

114TH CONGRESS  
2D SESSION

# S. 2473

To direct the Secretary of Veterans Affairs to carry out a pilot program to provide veterans the option of using an alternative appeals process to more quickly determine claims for disability compensation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2016

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

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## A BILL

To direct the Secretary of Veterans Affairs to carry out a pilot program to provide veterans the option of using an alternative appeals process to more quickly determine claims for disability compensation, 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 “Express Appeals Act  
5 of 2016”.

1 **SEC. 2. DEPARTMENT OF VETERANS AFFAIRS PILOT PRO-**  
2 **GRAM ON FULLY DEVELOPED APPEALS.**

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

7 (b) ELECTION.—

8 (1) FILING.—In accordance with paragraph  
9 (2), a claimant may elect to file a fully developed ap-  
10 peal under the pilot program under subsection (a) by  
11 filing with the Secretary the following:

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

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

20 (C) A statement of the argument in sup-  
21 port of the claim, if any.

22 (2) TIMING.—A claimant shall make an election  
23 under paragraph (1) as part of the notice of dis-  
24 agreement filed by the claimant in accordance with  
25 paragraph (1)(A).

26 (3) REVERSION.—

1           (A) ELECTED REVERSION.—At any time, a  
2 claimant who makes an election under para-  
3 graph (1) may elect to revert to the standard  
4 appeals process. Such a reversion shall be final.

5           (B) AUTOMATIC REVERSION.—A claimant  
6 described in subparagraph (A), or a claimant  
7 who makes an election under paragraph (1) but  
8 is later determined to be ineligible for the pilot  
9 program under subsection (a), shall revert to  
10 the standard appeals process without any pen-  
11 alty to the claimant other than the loss of the  
12 docket number associated with the fully devel-  
13 oped appeal.

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

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

22                   (i) the pilot program, including the  
23 advantages and disadvantages of the pro-  
24 gram;

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

3 (iii) the limitation on the use of new  
4 evidence described in paragraph (3) of sub-  
5 section (c) and the development of infor-  
6 mation under paragraph (4) of such sub-  
7 section; and

8 (iv) the ability of the claimant to seek  
9 advice and education regarding such proc-  
10 ess from veterans service organizations, at-  
11 torneys, and claims agents recognized  
12 under chapter 59 of title 38, United States  
13 Code.

14 (B) The Secretary shall collaborate, part-  
15 ner with, and give weight to the advice of the  
16 three veterans service organizations with the  
17 most members to publish on the Internet  
18 website of the Department of Veterans Affairs  
19 an online tutorial explaining the advantages and  
20 disadvantages of the pilot program.

21 (c) TREATMENT BY DEPARTMENT AND BOARD.—

22 (1) PROCESS.—Upon the election of a claimant  
23 to file a fully developed appeal pursuant to sub-  
24 section (b)(1), the Secretary shall—

1 (A) not provide the claimant with a state-  
2 ment of the case nor require the claimant to file  
3 a substantive appeal; and

4 (B) transfer jurisdiction over the fully de-  
5 veloped appeal directly to the Board of Vet-  
6 erans' Appeals.

7 (2) DOCKET.—

8 (A) IN GENERAL.—The Board of Veterans'  
9 Appeals shall—

10 (i) maintain fully developed appeals  
11 on a separate docket than standard ap-  
12 peals;

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

17 (iii) except as provided by subpara-  
18 graph (B), decide not more than one fully  
19 developed appeal for each four standard  
20 appeals decided; and

21 (iv) to the extent practicable, decide  
22 each fully developed appeal by the date  
23 that is one year following the date on  
24 which the claimant files the notice of dis-  
25 agreement.

1 (B) ADJUSTMENT.—Beginning one year  
2 after the date on which the pilot program under  
3 subsection (a) commences, the Board may ad-  
4 just the number of standard appeals decided for  
5 each fully developed appeal under subparagraph  
6 (A)(iii) if the Board determines that such ad-  
7 justment is fair for both standard appeals and  
8 fully developed appeals.

9 (3) LIMITATION ON USE OF NEW EVIDENCE.—

10 (A) IN GENERAL.—Except as provided by  
11 subparagraphs (B) and (C)—

12 (i) a claimant may not submit or iden-  
13 tify to the Board of Veterans' Appeals any  
14 new evidence relating to a fully developed  
15 appeal after filing such appeal unless the  
16 claimant reverts to the standard appeals  
17 process pursuant to subsection (b)(3); and

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

23 (B) EVIDENCE GATHERED BY BOARD.—

24 Subparagraph (A) shall not apply to evidence  
25 developed pursuant to paragraphs (4) and (5).

1           The Board shall consider such evidence in the  
2           first instance without consideration by the Vet-  
3           erans Benefits Administration.

