

119TH CONGRESS
1ST SESSION

S. _____

To amend title 38, United States Code, to improve 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

Mr. CASSIDY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 38, United States Code, to improve 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 2.0”.

1 **SEC. 2. IMPROVEMENTS TO PROCESSES RELATING TO AP-**
2 **PEALS OF DECISIONS REGARDING CLAIMS**
3 **FOR BENEFITS UNDER THE LAWS ADMINIS-**
4 **TERED BY THE SECRETARY OF VETERANS AF-**
5 **FAIRS.**

6 (a) EVIDENTIARY DOCKET.—Subsection (c) of sec-
7 tion 7113 is amended to read as follows:

8 “(c) CASES WITH NO REQUEST FOR A HEARING AND
9 WITH A REQUEST FOR ADDITIONAL EVIDENCE.—For
10 cases in which a hearing is not requested in the notice
11 of disagreement but an opportunity to submit evidence is
12 requested, the evidentiary record before the Board shall
13 be limited to evidence submitted by the appellant and his
14 or her representative, if any, at any time before the date
15 that is 90 days following receipt of the notice of disagree-
16 ment.”.

17 (b) HEARING DOCKET.—Subsection (b) of such sec-
18 tion is amended to read as follows:

19 “(b) CASES WITH A REQUEST FOR A HEARING.—For
20 cases in which a hearing is requested in the notice of dis-
21 agreement, the evidentiary record before the Board shall
22 be limited to evidence submitted by the appellant and his
23 or her representative, if any, at any time before the date
24 that is 90 days following the Board hearing.”.

25 (c) DOCKET FLEXIBILITY.—Section 7107(e) of such
26 title is amended—

1 (1) by inserting “(1)” before “The Secretary”;

2 and

3 (2) by adding at the end the following new
4 paragraphs:

5 “(2) The Secretary shall develop and implement a
6 policy allowing an appellant to withdraw an appeal in the
7 appellant’s case by filing a supplemental claim to the
8 agency of original jurisdiction at any time without losing
9 continuous pursuit in cases in which—

10 “(A) the appellant has not submitted new evi-
11 dence for the case or the case has not had a Board
12 hearing; and

13 “(B) the case has not been decided by the
14 Board.

15 “(3) The Secretary’s policy developed and imple-
16 mented under paragraph (1) shall allow the appellant to
17 move the appellant’s case from one docket to another
18 docket at any time without losing continuous pursuit in
19 cases in which—

20 “(A) the appellant has not submitted new evi-
21 dence for the case or the case has not had a Board
22 hearing; and

23 “(B) the case has not been decided by the
24 Board.”.

1 **SEC. 3. ELECTRONIC NOTICES BY BOARD OF VETERANS’**
2 **APPEALS OF DECISIONS ON APPEAL.**

3 Section 7104(f) of title 38, United States Code, is
4 amended—

5 (1) in paragraph (1)—

6 (A) by striking “if” and inserting “un-
7 less”; and

8 (B) by inserting “in a manner other than”
9 after “such notice”; and

10 (2) in paragraph (2), by inserting “make or”
11 before “revoke”.

12 **SEC. 4. REQUIREMENTS FOR NOTICES BY BOARD OF VET-**
13 **ERANS’ APPEALS REGARDING DECISIONS OF**
14 **THE BOARD.**

15 Section 7104(d)(1) of title 38, United States Code,
16 is amended by striking “record;” and inserting the fol-
17 lowing: “record, including—

18 “(A) identification of the issues adju-
19 dicated;

20 “(B) a summary of the evidence considered
21 by the Board;

22 “(C) a summary of the applicable laws and
23 regulations;

24 “(D) identification of findings favorable to
25 the claimant;

1 “(E) in the case of a denial, identification
2 of elements not satisfied leading to the denial;

3 “(F) an explanation of how to obtain or
4 access evidence used in making the decision;
5 and

6 “(G) if applicable, identification of the cri-
7 teria that must be satisfied to grant service
8 connection or the next higher level of compensa-
9 tion;”.

