

115TH CONGRESS  
2D SESSION

# S. 2341

To amend title 38, United States Code, to improve the processing of veterans benefits by the Department of Veterans Affairs, to limit the authority of the Secretary of Veterans Affairs to recover overpayments made by the Department and other amounts owed by veterans to the United States, to improve the due process accorded veterans with respect to such recovery, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2018

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

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## A BILL

To amend title 38, United States Code, to improve the processing of veterans benefits by the Department of Veterans Affairs, to limit the authority of the Secretary of Veterans Affairs to recover overpayments made by the Department and other amounts owed by veterans to the United States, to improve the due process accorded veterans with respect to such recovery, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Veteran Debt Fairness  
3 Act of 2018”.

4 **SEC. 2. IMPROVING PROCESSING OF VETERANS BENEFITS**  
5 **BY DEPARTMENT OF VETERANS AFFAIRS.**

6       (a) NOTIFICATION OF DEBTS INCURRED.—The Sec-  
7 retary of Veterans Affairs shall make such changes to such  
8 information technology systems of the Department of Vet-  
9 erans Affairs, including the eBenefits system or successor  
10 system, as may be necessary so that a person who is enti-  
11 tled to a payment from the Department by virtue of the  
12 person’s participation in a benefits program administered  
13 by the Secretary will receive, at the request of the person,  
14 a notice from the Department (by electronic mail or other  
15 mechanism) whenever such person incurs a debt to the  
16 United States by virtue of such participation.

17       (b) UPDATING DEPENDENT INFORMATION.—The  
18 Secretary shall make such changes to such information  
19 technology systems of the Department, including the  
20 eBenefits system or successor system, as may be necessary  
21 so that whenever the Secretary records in such systems  
22 information about a dependent of a person, the person is  
23 able to review and revise such information.

24       (c) TRACKING OF METRICS.—The Secretary shall  
25 make such changes to such information technology sys-

1 tems of the Department as may be necessary to track the  
2 following:

3 (1) The number and amount of payments made  
4 by the Department to persons as part of a benefits  
5 program administered by the Secretary which result  
6 in the persons incurring a debt to the United States  
7 by virtue of such payments.

8 (2) The average debt to the United States in-  
9 curred by a person by virtue of a payment described  
10 in paragraph (1).

11 (3) The frequency by which applications for re-  
12 lief under section 5302(a) of title 38, United States  
13 Code, are approved and denied.

14 (4) Such other metrics as the Secretary con-  
15 siders appropriate.

16 **SEC. 3. REFORMS RELATING TO RECOVERY BY DEPART-**  
17 **MENT OF VETERANS AFFAIRS OF AMOUNTS**  
18 **OWED BY VETERANS TO THE UNITED STATES.**

19 (a) INDEBTEDNESS OFFSETS.—

20 (1) LIMITATION ON SCOPE OF AUTHORITY.—  
21 Subsection (a) of section 5314 of title 38, United  
22 States Code, is amended—

23 (A) by striking “to subsections (b) and (d)”  
24 of this section” and inserting “to paragraphs

1 (2) through (6) of this subsection, subsections  
 2 (b) and (e) of this section,”; and

3 (B) by adding at the end the following new  
 4 paragraph:

5 “(2) The Secretary may only deduct under paragraph  
 6 (1) an amount of the indebtedness of a veteran, the estate  
 7 of a veteran, or a spouse or child of a veteran who is de-  
 8 ceased if the indebtedness is a result of one or more of  
 9 the following:

10 “(A) An error made by the veteran, estate,  
 11 spouse, or child, as the case may be.

12 “(B) Fraud perpetrated by the veteran, estate,  
 13 spouse, or child, as the case may be.

14 “(C) A misrepresentation made by the veteran,  
 15 estate, spouse, or child, as the case may be.

16 “(3)(A) The Secretary may not deduct under para-  
 17 graph (1) from any payment made under chapter 11 or  
 18 15 of this title more than the lessor of—

19 “(i) 25 percent; or

20 “(ii) such other percent as the Secretary deter-  
 21 mines, pursuant to a request made under subpara-  
 22 graph (B), is the greatest percent that would not  
 23 cause a hardship to the recipient of the payment.

24 “(B) A person whose future payments are to be re-  
 25 duced under paragraph (1) may request, via the adminis-

1 trative process prescribed under subsection (c), the Sec-  
 2 retary make a determination under subparagraph (A)(ii)  
 3 of this paragraph.

