

REVIEW EVERY VETERANS CLAIM ACT OF 2023

SEPTEMBER 10, 2024.—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. 5890]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5890) to amend title 38, United States Code, to limit the authority of the Secretary of Veterans Affairs to deny the claim of a veteran for benefits under the laws administered by such Secretary on the sole basis that such veteran failed to appear for a medical examination associated with such claim, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Amendment .....	2
Purpose and Summary .....	3
Background and Need for Legislation .....	3
Hearings .....	7
Subcommittee Consideration .....	8
Committee Consideration .....	8
Committee Votes .....	8
Committee Oversight Findings .....	8
Statement of General Performance Goals and Objectives .....	8
Earmarks and Tax and Tariff Benefits .....	9
Committee Cost Estimate .....	9
Budget Authority and Congressional Budget Office Estimate .....	9
Federal Mandates Statement .....	13
Advisory Committee Statement .....	14
Applicability to Legislative Branch .....	14
Statement on Duplication of Federal Programs .....	14
Section-by-Section Analysis of the Legislation .....	14
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.**

This Act may be cited as the “Review Every Veterans Claim Act of 2023”.

**SEC. 2. PROHIBITION ON DENIAL OF CLAIMS FOR BENEFITS UNDER LAWS ADMINISTERED BY SECRETARY OF VETERANS AFFAIRS ON SOLE BASIS THAT VETERAN FAILED TO APPEAR FOR CERTAIN MEDICAL EXAMINATION.**

Subsection (d) of section 5103A of title 38, United States Code, is amended—

(1) in the heading, by striking “COMPENSATION CLAIMS” and inserting “CLAIMS FOR BENEFITS”;

(2) in paragraph (2), by striking “treat an examination or opinion as being necessary to make a decision on a claim for purposes of” and inserting “provide for a medical examination or obtain a medical opinion under”; and

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

“(3) If a veteran fails to appear for a medical examination provided by the Secretary in conjunction with a claim for a benefit under a law administered by the Secretary, the Secretary may not deny such claim on the sole basis that such veteran failed to appear for such medical examination.”.

**SEC. 3. BOARD OF VETERANS’ APPEALS: JURISDICTION; ELEMENTS OF DECISIONS.**

(a) JURISDICTION.—Section 7104 of title 38, United States Code, is amended, in subsection (a)—

(1) by inserting “(1)” before “All questions”; and

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

“(2) The Board shall determine, in the first instance, whether the Board has jurisdiction regarding a matter.

“(3) If the Board, on its own initiative, raises a question of a potential jurisdictional defect, the Board shall notify the parties and allow the parties an opportunity to respond.”.

(b) ELEMENTS OF DECISIONS.—Subsection (d) of such section is amended as follows:

(1) In paragraph (2)—

(A) in subparagraphs (A) and (B), by striking “; and” both places it appears and inserting a semicolon;

(B) by redesignating subparagraph (B), as amended, as subparagraph (C); and

(C) by inserting, after subparagraph (A), the following new subparagraph (B):

“(B) if such evidence was not considered as described in subparagraph (A), identifying the time when such evidence was received and the provision of section 7113 of this title that establishes that such evidence may not be received at such time; and”.

(2) By redesignating paragraph (3) as paragraph (4).

(3) By inserting, after paragraph (2), the following new paragraph (3):

“(3) the written determination of the Board whether the notice of disagreement was adequate and timely filed under section 7105 of this title; and”.

(c) CONFORMING AMENDMENT.—Section 7105 of such title is amended by striking subparagraph (C) of paragraph (1) of subsection (b).

**SEC. 4. BOARD OF VETERANS’ APPEALS PUBLICATION OF DATES OF DOCKET ACTIVITY.**

Section 7107 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(f) PUBLICATION OF EXPECTED ACTIONS.—(1) On a weekly basis, for each docket, the Board shall publish, on a website of the Department, notice of the docket dates of the cases assigned to a Board member for a decision for that week.

“(2) Each notice published under paragraph (1) shall include a statement that an assignment described in such paragraph does not require the Board to issue a decision regarding the case during such week.

“(3) Paragraph (1) shall not apply to a case—

“(A) that has been advanced under subsection (b); or

“(B) remanded by the United States Court of Appeals for Veterans Claims.”.

**SEC. 5. MODIFICATION OF CERTAIN HOUSING LOAN FEES.**

The loan fee table in section 3729(b)(2) of title 38, United States Code, is amended by striking “November 15, 2031” each place it appears and inserting “November 22, 2031”.

## PURPOSE AND SUMMARY

H.R. 5890, the “Review Every Veterans Claim Act of 2023,” was introduced by Rep. Morgan Luttrell of Texas on October 3, 2023. This bill, as amended, would prevent the Department of Veterans Affairs (VA) from denying a claim for disability compensation solely because a veteran did not appear for a VA disability compensation examination that was scheduled after the veteran filed their claim.

