21 States a comprehensive plan for—

- 22 (1) the processing of appeals of decisions on leg-
 23 acy claims that the Secretary considers pending;
 24 (2) implementing the new appeals system;

1 (3) *timely processing, under the new appeals sys-*
2 *tem, of—*

3 (A) *supplemental claims under section 5108*
4 *of title 38, United States Code, as amended by*
5 *section 2(i);*

6 (B) *requests for higher-level review under*
7 *section 5104B of such title, as added by section*
8 *2(g); and*

9 (C) *appeals on any docket maintained*
10 *under section 7107 of such title, as amended by*
11 *section 2(t); and*

12 (4) *monitoring the implementation of the new*
13 *appeals system, including metrics and goals—*

14 (A) *to track the progress of the implementa-*
15 *tion;*

16 (B) *to evaluate the efficiency and effective-*
17 *ness of the implementation; and*

18 (C) *to identify potential issues relating to*
19 *the implementation.*

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

22 (1) *Delineation of the total resource requirements*
23 *of the Veterans Benefits Administration and the*
24 *Board of Veterans' Appeals, disaggregated by re-*
25 *sources required to implement and administer the*

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

3 (2) *Delineation of the personnel requirements of*
4 *the Administration and the Board, including staffing*
5 *levels during the—*

6 (A) *period in which the Administration and*
7 *the Board are concurrently processing—*

8 (i) *appeals of decisions on legacy*
9 *claims; and*

10 (ii) *appeals of decisions on non-legacy*
11 *claims under the new appeals system; and*

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

15 (3) *Identification of the legal authorities under*
16 *which the Administration or the Board may—*

17 (A) *hire additional employees to conduct the*
18 *concurrent processing described in paragraph*
19 *(2)(A); and*

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

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

8 (5) *A description of the amount of training and*
9 *experience that will be required of individuals con-*
10 *ducting higher-level reviews under section 5104B of*
11 *title 38, United States Code, as added by section 2(g).*

12 (6) *An estimate of the percentage of higher-level*
13 *adjudicators who will be employees of the Department*
14 *of Veterans Affairs who were Decision Review Officers*
15 *on the day before the new appeals system takes effect*
16 *or had experience, as of such date, comparable to that*
17 *of one who was a Decision Review Officer.*

18 (7) *A description of the functions that will be*
19 *performed after the date on which the new appeals*
20 *system takes effect by Decision Review Officers who*
21 *were Decision Review Officers on the day before the*
22 *date the new appeals system takes effect.*

23 (8) *Identification of and a timeline for—*

24 (A) *any training that may be required as*
25 *a result of hiring new employees to carry out the*

1 *new appeals system or to process appeals of deci-*
 2 *sions on legacy claims; and*

3 *(B) any retraining of existing employees*
 4 *that may be required to carry out such system*
 5 *or to process such claims.*

6 *(9) Identification of the costs to the Department*
 7 *of Veterans Affairs of the training identified under*
 8 *paragraph (8) and any additional training staff and*
 9 *any additional training facilities that will be re-*
 10 *quired to provide such training.*

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

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

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

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

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

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

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

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

3 (B) timelines for conducting such outreach.

4 (14) Timelines for updating any policy guid-
5 ance, Internet websites, and official forms that may
6 be necessary to carry out the new appeals system, in-
7 cluding—

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

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

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

19 (16) An outline of the circumstances under which
20 claimants with pending appeals of decisions on legacy
21 claims would be authorized to have their appeals re-
22 viewed under the new appeals system.

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

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

8 (18) *A description of each risk factor associated*
 9 *with each element of the plan and a contingency plan*
 10 *to minimize each such risk.*

11 (c) *REVIEW BY COMPTROLLER GENERAL OF THE*
 12 *UNITED STATES.—*

13 (1) *IN GENERAL.—Not later than 90 days after*
 14 *the Comptroller General of the United States receives*
 15 *the plan required by subsection (a), the Comptroller*
 16 *General shall—*

17 (A) *assess such plan; and*

18 (B) *notify the appropriate committees of*
 19 *Congress of the findings of the Comptroller Gen-*
 20 *eral with respect to the assessment conducted*
 21 *under subparagraph (A).*

22 (2) *ELEMENTS.—The assessment conducted*
 23 *under paragraph (1)(A) shall include the following:*

24 (A) *An assessment of whether the plan com-*
 25 *ports with sound planning practices.*

