

VETERANS BENEFITS IMPROVEMENT ACT OF 2023

SEPTEMBER 14, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BOST, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 1530]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1530) to amend title 38, United States Code, to improve the requirement to publish disability benefit questionnaire forms of Department of Veterans Affairs, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	5
Background and Need for Legislation	5
Hearings	9
Subcommittee Consideration	9
Committee Consideration	10
Committee Votes	10
Committee Correspondence	
Committee Oversight Findings	10
Statement of General Performance Goals and Objectives	10
New Budget Authority, Entitlement Authority, and Tax Expenditures	11
Earmarks and Tax and Tariff Benefits	11
Committee Cost Estimate	11
Congressional Budget Office Estimate	11
Federal Mandates Statement	12
Advisory Committee Statement	13
Constitutional Authority Statement	13
Applicability to Legislative Branch	13
Statement on Duplication of Federal Programs	13
Disclosure of Directed Rulemaking	
Section-by-Section Analysis of the Legislation	13
Changes in Existing Law Made by the Bill as Reported	15

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the “Veterans Benefits Improvement Act of 2023”.

SEC. 2. IMPROVEMENT OF PUBLICATION OF DEPARTMENT OF VETERANS AFFAIRS DISABILITY BENEFIT QUESTIONNAIRE FORMS.

Section 5101 of title 38, United States Code, is amended—

(1) in subsection (d)—

(A) in paragraph (1)(A), by inserting “, including (except as provided in paragraph (4)(A)) all disability benefit questionnaire forms available to personnel of the Veterans Health Administration and covered non-Department providers for the completion of examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary” before the semicolon; and

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

“(4)(A) The Secretary may exclude from publication under clauses (i) and (ii) of paragraph (1)(A) any form described in subparagraph (B) of this paragraph that the Secretary determines could not reasonably be completed to a clinically acceptable standard by someone not an employee or a contractor of the Department.

“(B) A form described in this subparagraph is a form that—

“(i) was available or in use at any time after the date of the enactment of the Veterans Benefits Act of 2023; and

“(ii) has not been published under paragraph (1).

“(C) The Secretary shall include on the same internet website as the website on which forms are published under paragraph (1)(A) a list of forms that have been excluded from publication pursuant to subparagraph (A), and for each such form, a justification for the exclusion of the form from publication.”; and

(2) in subsection (e), by adding at the end the following new paragraph:

“(3) The term ‘covered non-Department provider’ means a medical provider who is not an employee of the Department and who provides examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary pursuant to a contract with the Department.”.

SEC. 3. IMPROVEMENT OF PROVISION OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACTORS.

(a) **REPORT ON IMPROVING REIMBURSEMENT FOR TRAVEL RELATING TO MEDICAL DISABILITY EXAMINATIONS.**—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs, after consulting with the Secretary of State and the Commissioner of the Social Security Administration, shall submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a report on the efforts of the Secretary to reimburse veterans for expenses incurred traveling to a facility of the Department or of a covered non-Department provider incident to an examination with respect to the medical disability of the veteran for purposes of benefits under the laws administered by the Secretary, regardless of whether the facility is located inside or outside the United States.

(b) **COMMUNICATION BY NON-DEPARTMENT PROVIDERS PROVIDING MEDICAL DISABILITY EXAMINATIONS WITH INDIVIDUALS AND ORGANIZATIONS DESIGNATED FOR PREPARATION, PRESENTATION, AND PROSECUTION OF CLAIMS.**—Any contract entered into by the Secretary of Veterans Affairs after the date of the enactment of this Act under which a covered non-Department provider agrees to provide examinations with respect to medical disability for applicants for benefits under the laws administered by the Secretary, shall include a requirement that every communication from the covered non-Department provider to such an applicant regarding the scheduling of a covered medical disability examination be contemporaneously transmitted to any person or organization—

(1) designated by the applicant by a power of attorney filed with the Secretary; and

(2) recognized under sections 5902, 5903, and 5904 of title 38, United States Code, for the preparation, presentation, and prosecution of claims.

(c) **DEPARTMENT OF VETERANS AFFAIRS OUTREACH REGARDING CONTACT INFORMATION FOR CONTRACTORS PROVIDING COVERED MEDICAL DISABILITY EXAMINATIONS.**—Not later than 120 days after the date of enactment of this Act, the Secretary of Veterans Affairs, in partnership with veterans service organizations and such other stakeholders as the Secretary considers relevant and appropriate, shall implement an outreach program to provide veterans with the following information:

(1) Contact information for covered non-Department providers that provide examinations with respect to medical disability of applicants for benefits under

laws administered by the Secretary, including the telephone numbers such providers may use to contact veterans.

(2) Notice of the requirement for a veteran to provide personally identifiable information to such a provider when contacted in order to verify the identity of the veteran.

(d) COVERED NON-DEPARTMENT PROVIDER.—In this section, the term “covered non-Department provider” means a medical provider who is not an employee of the Department of Veterans Affairs and who provides examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary of Veterans Affairs pursuant to a contract with the Department.

SEC. 4. REPORT ON SUPPORTING GOVERNMENTAL VETERANS SERVICE OFFICERS WHO PREPARE, PRESENT, AND PROSECUTE BENEFITS CLAIMS BEFORE DEPARTMENT OF VETERANS AFFAIRS.