This bill, as amended, would also require the VA Board of Veterans’ Appeals (Board) to notify the veteran of the evidence the Board did not consider when deciding their claim for benefits—specifically the timeframe(s) during which untimely evidence was submitted—so that veterans would have the information they need to determine whether to file a request for VA to consider such untimely evidence. This bill, as amended, would also require the Board to state in its written decision whether a veteran’s appeal form successfully put their claim in appellate status, thus ensuring that the U.S. Court of Appeals for Veterans Claims (Court) can hold the Board accountable when the Board incorrectly rejects an appeal form as untimely or inadequate.

This bill, as amended, would also require the Board to publish on a website, on a weekly basis, for each Board docket, the timeframe of appeals that have been assigned to a Board judge for a decision, so that veterans have a better sense of where they are in the Board’s appeals queue.

The bill, as amended, would also provide an offset for the cost of this program change by extending current rates for VA home loan funding fees.

## BACKGROUND AND NEED FOR LEGISLATION

*Section 1: Short Title*

This Act may be cited as the “Review Every Veterans Claim Act of 2023.”

*Section 2: Prohibition on Denial of Claims for Benefits under Laws Administered by Secretary of Veterans Affairs on Sole Basis that Veteran Failed to Appear for Certain Medical Examination*

When a veteran files a claim for VA disability benefits, it may trigger VA’s duty to provide them with a VA disability compensation exam. Whether VA grants or denies a claim often hinges on the results of these exams. Under VA regulation Title 38 C.F.R. § 3.655(b), when a veteran files any additional VA disability claims other than their original claim for compensation, VA denies the claim without considering any of the evidence already in the veterans’ claims file if the veteran misses a VA-scheduled disability compensation exam without providing VA with good cause for doing so and they do not reschedule. This practice occurs even when a veteran has been pursuing their claim for years and VA has already completed multiple disability compensation exams. The Committee understands that veterans may miss their disability compensation exam for several reasons, including the veteran is homeless and without transportation; the veteran does not have the funds to travel to the exam; or the veteran does not wish to attend the exam because they suffer from a mental health condi-

tion such as post-traumatic stress that could be triggered during a disability compensation examination.

In his written testimony for the November 8, 2023, Subcommittee on Disability Assistance and Memorial Affairs legislative hearing on this bill, Mr. Shane L. Liermann, National Legislative Director for Disabled American Veterans, stated that “in most claims for increase in an existing disability, VA will deny an increased evaluation solely on the missed examination. Although the evidence of record may contain sufficient evidence for the increased evaluation, VBA will deny based on the failure to appear.” Mr. Liermann added that the current law allowing this practice “is interfering with the veteran’s due process of a claim. Thousands of veterans’ claims for service connection, claims for increase and for other benefits . . . are denied solely on the basis of the missed examination.”<sup>1</sup>

In his written testimony at the same legislative hearing, Mr. Zachary M. Stolz, Esq., Partner at the law firm of Chisholm Chisholm & Kilpatrick, stated: “Many claimants have already submitted reams of medical evidence, testimony, service records, etc. It serves no purpose for VA to deny claims simply because of a missed VA examination, especially when the evidence is otherwise sufficient to grant a claim.”<sup>2</sup> And in her written testimony, Ms. Quandrea Patterson, Associate Director, National Legislative Service for the Veterans of Foreign Wars of the United States (VFW) stated: “VFW has worked with countless veterans who had to re-apply for benefits because they missed examination appointments. Restarting a VA claim simply because of this is burdensome and unnecessary.”<sup>3</sup>

To address this issue, this section would prohibit VA from denying a claim for disability compensation solely because a veteran did not appear for a VA disability compensation examination that was scheduled after the veteran filed their claim.

The Committee believes that this section is crucial to ensure that VA would end its unfair practice of automatically denying a claim simply because a veteran misses a VA-scheduled disability compensation exam without providing VA a reason for doing so and without rescheduling. The Committee believes it is crucial that every veteran receives a VA decision on their claims for disability compensation that is based on thorough consideration of the evidence within their VA disability claims file, and that VA fully and fairly considers every claim for every veteran.

### *Section 3: Board of Veterans’ Appeals: Jurisdiction; Elements of Decisions*

As authorized by the *Veteran Appeals Improvement and Modernization Act of 2017 (AMA) (Pub L. 115–55)*, when a veteran files an appeal directly to the Board, they are allowed to submit evidence only within certain timeframes. If a veteran submits evi-

<sup>1</sup> Statement of Shane L. Liermann, Disabled American Veterans (October 24, 2023), <https://docs.house.gov/meetings/VR/VR09/20231108/116450/HHRG-118-VR09-Wstate-LiermannS-20231108.pdf>.

<sup>2</sup> Statement of Zachary M. Stolz, Chisholm Chisholm & Kilpatrick (October 24, 2023), <https://docs.house.gov/meetings/VR/VR09/20231108/116450/HHRG-118-VR09-Wstate-StolzZ-20231108.pdf>.