1 (B) *Identification of any gaps in the plan.*

2 (C) *Formulation of such recommendations*
 3 *as the Comptroller General considers appro-*
 4 *priate.*

5 (d) *PERIODIC PROGRESS REPORTS.*—*Not later than*
 6 *90 days after the date on which the Secretary submits the*
 7 *plan under subsection (a), not less frequently than once*
 8 *every 90 days thereafter until the applicability date set*
 9 *forth in section 2(x)(1), and not less frequently than once*
 10 *every 180 days thereafter for the seven-year period following*
 11 *such applicability date, the Secretary shall submit to the*
 12 *appropriate committees of Congress and the Comptroller*
 13 *General a report on the progress of the Secretary in car-*
 14 *rying out the plan and what steps, if any, the Secretary*
 15 *has taken to address any recommendations formulated by*
 16 *the Comptroller General pursuant to subsection (c)(2)(C).*

17 (e) *PUBLICATION.*—*The Secretary shall make available*
 18 *to the public on an Internet website of the Department of*
 19 *Veterans Affairs—*

20 (1) *the plan required by subsection (a); and*

21 (2) *the periodic progress reports required by sub-*
 22 *section (d).*

23 (f) *APPROPRIATE COMMITTEES OF CONGRESS DE-*
 24 *FINED.*—*In this section, the term “appropriate committees*
 25 *of Congress” means—*

1 (1) *the Committee on Veterans' Affairs and the*
 2 *Committee on Appropriations of the Senate; and*

3 (2) *the Committee on Veterans' Affairs and the*
 4 *Committee on Appropriations of the House of Rep-*
 5 *resentatives.*

6 **SEC. 4. PROGRAMS TO TEST ASSUMPTIONS RELIED ON IN**
 7 **DEVELOPMENT OF COMPREHENSIVE PLAN**
 8 **FOR PROCESSING OF LEGACY APPEALS AND**
 9 **SUPPORTING NEW APPEALS SYSTEM.**

10 (a) *AUTHORIZATION.—*

11 (1) *IN GENERAL.—The Secretary of Veterans Af-*
 12 *fairs may carry out such programs as the Secretary*
 13 *considers appropriate to test any assumptions relied*
 14 *upon in developing the comprehensive plan required*
 15 *by section 3(a) and to test the feasibility and advis-*
 16 *ability of any facet of the new appeals system.*

17 (2) *REPORTING REQUIRED.—Whenever the Sec-*
 18 *retary determines, based on the conduct of a program*
 19 *under paragraph (1), that legislative changes to the*
 20 *new appeals system are necessary, the Secretary shall*
 21 *submit to the Committee on Veterans' Affairs of the*
 22 *Senate and the Committee on Veterans' Affairs of the*
 23 *House of Representatives notice of such determina-*
 24 *tion.*

1 (b) *DEPARTMENT OF VETERANS AFFAIRS PROGRAM ON*
2 *FULLY DEVELOPED APPEALS.*—

3 (1) *IN GENERAL.*—*The Secretary of Veterans Af-*
4 *fairs may, under subsection (a)(1), carry out a pro-*
5 *gram to provide the option of an alternative appeals*
6 *process that shall more quickly determine such ap-*
7 *peals in accordance with this subsection.*

8 (2) *ELECTION.*—

9 (A) *FILING.*—*In accordance with subpara-*
10 *graph (B), a claimant may elect to file a fully*
11 *developed appeal under the program by filing*
12 *with the Secretary all of the following:*

13 (i) *The notice of disagreement under*
14 *chapter 71 of title 38, United States Code,*
15 *along with the written election of the claim-*
16 *ant to have the appeal determined under the*
17 *program.*

18 (ii) *All evidence that the claimant be-*
19 *lieves is needed for the appeal as of the date*
20 *of the filing.*

21 (iii) *A statement of the argument in*
22 *support of the claim, if any.*

23 (B) *TIMING.*—*A claimant shall make an*
24 *election under subparagraph (A) as part of the*

1 *notice of disagreement filed by the claimant in*
 2 *accordance with subparagraph (A)(i).*

3 (C) *TRIAGE.*—*The Secretary shall, upon ex-*
 4 *piration of the period specified in paragraph*
 5 *(3)(C)(iii), ensure that an assessment is under-*
 6 *taken of whether an appeal filed under subpara-*
 7 *graph (A) of this paragraph satisfies the require-*
 8 *ments for appeal under the program and provide*
 9 *appropriate notification to the claimant of the*
 10 *results of that assessment.*