(a) REPORT.—Not later than one year after the date of the enactment of this Act and after consulting veterans service organizations and such other stakeholders as the Secretary of Veterans Affairs considers relevant and appropriate, the Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the House of Representatives a report on improving the support by the Department of Veterans Affairs of covered governmental veterans service officers.

(b) ELEMENTS.—The report submitted under subsection (a) shall include the following:

(1) An assessment of the feasibility, advisability, and current technical limitations of providing covered governmental veterans service officers enhanced access to certain Department systems to better serve veterans those governmental service officers may not have authorization to represent.

(2) An assessment as to whether the Department would benefit from the establishment or designation of an office or working group within the Department to serve as an intergovernmental liaison between the Department and governmental veterans service officers.

(3) Any other recommendations to improve how the Department monitors, coordinates with, or provides support to covered governmental veterans service officers.

(c) DEFINITIONS.—In this section:

(1) The term “covered governmental veterans service officer” means an employee of a State, county, municipal, or Tribal government—

(A) who is recognized by the Secretary of Veterans Affairs as a representative of a veterans service organization to serve as a veterans service officer; and

(B) whose primary responsibilities include preparing, presenting, and prosecuting before the Department of Veterans Affairs claims for benefits under laws administered by the Secretary.

(2) The term “veterans service organization” means an organization recognized by the Secretary for the representation of veterans under section 5902 of title 38, United States Code.

SEC. 5. BOARD OF VETERANS’ APPEALS INTERNSHIP PROGRAM.

(a) IN GENERAL.—Chapter 71 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 7114. Internship program

“The Secretary shall establish a competitive internship program of the Board for individuals enrolled in the first or second year of law schools accredited by the American Bar Association.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of such title is amended by adding at the end the following new item:

“7114. Internship program.”.

(c) DEADLINE.—The Secretary of Veterans Affairs shall establish the internship program required by section 7114 of such title, as added by subsection (a), not later than one year after the date of the enactment of this Act.

SEC. 6. BENEFITS FOR PARTICIPANTS IN CERTAIN PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall carry out a program to furnish certain benefits to covered participants.

(b) BENEFITS: STUDENT LOAN REPAYMENT; REIMBURSEMENTS.—

(1) IN GENERAL.—Subject to an agreement under paragraph (2), the Secretary shall provide to each covered attorney—

- (A) student loan repayment benefits under section 5379 of title 5, United States Code, in the case of a covered attorney who is eligible for such benefits; and
- (B) reimbursement for the cost of—
 - (i) enrollment in a course designed to prepare an individual for licensure to practice law in a State;
 - (ii) sitting for a bar examination in a State; and
 - (iii) annual dues required to maintain membership in the bar of any State.
- (2) AGREEMENT.—The Secretary shall enter into an agreement with a covered attorney who will receive benefits under paragraph (1). Each such agreement shall specify that—
 - (A) the covered attorney agrees to remain in the service of the Department for a period of not less than three years, unless involuntarily separated; and
 - (B) if separated involuntarily on account of misconduct, or voluntarily, before the end of the period specified in the agreement, the covered attorney shall repay to the United States the amount of any benefits received by the covered participant under paragraph (1).
- (c) PROFESSIONAL DEVELOPMENT ACTIVITIES.—
 - (1) MENTORSHIP.—Not later than 90 days after the date on which an individual becomes a covered participant, the Secretary shall assign the covered participant a mentor who is an employee of the Department who is—
 - (A) to the extent practicable, a managerial employee; and
 - (B) outside the participant's chain of command.
 - (2) ASSIGNMENTS.—At the election of a covered participant who has completed at least two years of service to the Department, the Secretary shall assign such covered participant to:
 - (A) The Office of General Counsel, in a position—
 - (i) that includes full-time legal responsibilities in order to further the professional development of the covered participant; and
 - (ii) for a period of not less than 120 days and not more than 180 days, or longer at the discretion of the Secretary.
 - (B) In the case of a covered participant who has already held a position described in subparagraph (A), an assignment described in clauses (i) and (ii) of such subparagraph with the Board of Veterans' Appeals.
 - (3) OTHER ROTATIONAL ASSIGNMENTS.—The Secretary may provide a covered participant one or more other short-term rotational assignments. Such an assignment shall be for a period of not less than 30 days and not more than 180 days, at the discretion of the Secretary.
- (d) PERIODIC REPORTS.—
 - (1) REPORTS REQUIRED.—Not later than three years after the date on which the Secretary begins to carry out the program under this section, and not less frequently than once every three years thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives regarding such program.
 - (2) ELEMENTS.—Each report submitted under paragraph (1) shall include the following elements:
 - (A) Costs to the United States to provide benefits under subsection (b).
 - (B) The rates of retention of covered participants compared to other employees of the Department.
 - (C) Recommendations of the Secretary regarding legislative or administrative action to improve such program.
- (e) DEFINITIONS.—In this section:
 - (1) The term "covered attorney" means an individual who—
 - (A) is a covered participant;
 - (B) has graduated from a law school accredited by the American Bar Association; and
 - (C) is a member in good standing of the bar of a State.
 - (2) The term "covered participant" means an individual who participates in—
 - (A) the Honors Attorney Program (or successor program) of the Office of General Counsel of the Department of Veterans Affairs; or
 - (B) the Law Clerk Program (or successor program) of the Board of Veterans' Appeals.
 - (3) The term "State" has the meaning given such term in section 101 of title 38, United States Code.