<sup>3</sup> Statement of Quandrea Patterson, Veterans of Foreign Wars of the United States (November 8, 2023), <https://docs.house.gov/meetings/VR/VR09/20231108/116450/HHRG-118-VR09-Wstate-PattersonQ-20231108.pdf>.

dence at any time outside of those windows, the Board is prohibited from considering the untimely evidence in its decision on that veteran's claim for VA benefits. Should a veteran receive an unfavorable Board decision, they do have the option to file a "supplemental claim" to request that VA consider the previously submitted untimely evidence in VA's next decision on the claim. However, current law does not clearly require the Board to notify the veteran as to what evidence was submitted too early or too late. Without this information, veterans are unable to make a fully informed decision on whether or not they should file a supplemental claim to have VA consider any such untimely evidence following an unfavorable Board decision.

Further, to appeal denial of a claim by the Veterans Benefits Administration (VBA), veterans must file an appeal form—a so-called "Notice of Disagreement" (NOD)—to identify what denied claim they want the Board to decide. Current law (38 U.S.C. § 7104) is not clear as to whether the Board must provide a written decision on whether a veteran has filed a timely and adequate NOD that successfully placed their claim into appellate status. When a Board determines that an NOD was not timely or adequate, the Board will not decide the claim that was the subject of the NOD. Because current law states that the U.S. Court of Appeals for Veterans Claims (Court) can only review final decisions of the Board, the Court cannot review for accuracy any determination not explicitly stated in a written Board decision that the NOD was untimely or inadequate. As a result, it is clear to the Committee that the Court cannot hold the Board accountable for when the Board rejects an appeal form based on an incorrect determination—a determination made either implicitly or in a document not considered to be a written decision by the Board—that the NOD was untimely or inadequate and that the Board therefore need not decide the claim.

To address these issues, this section would require the Board to notify the veteran of the evidence it did not consider when making its decision—specifically the timeframe(s) during which untimely evidence was submitted. This section would also require the Board to state in a written decision reviewable by the Court whether a veteran's appeal form was untimely or inadequate.

The Committee believes that this section is crucial to ensure that veterans would have the information they need to determine whether to file a request for VA to consider any untimely evidence in a subsequent VA decision on the claim. The Committee also believes that this section is crucial to ensure that the Court can review an incorrect Board determination that an appeal form was untimely or inadequate and therefore remedy when the Board incorrectly refuses to decide a veteran's claim.

#### *Section 4: Board of Veterans' Appeals Publication of Dates of Docket Activity*

The Board issues decisions on veterans' claims for VA benefits that are on appeal because those veterans disagreed with the Veterans Benefits Administration's (VBA) denial of their claim. Under current law, the Board publishes on its website the average time it takes for the Board to issue decisions on veteran cases that are sitting in each of its dockets; however, those average times are misleading. For instance, as of December 2023, the Board's website

stated that it takes an average of 314 days—less than one year—for a veteran to get a decision on their case after they choose the Board’s “direct review” appeals docket. But VA informed the Committee that as of December 2023, veterans were actually waiting an average of 613 days—almost two years—after they chose the Board’s “direct review” docket. Further, the Board is required by statute to work on appeals in the order they are filed. Yet, VA informed the Committee that as of December 2023, some veterans had been waiting over four years in the “direct review” appeals docket.

In his written testimony for the November 8, 2023, Subcommittee on Disability Assistance and Memorial Affairs legislative hearing, Mr. Shane L. Liermann, National Legislative Director for Disabled American Veterans, stated, “By requiring the Board of Veterans’ Appeals to weekly publish docket dates of cases being worked, this provides veterans, their families and representatives with greater understanding and transparency as to the status of the pending appeal, not to mention it will help Congress hold the Board accountable concerning appealed cases.”<sup>4</sup>

In its statement for the record for the November 8, 2023 legislative hearing, the National Organization of Veterans’ Advocates stated, “When advocates petition the [U.S. Court of Appeals for Veterans Claims] to order the Board to issue a decision on an appeal that has been languishing, the Secretary routinely asserts that the Board must adjudicate all non-expedited appeals in docket order and asks the Court to dismiss the petition. Without any substantive information, the Court routinely grants the Secretary’s request to dismiss. Amending subsection (f) will promote transparency and provide veterans and advocates with useful information regarding the status of their appeals.”<sup>5</sup>

To address this issue, this section would require the Board to publish on a website, on a weekly basis, for each Board docket, the docket dates of the cases assigned to a Board judge for a decision for that week. The bill would also require the Board to include on such publication a caveat that such publication does not require the Board to issue a decision on such cases during that week, so as to not mislead veterans into thinking that assignment of a case to a Board judge means the Board judge will immediately issue a decision on the case. The section would also remove from the Board’s publication of docket dates any cases that have been “advanced on the docket” or remanded by the U.S. Court of Appeals for Veterans Claims, because in VA’s written testimony for the November 8, 2023 legislative hearing, VA testified that cases that have been advanced on the docket or remanded by the U.S. Court of Appeals for Veterans Claims jump to the front of the line, regardless of when appeals in those cases have been filed.<sup>6</sup>

The Committee believes that this section is crucial to ensure that veterans would have an accurate sense of where they are in the

<sup>4</sup> Statement of Shane L. Liermann, Disabled American Veterans (October 24, 2023), <https://docs.house.gov/meetings/VR/VR09/20231108/116450/HHRG0118-VR09-Wstate-LiermannS20231108.pdf>.