4 “(4) The Secretary may not deduct under paragraph  
 5 (1) any amount relating to an indebtedness that was in-  
 6 curred by a veteran more than five years previously.

7 “(5) The Secretary may not deduct under paragraph  
 8 (1) any amount relating to an indebtedness while the ex-  
 9 istence or amount of such indebtedness is being disputed  
 10 under subsection (c).

11 “(6) The Secretary may not deduct under paragraph  
 12 (1) any amount if the Secretary determines that the cost  
 13 that would be incurred by the Department to recover such  
 14 amount would exceed the amount to be recovered.”.

15 (2) DUE PROCESS.—

16 (A) MINIMUM PERIOD FOR NOTICE AND  
 17 SECONDARY REVIEW.—Subsection (b) of such  
 18 section is amended—

19 (i) by amending paragraph (1) to read  
 20 as follows:

21 “(1) has made reasonable efforts to notify such  
 22 person of such person’s right—

23 “(A) to dispute through prescribed admin-  
 24 istrative processes the existence or amount of  
 25 such indebtedness;

1 “(B) to request a waiver of such indebted-  
 2 ness under section 5302 of this title; and

3 “(C) to request the Secretary make a de-  
 4 termination under subsection (a)(3)(A)(ii).”;

5 (ii) in paragraph (2), by striking “;  
 6 and” and inserting a semicolon; and

7 (iii) by striking paragraph (3) and in-  
 8 serting the following new paragraphs:

9 “(3) has notified such person, not later than 90  
 10 days before making any of such deductions—

11 “(A) about the proposed deductions; and

12 “(B) detailed information about the in-  
 13 debtedness, including, in the case of an over-  
 14 payment, an itemized list of each overpayment  
 15 and the specific reason for the overpayment;  
 16 and

17 “(4) in any case in which the Secretary deter-  
 18 mines the amount of indebtedness of a person ex-  
 19 ceeds \$2,500, the Secretary completes a secondary  
 20 review to ensure that the determination is accurate  
 21 and the indebtedness is subject to offset under this  
 22 section.”.

23 (B) ADJUDICATION OF DISPUTES.—

24 (i) IN GENERAL.—Such section is  
 25 amended—

1 (I) by redesignating subsections  
 2 (c) and (d) as subsections (d) and (e);  
 3 and

4 (II) by inserting after subsection  
 5 (b) the following new subsection (c):

6 “(c)(1) The Secretary shall prescribe an administra-  
 7 tive process for—

8 “(A) the dispute of the existence or amount of  
 9 an indebtedness subject to subsection (a); and

10 “(B) making requests under paragraph (3)(B)  
 11 of such subsection.

12 “(2) The Secretary shall ensure that each dispute  
 13 under paragraph (1)(A) is adjudicated not later than 120  
 14 days after the dispute is filed.

15 “(3) The Secretary may not submit to any debt col-  
 16 lector (as defined in section 803 of the Fair Debt Collec-  
 17 tion Practices Act (15 U.S.C. 1692a)) any debt pending  
 18 adjudication under the process prescribed under para-  
 19 graph (1).

20 “(4) Nothing in this subsection shall be construed to  
 21 prohibit a person from seeking relief from a court of com-  
 22 petent jurisdiction.”.

23 (ii) LIMITATIONS ON INTEREST AND  
 24 FEES CHARGED DURING PERIOD OF DIS-

1                   PUTE.—Section 5315 of such title is  
2                   amended—

3                               (I) in subsection (b)(1), in the  
4                               first sentence by striking “or (B)”  
5                               and inserting “(B) for any period dur-  
6                               ing which the existence or amount of  
7                               the indebtedness is being disputed  
8                               under section 5314(c) of this title, or  
9                               (C)”;

10                              (II) in subsection (c)—

11                                       (aa) by inserting “(1)” be-  
12                                       fore “The administrative”; and

13                                       (bb) by adding at the end  
14                                       the following new paragraph:

15               “(2) No administrative costs may be charged under  
16 this section with respect to an indebtedness described in  
17 subsection (a) while the existence or amount of the indebt-  
18 edness is being disputed under section 5314(c) of this  
19 title.”.

20               (3) EFFECTIVE DATE.—This subsection and the  
21               amendments made by this subsection shall take ef-  
22               fect on the date of the enactment of this Act and  
23               shall apply with respect to deductions made under  
24               section 5314 of such title on or after such date.