11 (D) *REVERSION.*—

12 (i) *ELECTED REVERSION.*—*At any*
 13 *time, a claimant who makes an election*
 14 *under subparagraph (A) may elect to revert*
 15 *to the standard appeals process. Such a re-*
 16 *version shall be final.*

17 (ii) *AUTOMATIC REVERSION.*—*A claim-*
 18 *ant described in clause (i), or a claimant*
 19 *who makes an election under subparagraph*
 20 *(A) but is later determined to be ineligible*
 21 *for the program under paragraph (1), shall*
 22 *revert to the standard appeals process with-*
 23 *out any penalty to the claimant other than*
 24 *the loss of the docket number associated with*
 25 *the fully developed appeal.*

1 (E) *OUTREACH.*—*In providing claimants*
2 *with notices of the determination of a claim dur-*
3 *ing the period in which the program under para-*
4 *graph (1) is carried out, the Secretary shall con-*
5 *duct outreach as follows:*

6 (i) *The Secretary shall provide to the*
7 *claimant (and to the representative of*
8 *record of the claimant, if any) information*
9 *regarding—*

10 (I) *the program, including the ad-*
11 *vantages and disadvantages of the pro-*
12 *gram;*

13 (II) *how to make an election*
14 *under subparagraph (A);*

15 (III) *the limitation on the use of*
16 *new evidence described in subpara-*
17 *graph (C) of paragraph (3) and the de-*
18 *velopment of information under sub-*
19 *paragraph (D) of such paragraph;*

20 (IV) *the ability of the claimant to*
21 *seek advice and education regarding*
22 *such process from veterans service or-*
23 *ganizations, attorneys, and claims*
24 *agents recognized under chapter 59 of*
25 *title 38, United States Code; and*

1 (V) *the circumstances under which*
 2 *the appeal will automatically revert to*
 3 *the standard appeals process, including*
 4 *by making a request for a hearing.*

5 (ii) *The Secretary shall collaborate,*
 6 *partner with, and give weight to the advice*
 7 *of the three veterans service organizations*
 8 *with the most members and such other*
 9 *stakeholders as the Secretary considers ap-*
 10 *propriate to publish on the Internet website*
 11 *of the Department of Veterans Affairs an*
 12 *online tutorial explaining the advantages*
 13 *and disadvantages of the program.*

14 (3) *TREATMENT BY DEPARTMENT AND BOARD.—*

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

18 (i) *not provide the claimant with a*
 19 *statement of the case nor require the claim-*
 20 *ant to file a substantive appeal; and*

21 (ii) *transfer jurisdiction over the fully*
 22 *developed appeal directly to the Board of*
 23 *Veterans' Appeals.*

24 (B) *DOCKET.—*

1 (i) *IN GENERAL.*—*The Board of Vet-*
2 *erans' Appeals shall—*

3 (I) *maintain fully developed ap-*
4 *peals on a separate docket than stand-*
5 *ard appeals;*

6 (II) *decide fully developed appeals*
7 *in the order that the fully developed*
8 *appeals are received on the fully devel-*
9 *oped appeal docket;*

10 (III) *except as provided by clause*
11 *(ii), decide not more than one fully de-*
12 *veloped appeal for each four standard*
13 *appeals decided; and*

14 (IV) *to the extent practicable, de-*
15 *cide each fully developed appeal by the*
16 *date that is one year following the date*
17 *on which the claimant files the notice*
18 *of disagreement.*

19 (ii) *ADJUSTMENT.*—*Beginning one*
20 *year after the date on which the program*
21 *commences, the Board may adjust the num-*
22 *ber of standard appeals decided for each*
23 *fully developed appeal under clause (i)(III)*
24 *if the Board determines that such adjust-*

1 *ment is fair for both standard appeals and*
2 *fully developed appeals.*

3 (C) *LIMITATION ON USE OF NEW EVI-*
4 *DENCE.—*

5 (i) *IN GENERAL.—Except as provided*
6 *by clauses (ii) and (iii)—*

7 (I) *a claimant may not submit or*
8 *identify to the Board of Veterans' Ap-*
9 *peals any new evidence relating to a*
10 *fully developed appeal after filing such*
11 *appeal unless the claimant reverts to*
12 *the standard appeals process pursuant*
13 *to paragraph (2)(D); and*