10 **SEC. 5. PLAN FOR VETERANS BENEFITS MANAGEMENT SYS-**
11 **TEM AND CASEFLOW INTEGRATION.**

12 (a) REVIEW.—Not later than one year after the date
13 of the enactment of this Act, the Secretary of Veterans
14 Affairs shall complete a review of the electronic systems
15 used to process appeals under chapter 71 of title 38,
16 United States Code.

17 (b) PLAN.—Not later than one year after the date
18 of the enactment of this Act, the Secretary shall submit
19 to the Committee on Veterans’ Affairs of the Senate and
20 the Committee on Veterans’ Affairs of the House of Rep-
21 resentatives a plan to ensure the following:

22 (1) Seamless integration between systems used
23 to process decision at agencies of jurisdiction and
24 the systems used by the Board of Veterans’ Appeals

1 to process appeals for benefits under title 38, United
2 States Code.

3 (2) Life-cycle tracking of appeals of decisions
4 regarding assistance or support services under sec-
5 tion 1720G of title 38, United States Code.

6 **SEC. 6. RECONSIDERATION OF DECISIONS OF VETERANS'**
7 **BOARD OF APPEALS.**

8 Section 7103 of title 38, United States Code, is
9 amended to read as follows:

10 **“§ 7103. Reconsideration; correction of obvious errors**

11 “(a) ORDERS OF THE CHAIRMAN.—(1) The decision
12 of the Board determining a matter under section 7102 of
13 this title is final unless the Chairman orders reconsider-
14 ation of the decision in accordance with paragraph (2).
15 Such an order may be made on the Chairman’s initiative
16 or upon motion of the claimant.

17 “(2)(A) Upon the order of the Chairman for reconsid-
18 eration of the decision in a case, the case shall be re-
19 ferred—

20 “(i) in the case of a matter originally decided
21 by a single member of the Board, to a panel of not
22 less than three members of the Board; or

23 “(ii) in the case of a matter originally decided
24 by a panel of members of the Board, to an enlarged
25 panel of the Board.

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

4 “(C) A panel reconsidering a case under this sub-
5 section shall render its decision after reviewing the entire
6 record before the Board. The decision of the panel shall
7 be made by a majority vote of the members of the panel.
8 The decision of the panel shall constitute the final decision
9 of the Board.

10 “(b) CORRECTION OF OBVIOUS ERRORS.—The
11 Board on its own motion may correct an obvious error
12 in the record, without regard to whether there has been
13 a motion or order for reconsideration.

14 “(c) MOTION OF CLAIMANT.—(1)(A) A claimant may
15 submit to the Board a motion requesting a review of the
16 decision of a member of the Board by a different member
17 or panel of members of the Board.

18 “(B) The Chairman shall approve each request for
19 review under subparagraph (A).

20 “(2) A request for higher-level review by the Board
21 shall be—

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

24 “(B) made within the timeframe given to ap-
25 peal a decision of the Board.

1 “(3) Notice of a decision under this subsection shall
2 be provided to the claimant (and any representative of
3 such claimant) and shall include a general statement—

4 “(A) reflecting whether evidence was not con-
5 sidered pursuant to paragraph (4); and

6 “(B) noting the options available to the claim-
7 ant to have the evidence described in subparagraph
8 (A), if any, considered by the Department.

9 “(4) The evidentiary record before a member of the
10 Board shall be limited to the evidence of record in the
11 Board decision being reviewed.

12 “(5) A reconsideration of a decision under this sub-
13 section shall be de novo.”.

14 **SEC. 7. ORDER OF DECISION OF BOARD OF VETERANS’ AP-**
15 **PEALS.**

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

18 (1) in subsection (a)(4), by striking “in sub-
19 section (b)” and inserting “in subsection (b) or
20 (c)(3)”; and

21 (2) in subsection (c), by adding at the end the
22 following new paragraph:

23 “(3) At the discretion of the member of the Board
24 conducting a hearing, the Board may issue a decision, in
25 whole or in part, during the hearing.”.

1 **SEC. 8. ANNUAL REPORT ON OUTCOMES OF APPEALS.**

2 (a) IN GENERAL.—Subchapter I of chapter 51 of title
3 38, United States Code, is amended by adding at the end
4 the following new section:

5 **“SEC. 5109C. ANNUAL REPORT ON OUTCOMES OF APPEALS.**

6 “(a) IN GENERAL.—Not less frequently than once
7 each year, the Secretary shall submit to Congress and
8 publish on an Internet website of the Department a report
9 on the outcome of appeals, including with respect to sup-
10 plemental review, higher-level review, and options for ap-
11 peals to the Board of Veterans’ Appeals.