SEC. 7. INCREASE IN MAXIMUM NUMBER OF JUDGES APPOINTED TO UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

Section 7253(a) of title 38, United States Code, is amended by striking “seven” and inserting “nine”.

SEC. 8. REPORT ON IMPROVING ACCESS TO BOARD OF VETERANS’ APPEALS TELEHEARINGS.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on improving access to hearings before the Board of Veterans’ Appeals held by picture and voice transmission.

(b) **CONTENTS.**—The report required by subsection (a) shall include the following:

(1) Recommendations on the feasibility and advisability of reimbursing veterans for expenses incurred for travel from the home of a veteran to the location at which a hearing before the Board of Veterans’ Appeals is held by picture and voice transmission, if the Secretary determines that travel to such location is reasonably necessary for such a hearing.

(2) Recommendations on establishment of pilot programs to assess the feasibility and advisability of using other methods that could improve veteran access to hearings before the Board of Veterans’ Appeals held by picture and voice transmission from a veteran’s home.

(3) Such other recommendations to improve access to hearings before the Board of Veterans’ Appeals held by picture and voice transmission as the Secretary may receive from stakeholders.

PURPOSE AND SUMMARY

H.R. 1530 the “Veterans Benefits Improvement Act” was introduced by Rep. Morgan Luttrell of Texas on March 10, 2023. The bill as amended would improve and clarify publishing requirements for Department of Veterans Affairs (VA) disability benefits questionnaire forms. This bill would also provide clarity to veterans about communications from VA medical disability examination contractors. This bill would require a report on the Department’s support of governmental veterans service officers. The bill as amended includes the text of other bills referred to the committee including:

H.R. 1329, “To amend title 38, United States Code, to provide for an increase in the maximum number of judges who may be appointed to the United States Court of Appeals for Veterans Claims” was introduced by Rep. Keith Self of Texas on March 1, 2023. This bill would increase the number of permanent judges at the U.S. Court of Appeals for Veterans Claims (CAVC or Court) from seven to nine judges.

H.R. 1378, the “Veterans Appeals Backlog Improvement Act” was introduced by Rep. Juan Ciscomani of Arizona on March 7, 2023. This bill would establish an internship program at the Board of Veterans’ Appeals, establish a nine-year pilot program to help with recruiting and retention of qualified attorneys at VA, and would require a report on the status of the program. This bill would also require a report outlining how the Department would improve access for veterans to telehearings in front of the U.S. Board of Veterans’ Appeals.

BACKGROUND AND NEED FOR LEGISLATION

Section 1: Short title

This Act may be cited at the “Veterans Benefits Improvement Act of 2023”.

Section 2: Improvement of publication of Department of Veterans Affairs disability benefit questionnaire forms

Under current law, VA is not required to update the public-facing Disability Benefits Questionnaires (DBQ) on the Department's website for use by a veteran's private provider. DBQs are standardized forms used by VA when performing disability examinations in support of a veteran's claim for disability compensation. These forms collect necessary medical information that VA will use to process a veteran's claim. This section would require VA to publish all DBQ forms that Veterans Health Administration (VHA) and contract examiners have access to except those forms that cannot be reasonably completed to a clinically acceptable standard. This provision would also require the Secretary to list which forms have been excluded from publication. The Committee hopes that by requiring the publication of DBQs on their website, a potential barrier to disability benefits for veterans who choose to use a private provider would be removed.

Section 3: Improvement of provision of medical disability examinations by contractors

This section would establish reporting requirements on the efforts of the Secretary to reimburse veterans for expenses they might have incurred when traveling to a VA facility, or covered VA contract examiner facility, for a disability exam. Medical disability exams are necessary if the veteran's claim file does not contain sufficient competent medical evidence for VA to decide the claim. The veteran will often, (except in some cases where a telehealth exam can be provided), have to travel to a VHA provider or to a non-Department provider's facility to receive a medical disability exam. The cost of travel to a disability exam may be a barrier to veterans attending their exams. The Committee believes that this report would provide information necessary for oversight of the reimbursement efforts of the Secretary.

This provision would require non-Department providers who provide disability exams to simultaneously transmit the scheduling of a veteran's exam to the veteran and to the individual designated power of attorney for that veteran. Veterans have raised concerns that they often miss their disability exams because they were not notified in a timely manner. The Committee believes that requiring non-Department providers to send the scheduling notice to the power of attorney would provide another source of information for the veteran to ensure that they are able to show up to their disability exam.

This provision would require VA to conduct an outreach program to inform veterans that they may be asked to provide personally identifiable information to a provider in order to verify their identity. This provision would also provide the contact information of the non-Department providers, to include the phone numbers the non-Department provider might use to contact the veteran in regard to their disability exam. By providing veterans with this information, they would be better prepared to respond to the non-Department provider who is attempting to contact the veteran about their exam instead of ignoring a call from an unknown caller. Additionally, this provision may preempt the veteran's reluctance to provide personally identifiable information if the veteran is notified

prior to the call from the provider. The Committee believes that the outreach program in this provision would provide greater transparency and cooperation between VA and the veteran.