<sup>5</sup> Statement for the Record, National Organization of Veterans’ Advocates (October 24, 2023), <https://docs.house.gov/meetings/VR/VR09/20231108/116450/HHRG-118-VR09-20231108-SD005.pdf>.

<sup>6</sup> Statement of Beth Murphy, Executive Director, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs (November 8, 2023), <https://docs.house.gov/meetings/VR/VR09/20231108/116450/HHRG-118-VR09-Wstate-MurphyB-20231108.pdf>.

Board's appeals queue and how much longer they have to wait for a Board decision on their claims. The Committee also believes that by ensuring greater transparency from the Board, the Board can be held accountable for any failure on the part of the Board to comply with its statutory duty to work on appeals in the order in which they were filed.

*Section 5: Modification of Certain Housing Loan Fees*

Under current law, veterans who take advantage of the VA Home Loan Program pay a small fee that can be rolled into their monthly mortgage payments. This section would cover the costs of the other section of this bill by extending the current rates for VA home loan funding fees by a few days to November 22, 2031. Extending the funding fee increases a veteran's monthly cost by about \$5 on top of the monthly mortgage. Disabled veterans do not pay the funding fee and would not be affected by this extension of the home loan fees. The Committee believes this short-term extension of current funding fee rates is a reasonable way to cover the costs associated with the other sections of this bill.

HEARINGS

On November 8, 2023, the Subcommittee on Disability Assistance and Memorial Affairs held a legislative hearing on H.R. 5890 and other bills that were pending before the subcommittee.

The following witnesses testified:

The Honorable Morgan Luttrell, U.S. House of Representatives; The Honorable Mike Bost, U.S. House of Representatives; The Honorable Elissa Slotkin, U.S. House of Representatives; The Honorable Juan Ciscomani, U.S. House of Representatives; The Honorable Abigail Davis Spanberger, U.S. House of Representatives; The Honorable Keith Self, U.S. House of Representatives; The Honorable David J. Trone, U.S. House of Representatives; The Honorable Darrell Issa, U.S. House of Representatives; Ms. Beth Murphy, Executive Director, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Kevin Friel, Deputy Director, Pension & Fiduciary Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Kenneth Arnold, Vice Chairman, Board of Veterans' Appeals, U.S. Department of Veterans Affairs; Mr. Shane Liermann, Deputy National Legislative Director, Disabled American Veterans; Ms. Quandrea N. Patterson, Associate Director, Veterans of Foreign Wars of the United States; and Mr. Zachary M. Stolz, Partner, Chisholm, Chisholm, & Kilpatrick LTD.

The following individuals and organizations submitted statements for the record:

The Honorable Gerald E. Connolly, U.S. House of Representatives; The ALS Association; American Veterans (AMVETS); National Organization of Veterans' Advocates; Paralyzed Veterans of America; Quality. Timeliness. Customer Service (QTC); Special Operations Association of America; Service Women's Action Network, and Military Veterans Advocacy.

## SUBCOMMITTEE CONSIDERATION

On November 29, 2023, the Subcommittee on Disability Assistance and Memorial Affairs held a markup on proposed legislation, including H.R. 5890. There were no amendments to this bill. A motion made by Ranking Member Pappas to favorably forward H.R. 5890 to the Full Committee was agreed to by voice vote.

## COMMITTEE CONSIDERATION

On December 5, 2023, the full Committee met in open markup session, a quorum being present, and ordered H.R. 5890, as amended, 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 Mr. Luttrell included the text of H.R. 5891, as amended, which would require the Board to identify the evidence it did not consider when making its decision; include in the Board decision a written statement as to whether a claimant's appeal form was timely filed and adequate; include in the Board decision a written determination about whether the Board has jurisdiction over a matter; and, provide a claimant prior notice and an opportunity to respond to any potential jurisdictional defect that the Board raised on its own initiative. The amendment also included the text of H.R. 5870, as amended, which would require the Board to publish on a website, on a weekly basis, the docket dates of the cases assigned to a Board member for a decision for that week. The amendment would also extend the current rates for VA home loan funding fees to pay for mandatory and discretionary costs. The amendment in the nature of a substitute was approved by voice vote.

A motion by Ranking Member Takano to report H.R. 5890, 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, no recorded votes were taken on amendments or in connection with ordering H.R. 5890, as amended, reported to the House.