1 (b) LIMITATION ON AUTHORITY TO SUE TO COL-  
 2 LECT CERTAIN DEBTS.—

3 (1) IN GENERAL.—Section 5316(a) of title 38,  
 4 United States, is amended—

5 (A) in paragraph (1), by striking “(2) and  
 6 (3)” and inserting “(2), (3), and (4)”;

7 (B) by redesignating paragraph (3) as  
 8 paragraph (4); and

9 (C) by inserting after paragraph (2) the  
 10 following new paragraph (3):

11 “(3) No suit may be filed under this section to re-  
 12 cover any indebtedness incurred more than five years pre-  
 13 viously.”.

14 (2) EFFECTIVE DATE.—This subsection and the  
 15 amendments made by this subsection shall take ef-  
 16 fect on the date of the enactment of this Act and  
 17 shall apply with respect to suits filed under section  
 18 5316 of such title on or after such date.

19 (c) REPAIR OF CREDIT.—

20 (1) IN GENERAL.—Chapter 53 of such title is  
 21 amended by adding at the end the following new sec-  
 22 tion:

1 **“§ 5320. Correction of erroneous information sub-**  
2 **mitted to consumer reporting agencies**

3 “(a) CORRECTING ERRORS BY THE DEPARTMENT.—

4 In any case in which the Secretary finds that the Depart-  
5 ment has submitted erroneous information to a consumer  
6 reporting agency about the indebtedness of any person  
7 who has been determined by the Secretary to be indebted  
8 to the United States by virtue of such person’s participa-  
9 tion in a benefits program administered by the Secretary,  
10 the Secretary shall—

11 “(1) instruct the consumer reporting agency to  
12 remove such erroneous information from the con-  
13 sumer report of such person or take such other ac-  
14 tion as may be required to ensure that such erro-  
15 neous information is not included in the report of  
16 such person; and

17 “(2) transmit to the consumer reporting agency  
18 such information as the consumer reporting agency  
19 may require to take such appropriate actions.

20 “(b) CORRECTING ERRORS BY DEBT COLLECTORS.—

21 In any case in which the Secretary finds that a debt col-  
22 lector acting on behalf of the Department has submitted  
23 erroneous information to a consumer reporting agency  
24 about the indebtedness of any person who has been deter-  
25 mined by the Secretary to be indebted to the United States  
26 by virtue of such person’s participation in a benefits pro-

1 gram administered by the Secretary, the Secretary shall  
 2 instruct the debt collector to request the consumer report-  
 3 ing agency remove such erroneous information from the  
 4 consumer report of such person or take such other action  
 5 as may be required to ensure such erroneous information  
 6 is not included in the report of such person.”

7 “(c) NOTICE.—Not later than 60 days after the date  
 8 on which the Secretary issues an instruction under sub-  
 9 section (a)(1) or (b) with respect to a person, the Sec-  
 10 retary shall notify the person that the Secretary issued  
 11 such instruction.

12 “(d) DEFINITIONS.—In this section:

13 “(1) The terms ‘consumer report’ and ‘con-  
 14 sumer reporting agency’ have the meanings given  
 15 such terms in section 603 of the Fair Credit Report-  
 16 ing Act (15 U.S.C. 1681a).

17 “(2) The term ‘debt collector’ has the meaning  
 18 given such term in section 803 of the Fair Debt Col-  
 19 lection Practices Act (15 U.S.C. 1692a).”.

20 (2) CLERICAL AMENDMENT.—The table of sec-  
 21 tions at the beginning of chapter 53 of such title is  
 22 amended by adding at the end the following new  
 23 item:

“5320. Correction of erroneous information submitted to consumer reporting  
 agencies.”.

1 (d) AUDIT.—Not later than 180 days after the date  
2 of the enactment of this Act, the Secretary of Veterans  
3 Affairs shall complete an audit to determine the following:

4 (1) The frequency by which the Department of  
5 Veterans Affairs makes an error that results in a  
6 payment to a person by virtue of such person's par-  
7 ticipation in a benefits program administered by the  
8 Secretary that such person is not entitled to or in  
9 an amount that exceeds the amount to which the  
10 person is entitled.

11 (2) Whether and to what degree vacant posi-  
12 tions in the Veterans Benefits Administration affect  
13 such errors.

14 (e) PLAN.—Not later than 180 days after the date  
15 of the enactment of this Act, the Secretary shall submit  
16 to the Committee on Veterans' Affairs of the Senate and  
17 the Committee on Veterans' Affairs of the House of Rep-  
18 resentatives a plan and description of resource require-  
19 ments necessary to align information technology systems  
20 to ensure that errors described in subsection (d)(1) are  
21 not the result of communication or absence of communica-  
22 tion between information technology systems.

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