Section 4: Report on supporting governmental Veterans Service officers who prepare, present, and prosecute benefits claims before Department of Veterans Affairs

Governmental veterans service officers are employees of Veterans Service Organizations (VSO) who are recognized by the Secretary to prepare, present, and prosecute disability benefits claims before VA. These officers are employees of a State, county, municipal, or Tribal government. This section would establish reporting requirements that would include assessments about the feasibility of providing government veterans service officers with access to certain systems, as well as an assessment on how the government would benefit from the establishment of a working group between VA and these governmental veterans service officers. The Committee believes that this provision would provide necessary insight into how improving veterans service officers' access to VA systems would improve information and transparency between VA, VSOs, and veterans. The Committee believes that this provision would allow VA and Congress to have greater oversight of a major component of the VA disability claims process.

Section 5: Board of Veterans' Appeals internship program

The U.S. Board of Veterans' Appeals (BVA) is a VA administrative appellate board under the Office of the Secretary that reviews certain decisions from Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), and National Cemetery Administration (NCA). The Board is comprised of administrative Veteran's Law Judges (VLJ's) who decide appeals from claimants who feel their claim was wrongly decided by VA administrations. These judges are selected by the Secretary and appointed by the President, but are not Senate confirmed. Additionally, line attorneys provide case support to VLJ's by researching the case and preparing draft decisions.

The VA Office of General Counsel ensures that the VA responsibly and legally executes the laws, regulations, and policies that fall under the Secretary's jurisdiction. At the end of Fiscal Year (FY)22, there were roughly 209,535 pending appeals at BVA. The Board and OGC are facing hiring and retention issues, similar to VBA and VHA. Additionally, after the passage of the "Honoring our PACT Act" (P.L. 117-168) the number of pending appeals is expected to rise. This provision would help improve VA's ability to hire and retain qualified attorneys by providing internship opportunities at the Board for first or second-year law students. This provision would provide incentives for qualified attorneys to remain at the Department after the internship has ended. The Committee believes that this provision would assist VA in their hiring and improve retention of qualified attorneys at the Board. Having ample qualified attorneys on staff would contribute to the goal of working down the backlog of pending appeals.

Section 6: Benefits for participants in certain programs of the Department of Veterans Affairs

This section would provide the Secretary with the ability to offer participants of the internship program student loan repayment benefits and reimbursement for the cost of preparation courses for the bar exam and bar exam fees. If participants receive these benefits, they must enter into an agreement with the Secretary to remain in service to the Department for no less than 3 years. This provision would offer mentorship opportunities and varied assignments within the Department at the Board and at OGC. The Committee believes this would contribute to hiring incentives that the Secretary can offer to the lawyers participating in the honors program. VA already reimburses these fees for attorneys within the Office of General Counsel, thus this provision would provide parity for participants of the internship program. This provision requires a report that would include information about the Board's retention abilities, recommendations on further action, and the cost to the US. The Committee believes that this report would provide helpful insight on the implementation and effectiveness of the program.

Section 7: Increase in maximum number of judges appointed to the United States Court of Appeals for Veterans claims

The Court was established in 1988 under the Veterans' Judicial Review Act (P.L. 100-687) and signed into law by President Reagan to review decisions made by the Board when a claimant feels the Board made an error in their decision. The Court is an independent court outside of VA. Under current law, the Court is authorized to have seven permanent judges and two additional temporary judges. The temporary expansion is authorized until 2026. This provision would expand the size of the court from seven permanent judges to nine permanent judges. The Court would still maintain the temporary two additional judges until 2026. These judges are appointed for 15-year terms and can be optionally recalled for further service after retirement as a recall-eligible Senior Judge. In FY22, the Court recalled four retired judges to assist with the substantial and sustained workload. This provision is a request from the Court, and the Committee believes that they will need the additional judges to prepare for the influx of appeals that will come with the claims from the PACT Act. According to the Court's FY22 Annual Report,¹ they completed 15,136 total dispositions. The Committee that believes that the authorization for the two additional permanent judges is necessary for the Court to manage their workload based on the projections that the production of final decisions by the Board will continue to grow.

Section 8: Report on improving access to Board of Veterans' Appeals telehearings

The Tele-hearing Modernization Act (P.L. 116-137), signed into law in 2020, permitted the Board to conduct tele-hearings at a location selected by the veteran. Previously, the Board was authorized to conduct hearings via videoconferences at local VA facilities. This law gave the veteran more flexibility and accessibility in appearing before the Board. This law required a one-time report that would

¹ FY2022AnnualReport.pdf (cavc.gov).

provide information to Congress on the collaboration, IT-modernization requests, and information on outreach to veterans and stakeholders.

The report that would be required in this provision would include information such as feasibility for reimbursing veterans for travel to the location of their tele-hearing if it is outside the veteran's home and other recommendations to improve veterans' access to tele-hearings in front of the Board of veterans appeals. These tele-hearings increase access to the Board for veterans who are unable to travel to a VA facility or to the Board for their hearing. This option was particularly useful during the COVID-19 pandemic so the Board could continue to hold hearings. The Committee hopes that this report would provide necessary information on improving the access for veterans to tele-hearings.