14 (II) *if a claimant submits or*
15 *identifies any such new evidence, such*
16 *submission or identification shall be*
17 *deemed to be an election to make such*
18 *a reversion pursuant to paragraph*
19 *(2)(D).*

20 (ii) *EVIDENCE GATHERED BY*
21 *BOARD.—Clause (i) shall not apply to evi-*
22 *dence developed pursuant to subparagraphs*
23 *(D) and (E). The Board shall consider such*
24 *evidence in the first instance without con-*

1 *sideration by the Veterans Benefits Admin-*
 2 *istration.*

3 *(iii) REPRESENTATIVE OF RECORD.—*

4 *The representative of record of a claimant*
 5 *for appeals purposes, if any, shall be pro-*
 6 *vided an opportunity to review the fully de-*
 7 *veloped appeal of the claimant and submit*
 8 *any additional arguments or evidence that*
 9 *the representative determines necessary dur-*
 10 *ing a period specified by the Board for pur-*
 11 *poses of this subparagraph.*

12 *(D) PROHIBITION ON REMAND FOR ADDI-*
 13 *TIONAL DEVELOPMENT.—If the Board of Vet-*
 14 *erans' Appeals determines that a fully developed*
 15 *appeal requires Federal records, independent*
 16 *medical opinions, or new medical examinations,*
 17 *the Board shall—*

18 *(i) in accordance with subparagraph*
 19 *(E), take such actions as may be necessary*
 20 *to develop such records, opinions, or exami-*
 21 *nations in accordance with section 5103A of*
 22 *title 38, United States Code;*

23 *(ii) retain jurisdiction of the fully de-*
 24 *veloped appeal without requiring a deter-*
 25 *mination by the Veterans Benefits Adminis-*

1 *tration based on such records, opinions, or*
 2 *examinations;*

3 *(iii) ensure the claimant, and the rep-*
 4 *resentative of record of a claimant, if any,*
 5 *receives a copy of such records, opinions, or*
 6 *examinations; and*

7 *(iv) provide the claimant a period of*
 8 *90 days after the date of mailing such*
 9 *records, opinions, or examinations during*
 10 *which the claimant may provide the Board*
 11 *any additional evidence without requiring*
 12 *the claimant to make a reversion pursuant*
 13 *to paragraph (2)(D).*

14 *(E) DEVELOPMENT UNIT.—*

15 *(i) ESTABLISHMENT.—The Board of*
 16 *Veterans' Appeals shall establish an office to*
 17 *develop Federal records, independent med-*
 18 *ical opinions, and new medical examina-*
 19 *tions pursuant to subparagraph (D)(i) that*
 20 *the Board determines necessary to decide a*
 21 *fully developed appeal.*

22 *(ii) REQUIREMENTS.—The Secretary*
 23 *shall—*

24 *(I) ensure that the Veterans Bene-*
 25 *fits Administration cooperates with the*

1 *Board of Veterans' Appeals in carrying*
2 *out clause (i); and*

3 *(II) transfer employees of the Vet-*
4 *erans Benefits Administration who,*
5 *prior to the enactment of this Act, were*
6 *responsible for processing claims re-*
7 *manded by the Board of Veterans' Ap-*
8 *peals to positions within the office of*
9 *the Board established under clause (i)*
10 *in a number the Secretary determines*
11 *sufficient to carry out such subpara-*
12 *graph.*

13 *(F) HEARINGS.—Notwithstanding section*
14 *7107 of title 38, United States Code, the Sec-*
15 *retary may not provide hearings with respect to*
16 *fully developed appeals under the program. If a*
17 *claimant requests to hold a hearing pursuant to*
18 *such section 7107, such request shall be deemed*
19 *to be an election to revert to the standard ap-*
20 *peals process pursuant to paragraph (2)(D).*

21 *(4) DURATION; APPLICABILITY.—*

22 *(A) DURATION.—Subject to subsection (c),*
23 *the Secretary may carry out the program during*
24 *such period as the Secretary considers appro-*
25 *priate.*

1 (B) *APPLICABILITY.*—*This section shall*
 2 *apply only to fully developed appeals that are*
 3 *filed during the period in which the program is*
 4 *carried out pursuant to subparagraph (A).*