## 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. 5890, as amended, are to ensure that VA provides all veterans and their families due process when they navigate the VA claims and appeals process as well transparency about the Board's timeframes for processing appeals.



### EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5890, 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 Congressional Budget Office cost estimate on this measure.

### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

At a Glance			
H.R. 5890, Review Every Veterans Claim Act of 2023			
As ordered reported by the House Committee on Veterans' Affairs on December 5, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	1	16	29
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	1	16	29
Spending Subject to Appropriation (Outlays)	7	79	152
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	< \$2.5 billion	Statutory pay-as-you-go procedures apply?	Yes
Mandate Effects			
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The bill would:

- Require the Board of Veterans Appeals (BVA) to provide additional legal documentation to veterans who appeal benefits decisions by the Department of Veterans Affairs (VA)
- Prohibit VA from denying some claims for veterans' benefits because the veteran did not report for a scheduled medical examination
- Require BVA to publish information online about the appeals it is scheduled to consider each week
- Increase the fees that VA charges borrowers for home loan guarantees

Estimated budgetary effects would mainly stem from:

- Increasing resources to process claims and provide additional legal documentation
- Increasing the fees charged by VA for home loan guarantees

Bill summary: H.R. 5890 would require the Board of Veterans Appeals (BVA) to provide additional legal documentation when considering appeals for veterans' benefits. (BVA is a component of Department of Veterans Affairs (VA) that hears appeals on matters affecting VA benefits.) The bill also would prohibit VA from denying some claims for veterans benefits solely on the basis that the veteran failed to report for a required medical examination. Fur-

ther, BVA would be required to publish information on certain appeals that are scheduled to be considered each upcoming week. Finally, the bill would increase the fees that the department charges borrowers for home loan guarantees in 2032.

**Estimated Federal cost:** The estimated budgetary effects of H.R. 5890 are shown in Table 1. The costs of the legislation fall within budget function 700 (veterans benefits and services).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 5890

	By fiscal year, millions of dollars—													
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024– 2029	2024– 2034	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION														
Estimated Authorization .....	12	13	13	14	14	14	14	14	15	15	15	80	153	
Estimated Outlays .....	7	16	14	14	14	14	14	14	15	15	15	79	152	
INCREASES OR DECREASES (–) DIRECT SPENDING														
Estimated Budget Authority .....	2	2	2	3	4	3	4	5	–7	5	6	16	29	
Estimated Outlays .....	1	2	3	3	4	3	4	5	–7	5	6	16	29	

**Basis of estimate:** For this estimate, CBO assumes that H.R. 5890 will be enacted in the middle of fiscal year 2024 and that provisions will take effect upon enactment or on the dates specified by the bill. CBO also estimates that outlays will follow historical spending patterns for affected programs.

Provisions that affect spending subject to appropriation and direct spending: H.R. 5890 would modify certain aspects of VA’s process for reviewing and adjudicating claims for disability compensation from the department. The main budgetary effects stem from requiring BVA to provide additional legal documentation and from prohibiting VA from denying benefits solely because a veteran failed to report for a required medical examination. In total, those changes would increase spending subject to appropriation by \$152 million, and direct spending by \$40 million over the 2024–2034 period.

Some of the beneficiaries whose claims for veterans’ benefits would be affected by the bill are veterans with exposures to environmental hazards; thus, CBO expects that some of the costs of implementing H.R. 5890 would be paid from the Toxic Exposures Fund (TEF) established by Public Law 117–168, the Honoring our PACT Act. The TEF is a mandatory appropriation that VA uses to pay for health care, disability claims processing, medical research, information technology (IT) modernization, and other services that benefit veterans who were exposed to environmental hazards.

Additional spending from the TEF would occur if legislation increases the costs of similar activities that benefit veterans with such exposure. Therefore, in addition to increasing spending subject to appropriation, the bill would increase amounts paid from the TEF, which are classified as direct spending.

In CBO’s baseline projections, the percentage of costs paid by the TEF is estimated to grow over time.<sup>1</sup> For purposes of this estimate, those growing percentages are applied to the estimated increase in costs under H.R. 5890. CBO estimates that 12 percent of the costs

<sup>1</sup>For additional information about spending from the TEF, see Congressional Budget Office, “Toxic Exposures Fund—February 2024 Baseline,” <https://tinyurl.com/4wyvzywc>.

of the changes to the affected programs would be paid from the TEF in 2024, increasing to 26 percent in 2034.

Additional legal documentation: Section 3 of the bill would require BVA to provide veterans or their representatives with a documented legal determination that the board has jurisdiction to hear an appeal when it reviews applications for an appeal related to veterans' benefits. That finding would be issued before BVA issues a decision on the appeal's merits. That requirement would apply to each appeal, including instances where there is not otherwise a defect or jurisdictional issue that would require BVA to communicate with the applicant before it adjudicates the appeal. CBO expects that BVA would need additional personnel and resources to provide that legal analysis and documentation for each new appeal. Further, BVA would require additional information technology resources to manage the increased documentation requirements and workload.