HEARINGS

On March 29, 2023, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on H.R. 1329, H.R. 1378, H.R. 1530, and other bills pending before the subcommittee.

The following witnesses testified:

The Honorable Jack Bergman, U.S. House of Representatives, 1st District, Michigan; The Honorable Juan Ciscomani, U.S. House of Representatives, 6th District, Arizona; The Honorable Mike Levin, U.S. House of Representatives, 49th District, California; The Honorable Morgan Luttrell, U.S. House of Representatives, 8th District, Texas; The Honorable Chris Pappas, U.S. House of Representatives, 1st District, New Hampshire; The Honorable Keith Self, U.S. House of Representatives, 3rd District, Texas; Mr. Kevin J. Friel, Deputy Director of the Pension and Fiduciary Service, U.S. Department of Veterans Affairs, who was accompanied by Ms. Cheryl Rawls, Executive Director, Outreach, Transition, and Economic Development, Department of Veterans Affairs and Ms. Christa A. Shriber, Deputy Chief Counsel, U.S. Department of Veterans Affairs; Ms. Kristina J. Keenan, Deputy Director, Veterans of Foreign Wars of the United States; Mr. Shane Liermann, Deputy National Legislative Director, Disabled American Veterans; Mr. Lawrence Montreuil, National Legislative Division Director, The American Legion; and Lieutenant Colonel William Taylor (Ret.), Chief Operating Officer, Veterans Guardian.

A statement for the record was submitted by:

Gold Star Wives of America, National Organization of Veterans' Advocates, Inc., Tragedy Assistance Program for Survivors, U.S. Court of Appeals for Veterans Claims, and The Honorable Michael Waltz, U.S. House of Representatives, 6th District, Florida.

SUBCOMMITTEE CONSIDERATION

On April 19, 2023, the Subcommittee of Disability Assistance and Memorial Affairs held a markup on H.R. 1530.

An amendment in the nature of a substitute to H.R. 1329 offered by Rep. Luttrell was adopted by voice vote and the bill

was ordered favorably forwarded to the full Committee on Veterans Affairs. The amendment in the nature of would extend current rates for VA home loan funding fees to pay for cost of this bill.

An amendment to H.R. 1378 offered by Rep. McGarvey was adopted by voice vote and the bill was ordered favorably forwarded to the full committee. The amendment would allow eligible participants in the internship program to be eligible for student loan repayment and certain reimbursement benefits.

An amendment in the nature of a substitute to H.R. 1530 offered by Rep. Luttrell was adopted by voice vote and the bill was ordered favorably forwarded to the full Committee on Veterans Affairs. The amendment in the nature of would make technical changes to the base text to clarify the intent of the bill.

COMMITTEE CONSIDERATION

On April 28, 2023, the full Committee met in open markup session, a quorum being present, and ordered H.R. 1530, as amended, to be reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendments were considered:

An amendment in the nature of a substitute offered by Chairman Bost that included the text of H.R. 1530, adopted by the Subcommittee on Disability Assistance and Memorial Affairs, and added the text of the following bills: H.R. 1378, as amended, and H.R. 1329. The amendment in the nature of substitute, as amended, was approved by voice vote.

A motion by Representative Takano to report H.R. 1530, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 1530, as amended, reported to the House. A motion by Representative Mark Takano of California to report H.R. 1530, as amended, favorably to the House of Representatives was adopted by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives of H.R. 1530, as amended, are to provide improvements to the veterans benefits process by supporting the Department and providing clarity in the process for the veterans.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1530, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1530, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1530, as amended, provided by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 1530, Veterans Benefits Improvement Act of 2023			
As ordered reported by the House Committee on Veterans' Affairs on April 28, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	6	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1530 would increase the number of judges on the Court of Appeals for Veterans' Claims (CAVC), provide certain benefits to recent law school graduates hired by the Department of Veterans' Affairs (VA), expand internship opportunities at VA, and require several reports and studies. In total, those changes would cost \$6 million over the 2023–2028 period. Such spending would be subject to the availability of appropriated funds.

The CAVC has jurisdiction over appeals relating to veterans' benefits when veterans believe that VA's final decisions are incorrect. Under current law, the court is authorized to have up to seven permanent judges; it has temporary authority for two additional judges through the end of 2025. Section 7 would permanently authorize the court to seat up to nine judges, an increase of two judges, beginning in 2026. Using information on salaries for federal judges and their supporting staff, CBO estimates that adding two additional judges to the CAVC on a permanent basis would cost \$6 million over the 2023–2028 period.

In addition, the bill would require VA to establish a program to reimburse the costs of state bar exam preparation and annual bar dues for recent law graduates who commit to a three-year service agreement with the department. VA hires recent law school graduates on a temporary basis under programs that allow them to convert to permanent positions upon becoming fully licensed to practice law. Because VA has hired a small number of people under those programs in recent years, CBO estimates that reimbursing employees for bar preparation courses and annual bar dues would increase costs by less than \$500,000 over the 2023–2028 period.