5 (5) *DEFINITIONS.*—*In this subsection:*

6 (A) *COMPENSATION.*—*The term “compensa-*
 7 *tion” has the meaning given that term in section*
 8 *101 of title 38, United States Code.*

9 (B) *FULLY DEVELOPED APPEAL.*—*The term*
 10 *“fully developed appeal” means an appeal of a*
 11 *claim for disability compensation that is—*

12 (i) *filed by a claimant in accordance*
 13 *with paragraph (2)(A); and*

14 (ii) *considered in accordance with this*
 15 *subsection.*

16 (C) *STANDARD APPEAL.*—*The term “stand-*
 17 *ard appeal” means an appeal of a claim for dis-*
 18 *ability compensation that is not a fully devel-*
 19 *oped appeal.*

20 (c) *TERMINATION OF AUTHORITY.*—*The Secretary of*
 21 *Veterans Affairs may not carry out a program under this*
 22 *section after the applicability date set forth in section*
 23 *2(x)(1).*

1 **SEC. 5. PERIODIC PUBLICATION OF METRICS RELATING TO**
2 **PROCESSING OF APPEALS BY DEPARTMENT**
3 **OF VETERANS AFFAIRS.**

4 *The Secretary of Veterans Affairs shall periodically*
5 *publish on an Internet website of the Department of Vet-*
6 *erans Affairs the following:*

7 *(1) With respect to the processing by the Sec-*
8 *retary of appeals under the new appeals system of de-*
9 *cisions regarding claims for benefits under laws ad-*
10 *ministered by the Secretary, the following:*

11 *(A) For the Veterans Benefits Administra-*
12 *tion and, to the extent practicable, each regional*
13 *office of the Department of Veterans Affairs, the*
14 *number of—*

15 *(i) supplemental claims under section*
16 *5108 of title 38, United States Code, as*
17 *amended by section 2(i), that are pending;*
18 *and*

19 *(ii) requests for higher-level review*
20 *under section 5104B of such title, as added*
21 *by section 2(g), that are pending.*

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

1 (C) *The average duration for processing*
2 *claims and supplemental claims, disaggregated*
3 *by regional office.*

4 (D) *The average duration for processing re-*
5 *quests for higher-level review under section*
6 *5104B of such title, as added by section 2(g),*
7 *disaggregated by regional office.*

8 (E) *The average number of days that ap-*
9 *peals are pending on a docket of the Board of*
10 *Veterans' Appeals maintained pursuant to sec-*
11 *tion 7107 of such title, as amended by section*
12 *2(t), disaggregated by—*

13 (i) *appeals that include a request for a*
14 *hearing;*

15 (ii) *appeals that do not include a re-*
16 *quest for a hearing and do include sub-*
17 *mittal of evidence; and*

18 (iii) *appeals that do not include a re-*
19 *quest for a hearing and do not include sub-*
20 *mittal of evidence.*

21 (F) *With respect to the policy developed and*
22 *implemented under section 7107(e) of such title,*
23 *as amended by section 2(t)—*

24 (i) *the number of cases moved from one*
25 *docket to another pursuant to such policy;*

1 (ii) the average time cases were pend-
2 ing prior to moving from one docket to an-
3 other; and

4 (iii) the average time to adjudicate the
5 cases after so moving.

6 (G) The total number of remands to obtain
7 advisory medical opinions under section 5109(d)
8 of title 38, United States Code, as added by sec-
9 tion 2(j).

10 (H) The average number of days between
11 the date on which the Board remands a claim to
12 obtain an advisory medical opinion under sec-
13 tion 5109(d) of such title, as so added, and the
14 date on which the advisory medical opinion is
15 obtained.

16 (I) The average number of days between the
17 date on which the Board remands a claim to ob-
18 tain an advisory medical opinion under section
19 5109(d) of such title, as so added, and the date
20 on which the agency of original jurisdiction
21 issues a decision taking that advisory opinion
22 into account.