Using information from BVA, CBO estimates the board would need 100 additional full-time-equivalent employees to produce the required legal analyses. On average, each employee would receive compensation and benefits of about \$165,000 each year. In total, the increased legal analyses would cost \$172 million over the 2024–2034 period.

CBO also estimates BVA would require additional information technology resources to produce and manage the additional legal analyses. Using information on the cost of similar systems, CBO estimates developing and sustaining that system would cost \$6 million over the 2024–2034 period.

In total, Section 3 would cost \$178 million over the 2024–2034 period. Of that amount, \$141 million would be spending subject to appropriation and \$37 million would be direct spending, CBO estimates.

Medical examinations: Section 2 would prohibit VA from denying claims for veterans' benefits solely because the veteran failed to report for a required medical examination. Under current law, VA may require veterans to undergo medical examinations to determine their eligibility for certain benefits. Veterans who are applying for an increase to their disability compensation, or who are appealing certain claims, and some applicants for VA pensions, must report to a medical examination if one is requested by VA. If the veteran does not report for the examination in those instances, VA will deny the claim on the basis that the veteran failed to report. Under the bill, VA would be prohibited from denying claims for benefits in those instances and would be required to make a final determination of eligibility based on the information presented in the veteran's application.

CBO expects that instead of summarily denying the claim because the veteran did not get an examination, VA would deny most claims because of the lack of evidence to support the claim that the exam was intended to provide. Thus, the prohibition would not significantly increase mandatory spending for disability compensation. However, VA would need additional resources to review claims that will be automatically denied under current law. Using information from VA, CBO estimates the agency would require nine additional full-time equivalent employees each year, with each employee receiving an average of about \$165,000 in compensation and benefits

each year. In total, the requirement would cost \$15 million over the 2024–2034 period, CBO estimates. Of that amount, \$12 million would be spending subject to appropriation and \$3 million would be direct spending.

Publication of docket dates: Section 4 would require BVA to publish on a VA website the appeals cases assigned to the board for a decision during the upcoming week and the date on which those appeals were filed with the court. Certain cases would be excluded from that requirement. The schedule also would include a disclaimer on each weekly notice that an assignment does not require the board to issue a decision in that week. Because BVA already has the information it would be required to publish, CBO estimates that satisfying the requirement would cost less than \$500,000.

Spending subject to appropriation: The discussion above in “Provisions That Affect Spending Subject to Appropriation and Direct Spending” describe provisions that would increase spending subject to appropriation under H.R. 5890, totaling \$152 million over the 2024–2034 period (see Table 2).

TABLE 2.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 5890

	By fiscal year, millions of dollars—													
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024– 2029	2024– 2034	
Additional Legal Documentation:														
Estimated Authorization .....	11	12	12	13	13	13	13	13	14	14	14	74	142	
Estimated Outlays .....	6	15	13	13	13	13	13	13	14	14	14	73	141	
Medical Examinations:														
Estimated Authorization .....	1	1	1	1	1	1	1	1	1	1	1	6	11	
Estimated Outlays .....	1	1	1	1	1	1	1	1	1	1	1	6	11	
Total Increases:														
Estimated Authorization .....	12	13	13	14	14	14	14	14	15	15	15	80	153	
Estimated Outlays .....	7	16	14	14	14	14	14	14	15	15	15	79	152	

Direct spending: The discussion above in “Provisions That Affect Spending Subject to Appropriation and Direct Spending” describe provisions that would increase direct spending from the Toxic Exposures Fund under H.R. 5890. The bill also would increase fees paid for VA home loan guarantees. In total, the bill would increase direct spending by \$29 million over the 2024–2034 period (see Table 3).

H.R.5890 would increase the fees that VA charges borrowers for its loan guarantees. VA provides loan guarantees to lenders that allow eligible borrowers to obtain better loan terms—such as lower interest rates or smaller down payments—to purchase, construct, improve, or refinance a home. VA typically pays lenders up to 25 percent of the outstanding mortgage balance if a borrower’s home is foreclosed upon. Those payments, net of fees paid by borrowers and recoveries by lenders, constitute the subsidy cost for the loan guarantees.<sup>2</sup>

<sup>2</sup> Under the Federal Credit Reform Act of 1990, the subsidy cost of a loan guarantee is the net present value of estimated payments by the government to cover defaults and delinquencies, interest subsidies, or other expenses offset by any payments to the government, including origination or other fees, penalties, and recoveries on defaulted loans. Such subsidy costs are calculated by discounting those expected cash flows using the rate on Treasury securities of comparable maturity. The resulting estimated subsidy costs are recorded in the budget when the loans are disbursed or modified. A positive subsidy indicates that the loan results in net outlays from the Treasury; a negative subsidy indicates that the loan results in net receipts to the Treasury.