Several other sections of the bill would require VA to submit reports and studies to the Congress and to provide additional information to veterans and their representatives. Based on the costs of similar activities, CBO estimates that satisfying those requirements would increase costs by insignificant amounts.

The bill also would require VA to establish an internship program for first-year and second-year law students, and to help recent law school graduates repay their student loans. The department is satisfying both of those requirements under current law, thus implementing those provisions would not affect the federal budget.

The costs of the legislation, detailed in Table 1, fall within budget function 700 (veterans benefits and services).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 1530

	By fiscal year, millions of dollars—						
	2023	2024	2025	2026	2027	2028	2023– 2028
Estimated Authorization	*	*	*	2	2	2	6
Estimated Outlays	*	*	*	2	2	2	6

** = between zero and \$500,000.

The CBO staff contact for this estimate is Logan Smith. The estimate was reviewed by Chad Chirico, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1530, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1530, as amended.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 1530, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1530, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 1530, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of P.L. 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill would establish the short title of the bill as "Veterans Benefits Improvement Act of 2023".

Section 2. Improvement of publication of department of veterans affairs disability benefit questionnaire forms

Section two of the bill would amend section 5101 of title 38 United States Code (U.S.C.) by clarifying that the forms published on VA's website must include all disability benefit questionnaire forms that are available to Veterans Health Administration employees and covered non-Department providers which can be used in disability exams for the purposes of applying for veterans' benefits.

This section would allow the Secretary to exclude certain forms that could not be reasonably completed to a clinically acceptable standard by someone not employed or contracted by VA.

This section would require the Secretary to publish a list of the forms which were excluded from publication as well as a justification for the exclusion from publication.

This section would define "covered non-Department provider".

Section 3. Improvement of provision of medical disability examinations by contractors

Section three of the bill would require the Secretary to submit, in consultation with the Secretary of State and the Commissioner of the Social Security Administration, a report no later than one year after enactment of this bill detailing the efforts of the Secretary in providing reimbursements to veterans who had to travel to a VA facility or a non-Department provider for a medical disability examination for their disability claim, regardless of whether the facility is located in or outside of the U.S.

This section would require the Secretary, after the date of enactment of this bill, to include a requirement in all contracts with non-Department providers that every communication regarding scheduling a disability exam between the provider and the applicant should simultaneously be sent to the person or organization designated power of attorney or recognized in the Code to prepare, present, and prosecute the applicants claim.

This section would require the Secretary to implement an outreach program no later than 120 days after enactment of this bill which would provide veterans with the following information: (1) contact information for covered non-Department providers that provide medical disability examinations including the telephone numbers such providers may use to contact veterans; and (2) a notice of the requirement for a veteran to provide personally identifiable information to such a provider when contacted in order to verify the identity of the veteran.

Section 4. Report on supporting governmental veterans service officers who prepare, present, and prosecute benefits claims before Department of Veterans Affairs

Section four of the bill would require the Secretary to submit a report no later than one year after enactment of this bill which would include the following: (1) An assessment of the feasibility, advisability, and current technical limitations of providing covered governmental veterans service officers enhanced access to certain Department systems to better serve veterans those governmental service officers may not have authorization to represent; (2) An assessment as to whether the Department would benefit from the establishment or designation of an office or working group within the Department to serve as an intergovernmental liaison between the Department and governmental veterans service officers; and (3) Any other recommendations to improve how the Department monitors, coordinates with, or provides support to covered governmental veterans service officers.

This section would define for the purposes of this section: covered governmental veterans service officers and veterans service organizations.

Section 5. Board of Veterans' Appeals internship program

Section five of the bill would amend chapter 71 of title 38 U.S.C. by inserting after section 7113 a new section which would require the Secretary to establish an internship program no later than one year after enactment of the bill at the Board for first- or second-year law students.

Section 6. Benefits for participants in certain programs of the Department of Veterans Affairs

Section six of the bill would require the Secretary, no later than one year after enactment, to carry out a program which would provide student loan repayment benefits and reimbursement for preparation courses and bar exam fees if the attorney agrees to remain employed by the Department for no less than three years.

This section would require the Secretary to assign covered participants a mentor, a full-time position no longer than six months in the Office of General Counsel or at the Board. The Secretary could also provide a short-term rotational assignment to the covered participant.

This section would require the Secretary to submit a report no later than three years after the date when the Secretary begins the program and at least once every three years after which would include the following: (A) costs to the U.S. to provide benefits under subsection (b); (B) the rates of retention of covered participants compared to other employees of the Department; and (C) recommendations of the Secretary regarding legislative or administrative action to improve such program.

This section would define: covered attorney, covered participant, and State.

Section 7. Increase in maximum number of judges appointed to United States Court of Appeals for veterans claims

Section seven of the bill would amend section 7253(a) of title 38 U.S.C. to authorize two additional permanent judges at the Court.