4           (C) REPRESENTATIVE OF RECORD.—The  
5           representative of record of a claimant for ap-  
6           peals purposes, if any, shall be provided an op-  
7           portunity to review the fully developed appeal of  
8           the claimant and submit any additional argu-  
9           ments or evidence that the representative deter-  
10          mines necessary during a period specified by  
11          the Board for purposes of this subparagraph.

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

17                (A) in accordance with paragraph (5), take  
18                such actions as may be necessary to develop  
19                such records, opinions, or examinations in ac-  
20                cordance with section 5103A of title 38, United  
21                States Code;

22                (B) retain jurisdiction of the fully devel-  
23                oped appeal without requiring a determination  
24                by the Veterans Benefits Administration based  
25                on such records, opinions, or examinations;

1 (C) ensure the claimant, and the represent-  
2 ative of record of a claimant, if any, receives a  
3 copy of such records, opinions, or examinations;  
4 and

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

11 (5) DEVELOPMENT UNIT.—

12 (A) ESTABLISHMENT.—The Board of Vet-  
13 erans' Appeals shall establish an office to de-  
14 velop Federal records, independent medical  
15 opinions, and new medical examinations pursu-  
16 ant to paragraph (4)(A) that the Board deter-  
17 mines necessary to decide a fully developed ap-  
18 peal.

19 (B) REQUIREMENTS.—The Secretary  
20 shall—

21 (i) ensure that the Veterans Benefits  
22 Administration cooperates with the Board  
23 of Veterans' Appeals in carrying out sub-  
24 paragraph (A); and



1                   (ii) transfer employees of the Veterans  
2                   Benefits Administration who, prior to the  
3                   enactment of this Act, were responsible for  
4                   processing claims remanded by the Board  
5                   of Veterans' Appeals to positions within  
6                   the office of the Board established under  
7                   subparagraph (A) in a number the Sec-  
8                   retary determines sufficient to carry out  
9                   such subparagraph.

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

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

22               (e) REPORTS.—During each year in which the pilot  
23               program under subsection (a) is carried out, the Secretary  
24               shall submit to the Committees on Veterans' Affairs of  
25               the House of Representatives and the Senate a report on

1 the pilot program. The first such report shall be submitted  
2 by not later than 180 days after the date on which the  
3 pilot program commences. Each report shall include the  
4 following:

5 (1) For the period covered by the report—

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

8 (B) the average processing time for each  
9 such appeal, measured by each phase of the ap-  
10 peal, and, if the processing time for appeals ex-  
11 ceed one year, the reasons for such processing  
12 time;

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

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

18 (E) of the number identified in subpara-  
19 graph (D), the number of issues for which evi-  
20 dence was not so developed, listed by the dis-  
21 position of the issue;

22 (F) of the number of fully developed ap-  
23 peals decided by the Board of Veterans' Ap-  
24 peals, the number of cases from each agency of

1 original jurisdiction, listed by the disposition of  
2 the issue;

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

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

8 (I) any reasons for why a claimant was de-  
9 termined to be ineligible to participate in the  
10 pilot program.

11 (2) A review, made in conjunction with veterans  
12 service organizations, of the efforts of the Secretary  
13 to provide clear rating decisions and improve dis-  
14 ability rating notification letters, including with re-  
15 spect to—

16 (A) the opinions of veterans service organi-  
17 zations regarding such efforts; and

18 (B) how the pilot program improves such  
19 efforts.

20 (3) A recommendation for any changes to im-  
21 prove the pilot program.

22 (4) An assessment of the feasibility and advis-  
23 ability of expanding the pilot program.

24 (f) REGULATIONS.—Not later than one day after the  
25 date of the enactment of this Act, the Secretary shall pub-

1 lish interim guidance on the pilot program under sub-  
2 section (a). Not later than 90 days after such date of en-  
3 actment, the Secretary shall prescribe regulations to carry  
4 out such pilot program.

5 (g) DEFINITIONS.—In this section:

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

9 (2) COMPENSATION.—The term “compensa-  
10 tion” has the meaning given that term in section  
11 101 of title 38, United States Code.

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

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

17 (B) considered in accordance with this sec-  
18 tion.

19 (4) STANDARD APPEAL.—The term “standard  
20 appeal” means an appeal of a claim for disability  
21 compensation that is not a fully developed appeal.

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