TABLE 3.—ESTIMATED CHANGES IN DIRECT SPENDING UNDER H.R. 5890

	By fiscal year, millions of dollars—													
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024–2029	2024–2034	
Additional Legal Documentation:														
Estimated Budget Authority	2	2	2	3	3	3	4	4	4	5	5	15	37	
Estimated Outlays .....	1	2	3	3	3	3	4	4	4	5	5	15	37	
Medical Examinations:														
Estimated Budget Authority	*	*	*	*	1	*	*	1	*	*	1	1	3	
Estimated Outlays .....	*	*	*	*	1	*	*	1	*	*	1	1	3	
Loan Fees:														
Estimated Budget Authority	0	0	0	0	0	0	0	0	–11	0	0	0	–11	
Estimated Outlays .....	0	0	0	0	0	0	0	0	–11	0	0	0	–11	
Total Changes:														
Estimated Budget Authority	2	2	2	3	4	3	4	5	–7	5	6	16	29	
Estimated Outlays .....	1	2	3	3	4	3	4	5	–7	5	6	16	29	

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

Under current law, the rates for most of the fees that borrowers pay to VA for loans guaranteed after November 15, 2031, will drop from a weighted average of about 2.3 percent to about 1.2 percent of the loan amount. The bill would extend the higher rates through November 22, 2031, thereby reducing the subsidy cost of loans guaranteed during that period. Using information from VA, CBO estimates that extending the higher rates would decrease direct spending by \$11 million over the 2024–2034 period.

**Pay-As-You-Go Considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are show in Table 3.

**Increase in long-term net direct spending and deficits:** CBO estimates that enacting H.R. 5890 would not increase net direct spending by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2035.

**CBO estimates that enacting H.R. 5890 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2035.**

**Mandates:** The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

**Estimate prepared by:** Federal costs: Logan Smith (for veterans benefits claims and appeals); Paul B.A. Holland (for home loans); Mandates: Brandon Lever.

**Estimate reviewed by:** David Newman, Chief, Defense, International Affairs, and Veterans' Affairs Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; Christina Hawley Anthony, Deputy Director of Budget Analysis.

**Estimate approved by:** Phillip L. Swagel, Director, Congressional Budget Office.

#### FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4 is inapplicable to H.R. 5890, as amended.

## 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. 5890, as amended.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 5890, 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. 5890, as amended, would establish or reauthorize 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 Public Law 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 would establish the short title of the bill as the “Review Every Veterans Claim Act of 2023.”

*Section 2. Prohibition on denial of claims for benefits under laws administered by Secretary of Veterans Affairs on sole basis that veteran failed to appear for certain medical examination*

Section 2 would amend 38 U.S.C. § 5103A(d) by adding a new paragraph stating that if a veteran fails to appear for a medical examination provided by the Secretary in conjunction with a claim for a benefit under a law administered by the Secretary, the Secretary may not deny such claim on the sole basis that such veteran failed to appear for such medical examination.

*Section 3. Board of Veterans’ Appeals: jurisdiction; elements of decisions*

Section 3 would amend 38 U.S.C. § 7104(a) by adding new paragraphs stating that the Board must determine whether the Board has jurisdiction regarding a matter, and that if the Board, on its own initiative raises a question of a potential jurisdictional defect, the Board shall provide notice and an opportunity to response. This section would also amend 38 U.S.C. § 7104(d) that would require the Board to include, in its written decision, a statement as to the time that evidence deemed untimely under 38 U.S.C. § 7113 was received, as well as a written determination as to whether a notice of disagreement was adequate and timely under 38 U.S.C. § 7105.

*Section 4. Board of Veteran’s Appeals publication of dates of docket activity*

Section 4 would amend 38 U.S.C. § 7107 by adding a new subsection stating that on a weekly basis, for each docket, the Board

would be required to publish, on a website of the Department, notice of the docket dates of the cases assigned to a Board member for a decision for that week. This new subsection would also require each published notice to include a statement that an assignment of a case to a Board member does not require the Board to issue a decision regarding the case during such week. This section would also clarify that the Board's weekly publication of docket dates shall not apply to a case that has been advanced on the Board's docket or remanded by the U.S. Court of Appeals for Veterans Claims.

*Section 5. Modification of certain housing loan fees*

Section 3 would extend current rates for VA home loan funding fees as established in section 3729 of title 38, U.S.C. from November 15, 2031 to November 22, 2031.

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, 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 III—READJUSTMENT AND RELATED BENEFITS**

\* \* \* \* \*

**CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS**

\* \* \* \* \*

**SUBCHAPTER III—ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

**§ 3729. Loan fee**

(a) REQUIREMENT OF FEE.—(1) Except as provided in subsection (c), a fee shall be collected from each person obtaining a housing loan guaranteed, insured, or made under this chapter, and each person assuming a loan to which section 3714 of this title applies. No such loan may be guaranteed, insured, made, or assumed until

the fee payable under this section has been remitted to the Secretary.