Section 8. Report on improving access to Board of Veterans' Appeals telehearings

Section eight of the bill would require the Secretary to submit a report no later than 180 days after enactment of this bill which would include the following: (1) recommendations on the feasibility and advisability of reimbursing veterans for expenses incurred for travel from the home of a veteran to the location at which a hearing before the Board is held by picture and voice transmission, if the Secretary determines that travel to such location is reasonably necessary; (2) recommendations on establishment of pilot programs to assess the feasibility and advisability of using other methods that could improve veteran access to hearings before the Board held by picture and voice transmission from a veteran's home; and (3) other recommendations from stakeholders to improve access to hearings before the BVA held by picture and voice transmission.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

* * * * *

SUBCHAPTER I—CLAIMS

* * * * *

§ 5101. Claims and forms

(a)(1)(A) Except as provided in subparagraph (B), a specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by section 5105 of this title) must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary.

(B)(i) The Secretary may pay benefits under chapters 13 and 15 and sections 2303, 2307, and 5121 of this title to a survivor of a veteran who has not filed a formal claim if the Secretary determines that the record contains sufficient evidence to establish the entitlement of the survivor to such benefits.

(ii) For purposes of this subparagraph and section 5110 of this title, the earlier of the following dates shall be treated as the date of the receipt of the survivor's application for benefits described in clause (i):

(I) The date on which the survivor of a veteran (or the representative of such a survivor) notifies the Secretary of the death of the veteran through a death certificate or other relevant evidence that establishes entitlement to survivors' benefits identified in clause (i).

(II) The head of any other department or agency of the Federal Government notifies the Secretary of the death of the veteran.

(iii) In notifying the Secretary of the death of a veteran as described in clause (ii)(I), the survivor (or the representative of such a survivor) may submit to the Secretary additional documents relating to such death without being required to file a formal claim.

(2) If an individual has not attained the age of 18 years, is mentally incompetent, or is physically unable to sign a form, a form filed under paragraph (1) for the individual may be signed by a

court-appointed representative, a person who is responsible for the care of the individual, including a spouse or other relative, or an attorney in fact or agent authorized to act on behalf of the individual under a durable power of attorney. If the individual is in the care of an institution, the manager or principal officer of the institution may sign the form.

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation shall also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension shall be considered to be a claim for death compensation (or dependency and indemnity compensation) and accrued benefits.

(2) A claim by a parent for compensation or dependency and indemnity compensation shall also be considered to be a claim for accrued benefits.

(c)(1) Any person who applies for, signs a form on behalf of an individual to apply for, or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person, or TIN in the case that the person is not an individual, and the social security number of any claimant, dependent, or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number or TIN required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number or TIN.

(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

(d)(1) The Secretary shall publish in a central location on the internet website of the Department—

(A) the disability benefit questionnaire forms of the Department for the submittal of evidence from non-Department medical providers regarding a disability of a claimant, including any form or process that replaces any such disability benefit questionnaire form, *including (except as provided in paragraph (4)(A)) all disability benefit questionnaire forms available to personnel of the Veterans Health Administration and covered non-Department providers for the completion of examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary*; and

(B) details about the process used by the Department for submittal of evidence described in subparagraph (A).

(2) Subject to section 6103 of this title, if the Secretary updates a form described in paragraph (1)(A), the Secretary shall—

(A) accept the previous version of the form filed by a claimant if—

- (i) the claimant provided to the non-Department medical provider the previous version of the form before the date on which the updated version of the form was made available; and
- (ii) the claimant files the previous version of the form during the one-year period following the date the form was completed by the non-Department medical provider;
- (B) request from the claimant (or from a non-Department medical provider if the claimant has authorized the provider to share health information with the Secretary) any other information that the updated version of the form requires; and
- (C) apply the laws and regulations required to adjudicate the claim as if the claimant filed the updated version of the form.
- (3) The Secretary may waive any interagency approval process required to approve a modification to a disability benefit questionnaire form if such requirement only applies by reason of the forms being made public.
- (4)(A) *The Secretary may exclude from publication under clauses (i) and (ii) of paragraph (1)(A) any form described in subparagraph (B) of this paragraph that the Secretary determines could not reasonably be completed to a clinically acceptable standard by someone not an employee or a contractor of the Department.*
- (B) *A form described in this subparagraph is a form that—*
 - (i) *was available or in use at any time after the date of the enactment of the Veterans Benefits Act of 2023; and*
 - (ii) *has not been published under paragraph (1).*
- (C) *The Secretary shall include on the same internet website as the website on which forms are published under paragraph (1)(A) a list of forms that have been excluded from publication pursuant to subparagraph (A), and for each such form, a justification for the exclusion of the form from publication.*
- (e) In this section:
 - (1) The term “mentally incompetent” with respect to an individual means that the individual lacks the mental capacity—
 - (A) to provide substantially accurate information needed to complete a form; or
 - (B) to certify that the statements made on a form are true and complete.
 - (2) The term “TIN” has the meaning given the term in section 7701(a)(41) of the Internal Revenue Code of 1986.
 - (3) *The term “covered non-Department provider” means a medical provider who is not an employee of the Department and who provides examinations with respect to medical disability of applicants for benefits under laws administered by the Secretary pursuant to a contract with the Department.*

* * * * *

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

* * * * *

CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.

7101. Composition of Board of Veterans' Appeals.

* * * * *

7114. *Internship program.*

* * * * *

§ 7114. *Internship program*

The Secretary shall establish a competitive internship program of the Board for individuals enrolled in the first or second year of law schools accredited by the American Bar Association.