12 “(b) DISAGGREGATION OF DATA.—The information
13 reported and published pursuant to subsection (a) shall
14 be disaggregated by the following:

15 “(1) Type of review.

16 “(2) Agency of original jurisdiction.

17 “(3) Nature of issue, such as service connec-
18 tion, disability rating, or effective date.

19 “(4) Body system or diagnostic code.

20 “(5) Outcome, such as affirmed or reversed,
21 benefit awarded, remand for medical opinion, re-
22 mand to obtain records, or remand for other reason.

23 “(c) DEIDENTIFIED.—The Secretary shall insure
24 that all information published under this section is
25 deidentified.”.

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

“5109C. Annual report on outcomes of appeals.”.

5 **SEC. 9. THIRD-PARTY REVIEW OF DEPARTMENT OF VET-**
6 **ERANS AFFAIRS APPEALS PROCESS.**

7 (a) IN GENERAL.—The Secretary of Veterans Affairs
8 shall seek to enter into an agreement with a non-Depart-
9 ment of Veterans Affairs entity that the Secretary deter-
10 mines has knowledge of the appeals process of the Depart-
11 ment of Veterans Affairs and the Federal rules of appel-
12 late procedures to carry out a review of such process.

13 (b) PERIOD FOR ENTERING INTO AGREEMENT.—The
14 Secretary shall seek to enter into the agreement described
15 in subsection (a) before the date that is 180 days after
16 the date of the enactment of this Act.

17 (c) ELEMENTS.—Pursuant to an agreement entered
18 into by the Secretary and an entity under subsection (a),
19 the entity shall conduct the review covered by the agree-
20 ment, including the following:

21 (1) A review of joint motions for remand ap-
22 peals decisions made by the Board of Veterans’ Ap-
23 peals.

24 (2) A review of remands by the Board of deci-
25 sions made by agencies of original jurisdiction.

1 (3) Development of recommendations for legis-
2 lative or administrative action to increase the quality
3 of decisions made by agencies of original jurisdiction
4 and the Board of Veterans Appeals, and reduce the
5 prevalence of remands.

6 **SEC. 10. COMPTROLLER GENERAL OF THE UNITED STATES**

7 **REVIEW OF PRECEDENT SETTING DECISIONS**

8 **OF UNITED STATES COURT OF APPEALS FOR**

9 **VETERANS CLAIMS AND OFFICE OF THE GEN-**

10 **ERAL COUNSEL.**

11 (a) REVIEW.—The Comptroller General of the United
12 States shall conduct a review of the implementation by the
13 Department of Veterans Affairs of precedential decisions
14 issues by the United States Court of Appeals for Veterans
15 Claims or the Office of the General Counsel of the Depart-
16 ment of Veterans Affairs.

17 (b) ELEMENTS.—The review conducted under sub-
18 section (a) shall cover the following:

19 (1) The circumstances in which the Court or
20 Office issued precedential decisions and factors
21 which may limit the ability of the Court or Office to
22 issue such decisions.

23 (2) The process of the Department for pro-
24 viding training and guidance for claims processors

1 and how that process affects compliance with
2 precedential decisions described in subsection (a).

3 (3) Accuracy of claims decisions when applying
4 new precedent.

5 (4) Whether the structure or type of preceden-
6 tial decision affects the implementation by the De-
7 partment.

8 (5) Perspectives of stakeholders with respect to
9 training, guidance, and quality assurance at the De-
10 partment.

11 (6) Such other matters relating to challenges
12 and opportunities for improvement relating to prece-
13 dential decisions as the Comptroller General con-
14 siders appropriate.

15 (c) REPORT.—Not later than two years after the date
16 of the enactment of this Act, the Comptroller General shall
17 submit to the Committee on Veterans' Affairs of the Sen-
18 ate and the Committee on Veterans' Affairs of the House
19 of Representatives a report on the findings of the Comp-
20 troller General with respect to the review conducted under
21 subsection (a).