23 (J) The number of appeals that are granted,
24 the number of appeals that are remanded, and

1 *the number of appeals that are denied by the*
2 *Board disaggregated by docket.*

3 *(K) The number of claimants each year that*
4 *take action within the period set forth in section*
5 *5110(a)(2) of such title, as added by section 2(l),*
6 *to protect their effective date under such section*
7 *5110(a)(2), disaggregated by the status of the*
8 *claimants taking the actions, such as whether the*
9 *claimant is represented by a veterans service or-*
10 *ganization, the claimant is represented by an at-*
11 *torney, or the claimant is taking such action pro*
12 *se.*

13 *(L) The total number of times on average*
14 *each claimant files under section 5110(a)(2) of*
15 *such title, as so added, to protect their effective*
16 *date under such section, disaggregated by the*
17 *subparagraph of such section under which they*
18 *file.*

19 *(M) The average duration, from the filing of*
20 *an initial claim until the claim is resolved and*
21 *claimants no longer take any action to protect*
22 *their effective date under section 5110(a)(2) of*
23 *such title, as so added—*

1 (i) of claims under the new appeals
2 system, excluding legacy claims that opt in
3 to the new appeals system; and

4 (ii) of legacy claims that opt in to the
5 new appeals system.

6 (N) How frequently an action taken within
7 one year to protect an effective date under sec-
8 tion 5110(a)(2) of such title, as so added, leads
9 to additional grant of benefits, disaggregated by
10 action taken.

11 (O) The average of how long it takes to com-
12 plete each segment of the claims process while
13 claimants are protecting the effective date under
14 such section, disaggregated by the time waiting
15 for the claimant to take an action and the time
16 waiting for the Secretary to take an action.

17 (P) The number and the average amount of
18 retroactive awards of benefits from the Secretary
19 as a result of protected effective dates under such
20 section, disaggregated by action taken.

21 (Q) The average number of times claimants
22 submit to the Secretary different claims with re-
23 spect to the same condition, such as an initial
24 claim and a supplemental claim.

1 (R) *The number of cases each year in which*
2 *a claimant inappropriately tried to take simul-*
3 *taneous actions, such as filing a supplemental*
4 *claim while a higher-level review is pending,*
5 *what actions the Secretary took in response, and*
6 *how long it took on average to take those actions.*

7 (S) *In the case that the Secretary develops*
8 *and implements a policy under section*
9 *5104C(a)(2)(D) of such title, as amended by sec-*
10 *tion 2(h)(1), the number of actions withdrawn*
11 *and new actions taken pursuant to such policy.*

12 (T) *The number of times the Secretary re-*
13 *ceived evidence relating to an appeal or higher-*
14 *level review at a time not authorized under the*
15 *new appeals system, disaggregated by actions*
16 *taken by the Secretary to deal with the evidence*
17 *and how long on average it took to take those ac-*
18 *tions.*

19 (U) *The number of errors committed by the*
20 *Secretary in carrying out the Secretary's duty to*
21 *assist under section 5103A of title 38, United*
22 *States Code, that were identified by higher-level*
23 *review and by the Board, disaggregated by type*
24 *of error, such as errors relating to private*
25 *records and inadequate examinations, and a*

1 *comparison with errors committed by the Sec-*
2 *retary in carrying out such duty with respect to*
3 *appeals of decisions on legacy claims.*

4 (V) *An assessment of the productivity of em-*
5 *ployees at the regional offices and at the Board,*
6 *disaggregated by level of experience of the em-*
7 *ployees.*

8 (W) *The percentage of cases that are decided*
9 *within the goals established by the Secretary for*
10 *deciding cases, disaggregated by cases that in-*
11 *volve a supplemental claim, cases that involve*
12 *higher-level review, and by docket maintained*
13 *under section 7107(a) of such title, as amended*
14 *by section 2(t), or in the case that the Secretary*
15 *has not established goals for deciding cases, the*
16 *percentage of cases which are decided within one*
17 *year, two years, three years, and more than three*
18 *years, disaggregated by docket.*

19 (X) *Of the cases that involve higher-level re-*
20 *view, the percentage of decisions that are over-*
21 *turned in whole or in part by the higher-level*
22 *adjudicator, that are upheld by the higher-level*
23 *adjudicator, and that are returned for correction*
24 *of an error.*

1 (Y) *The frequency by which the Secretary*
 2 *readjudicates a claim pursuant to section 5108*
 3 *of such title, as amended by section 2(i), and the*
 4 *frequency by which readjudication pursuant to*
 5 *section 5108 of such title, as so amended, results*
 6 *in an award of benefits.*

7 (Z) *In any case in which the Board decides*
 8 *to screen cases for a purpose described in section*
 9 *7107(d) of such title, as amended by section*
 10 *2(t)(1)—*