* * * * *

CHAPTER 72—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

* * * * *

SUBCHAPTER I—ORGANIZATION AND JURISDICTION

* * * * *

§ 7253. **Composition**

(a) COMPOSITION.—The Court of Appeals for Veterans Claims is composed of at least three and not more than **[seven]** *nine* judges, one of whom shall serve as chief judge in accordance with subsection (d).

(b) APPOINTMENT.—The judges of the Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. A person may not be appointed to the Court who is not a member in good standing of the bar of a Federal court or of the highest court of a State. Not more than the number equal to the next whole number greater than one-half of the number of judges of the Court may be members of the same political party.

(c) TERM OF OFFICE.—The term of office of the judges of the Court of Appeals for Veterans Claims shall be 15 years. A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.

(d) CHIEF JUDGE.—(1) The chief judge of the Court is the head of the Court. The chief judge of the Court shall be the judge of the Court in regular active service who is senior in commission among the judges of the Court who—

- (A) have served for one or more years as judges of the Court;
- (B) have at least 3 years remaining in term of office; and
- (C) have not previously served as chief judge.

(2)(A) In any case in which there is no judge of the Court in regular active service who meets the requirements under paragraph (1), the judge of the Court in regular active service who is senior in commission and meets subparagraph (A) or (B) and subparagraph (C) of paragraph (1) shall act as the chief judge.

(B) In any case under subparagraph (A) of this paragraph in which there is no judge of the Court in regular active service who meets subparagraph (A) or (B) and subparagraph (C) of paragraph (1), the judge of the Court in regular active service who is senior in commission and meets subparagraph (C) shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the Court shall serve as the chief judge under paragraph (1) for a term of five years or until the judge becomes age 70, whichever occurs first. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, that judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of the term prescribed by paragraph (3) if—

(i) the chief judge leaves regular active service as a judge of the Court; or

(ii) the chief judge notifies the other judges of the Court in writing that such judge desires to be relieved of the duties of chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform the duties of chief judge, those duties shall be performed by the judge of the Court in active service who is present, able and qualified to act, and is next in precedence.

(6) Judges who have the same seniority in commission shall be eligible for service as chief judge in accordance with their relative precedence.

(e) SALARY.—Each judge of the Court shall receive a salary at the same rate as is received by judges of the United States district courts.

(f) REMOVAL.—(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, engaging in the practice of law, or violating section 7255(c) of this title. A judge of the Court may not be removed from office by the President on any other ground.

(2) Before a judge may be removed from office under this subsection, the judge shall be provided with a full specification of the reasons for the removal and an opportunity to be heard.

(g) RULES.—(1) The Court shall prescribe rules, consistent with the provisions of chapter 16 of title 28, establishing procedures for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under such chapter.

(2) The provisions of sections 354(b) through 360 of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a

determination pursuant to section 354(b) or 355 of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

(B) The Court shall have the power provided under section 361 of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.

(h) TEMPORARY EXPANSION OF COURT.—(1) During the period from January 1, 2002, through August 15, 2005, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2)(A) Of the two additional judges authorized by this subsection—

(i) only one may be appointed pursuant to a nomination made in 2002; and

(ii) only one may be appointed pursuant to a nomination made in 2003.

(B) If a judge is not appointed under this subsection pursuant to a nomination made in 2002, a judge may be appointed under this subsection pursuant to a nomination made in 2004. If a judge is not appointed under this subsection pursuant to a nomination made in 2003, a judge may be appointed under this subsection pursuant to a nomination made in 2004. In either case, such an appointment may be made only pursuant to a nomination made before October 1, 2004.

(3) The term of office and the eligibility for retirement of a judge appointed under this subsection, other than a judge described in paragraph (4), are governed by the provisions of section 1012 of the Court of Appeals for Veterans Claims Amendments of 1999 (title X of Public Law 106–117; 113 Stat. 1590; 38 U.S.C. 7296 note) if the judge is one of the first two judges appointed to the Court after November 30, 1999.

(4) A judge of the Court as of December 27, 2001, who was appointed to the Court before January 1, 1991, may accept appointment as a judge of the Court under this subsection notwithstanding that the term of office of the judge on the Court has not yet expired under this section. The term of office of an incumbent judge who receives an appointment as described in the preceding sentence shall be 15 years, which includes any period remaining in the unexpired term of the judge. Any service following an appointment under this subsection shall be treated as though served as part of the original term of office of that judge on the Court.

(5) Notwithstanding paragraph (1), an appointment may not be made to the Court if the appointment would result in there being more than seven judges on the Court who were appointed after January 1, 1997. For the purposes of this paragraph, a judge serving in recall status under section 7257 of this title shall be disregarded in counting the number of judges appointed to the Court after such date.

(i) ADDITIONAL TEMPORARY EXPANSION OF COURT.—(1) Subject to paragraph (2), effective as of December 31, 2009, the authorized

number of judges of the Court specified in subsection (a) is increased by two.

(2) Effective as of January 1, 2026, an appointment may not be made to the Court if the appointment would result in there being more judges of the Court than the authorized number of judges of the Court specified in subsection (a).

* * * * *