11 (i) *a description of the way in which*
 12 *the cases are screened and the purposes for*
 13 *which they are screened;*

14 (ii) *a description of the effect such*
 15 *screening has had on—*

16 (I) *the timeliness of the issuance*
 17 *of decisions of the Board; and*

18 (II) *the inventory of cases before*
 19 *the Board; and*

20 (iii) *the type and frequency of develop-*
 21 *ment errors detected through such screening.*

22 (2) *With respect to the processing by the Sec-*
 23 *retary of appeals of decisions on legacy claims, the*
 24 *following:*

1 (A) *The average duration of each segment of*
2 *the appeals process, disaggregated by periods in*
3 *which the Secretary is waiting for a claimant to*
4 *take an action and periods in which the claim-*
5 *ant is waiting for the Secretary to take an ac-*
6 *tion.*

7 (B) *The frequency by which appeals lead to*
8 *additional grant of benefits by the Secretary,*
9 *disaggregated by whether the additional benefits*
10 *are a result of additional evidence added after*
11 *the initial decision.*

12 (C) *The number and average amount of ret-*
13 *roactive awards of benefits resulting from an ap-*
14 *peal.*

15 (D) *The average duration from filing a leg-*
16 *acy claim with the Secretary until all appeals*
17 *and remands relating to such legacy claim are*
18 *completed.*

19 (E) *The average number of times claimants*
20 *submit to the Secretary different claims with re-*
21 *spect to the same condition, such as an initial*
22 *claim, new and material evidence, or a claim for*
23 *an increase in benefits.*

24 (F) *An assessment of the productivity of*
25 *employees at the regional offices and at the*

1 *Board, disaggregated by level of experience of the*
2 *employees.*

3 (G) *The average number of days the dura-*
4 *tion of an appeal is extended because the Sec-*
5 *retary secured or attempted to secure an advi-*
6 *sory medical opinion under section 5109 of title*
7 *38, United States Code, or section 7109 of such*
8 *title (as in effect on the day before the date of*
9 *the enactment of this Act).*

10 (H) *The frequency by which claims are re-*
11 *opened pursuant to section 5108 of such title and*
12 *the frequency by which such reopening results in*
13 *an award of benefits.*

14 (3) *With respect to the processing by the Sec-*
15 *retary of appeals of decisions on legacy claims that*
16 *opt in to the new appeals system, the following:*

17 (A) *The cumulative number of such legacy*
18 *claims.*

19 (B) *The portion of work in the new appeals*
20 *system attributable to appeals of decisions on*
21 *such legacy claims.*

22 (C) *The average period such legacy claims*
23 *were pending before opting in to the new appeals*
24 *system and the average period required to adju-*

1 *dicate such legacy claims on average after opting*
 2 *in—*

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

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

9 *(II) requests for higher-level re-*
 10 *view under section 5104B of such title,*
 11 *as added by section 2(g); and*

12 *(ii) with respect to appeals,*
 13 *disaggregated by docket of the Board main-*
 14 *tained under section 7107 of such title, as*
 15 *amended by section 2(t).*

16 **SEC. 6. DEFINITIONS.**

17 *In this Act:*

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

21 *(2) LEGACY CLAIMS.—The term “legacy claim”*
 22 *means a claim—*

23 *(A) that was submitted to the Secretary of*
 24 *Veterans Affairs for a benefit under a law ad-*
 25 *ministered by the Secretary; and*

1 (B) for which notice of a decision under sec-
2 tion 5104 of title 38, United States Code, was
3 provided by the Secretary before the date set
4 forth in section 2(x).

5 (3) *OPT IN*.—The term “opt in” means, with re-
6 spect to a legacy claim of a claimant, that the claim-
7 ant elects to subject the claim to the new appeals sys-
8 tem pursuant to—

9 (A) section 2(x)(3); or

10 (B) such other mechanism as the Secretary
11 may prescribe for purposes of carrying out this
12 Act and the amendments made by this Act.

13 (4) *NEW APPEALS SYSTEM*.—The term “new ap-
14 peals system” means the set of processes and mecha-
15 nisms by which the Secretary processes, pursuant to
16 the authorities and requirements modified by section
17 2, claims for benefits under laws administered by the
18 Secretary.

Calendar No. 166

115TH CONGRESS
1ST Session

S. 1024

[Report No. 115–126]

A BILL

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

JULY 10, 2017

Reported with an amendment