(2) The fee may be included in the loan and paid from the proceeds thereof.

(b) DETERMINATION OF FEE.—(1) The amount of the fee shall be determined from the loan fee table in paragraph (2). The fee is expressed as a percentage of the total amount of the loan guaranteed, insured, or made, or, in the case of a loan assumption, the unpaid principal balance of the loan on the date of the transfer of the property.

(2) The loan fee table referred to in paragraph (1) is as follows:

Type of loan	Active duty veteran	Reservist	Other obligor
(A)(i) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after October 1, 2004, and before January 1, 2020).	2.15	2.40	NA
(A)(ii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after January 1, 2020, and before April 7, 2023).	2.30	2.30	NA
(A)(iii) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after April 7, 2023, and before <b>November 15, 2031</b> <i>November 22, 2031</i> ).	2.15	2.15	NA



Type of loan	Active duty veteran	Reservist	Other obligor
(A)(iv) Initial loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other initial loan described in section 3710(a) other than with 5-down or 10-down (closed on or after <b>November 15, 2031</b> <i>November 22, 2031</i> ).	1.40	1.40	NA
(B)(i) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after October 1, 2004, and before January 1, 2020).	3.30	3.30	NA
(B)(ii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after January 1, 2020, and before April 7, 2023).	3.60	3.60	NA
(B)(iii) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after April 7, 2023, and before <b>November 15, 2031</b> <i>November 22, 2031</i> ).	3.30	3.30	NA

Type of loan	Active duty veteran	Reservist	Other obligor
(B)(iv) Subsequent loan described in section 3710(a) to purchase or construct a dwelling with 0-down, or any other subsequent loan described in section 3710(a) (closed on or after <b>November 15, 2031</b> <i>November 22, 2031</i> ).	1.25	1.25	NA
(C)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed before January 1, 2020).	1.50	1.75	NA
(C)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after January 1, 2020, and before April 7, 2023).	1.65	1.65	NA
(C)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after April 7, 2023, and before <b>November 15, 2031</b> <i>November 22, 2031</i> ).	1.50	1.50	NA
(C)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 5-down (closed on or after <b>November 15, 2031</b> <i>November 22, 2031</i> ).	0.75	0.75	NA
(D)(i) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed before January 1, 2020).	1.25	1.50	NA

Type of loan	Active duty veteran	Reservist	Other obligor
(D)(ii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after January 1, 2020, and before April 7, 2023).	1.40	1.40	NA
(D)(iii) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after April 7, 2023, and before <del>November 15, 2031</del> <i>November 22, 2031</i> ).	1.25	1.25	NA
(D)(iv) Loan described in section 3710(a) to purchase or construct a dwelling with 10-down (closed on or after <del>November 15, 2031</del> <i>November 22, 2031</i> ).	0.50	0.50	NA
(E) Interest rate reduction refinancing loan.	0.50	0.50	NA
(F) Direct loan under section 3711.	1.00	1.00	NA
(G) Manufactured home loan under section 3712 (other than an interest rate reduction refinancing loan).	1.00	1.00	NA
(H) Loan to Native American veteran under section 3762 (other than an interest rate reduction refinancing loan).	1.25	1.25	NA
(I) Loan assumption under section 3714.	0.50	0.50	0.50
(J) Loan under section 3733(a).	2.25	2.25	2.25.

(3) Any reference to a section in the “Type of loan” column in the loan fee table in paragraph (2) refers to a section of this title.

(4) For the purposes of paragraph (2):

(A) The term “active duty veteran” means any veteran eligible for the benefits of this chapter other than a Reservist.

(B) The term “Reservist” means a veteran described in section 3701(b)(5)(A) of this title who is eligible under section 3702(a)(2)(E) of this title.

(C) The term “other obligor” means a person who is not a veteran, as defined in section 101 of this title or other provision of this chapter.

(D)(i) The term “initial loan” means a loan to a veteran guaranteed under section 3710 or made under section 3711 of this title if the veteran has never obtained a loan guaranteed under section 3710 or made under section 3711 of this title.

(ii) If a veteran has obtained a loan guaranteed under section 3710 or made under section 3711 of this title and the dwelling securing such loan was substantially damaged or destroyed by a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), the Secretary shall treat as an initial loan, as defined in clause (i), the next loan the Secretary guarantees or makes to such veteran under section 3710 or 3711, respectively, if—

(I) such loan is guaranteed or made before the date that is three years after the date on which the dwelling was substantially damaged or destroyed; and

(II) such loan is only for repairs or construction of the dwelling, as determined by the Secretary.

(E) The term “subsequent loan” means a loan to a veteran, other than an interest rate reduction refinancing loan, guaranteed under section 3710 or made under section 3711 of this title that is not an initial loan.

(F) The term “interest rate reduction refinancing loan” means a loan described in section 3710(a)(8), 3710(a)(9)(B)(i), 3710(a)(11), 3712(a)(1)(F), or 3762(h) of this title.

(G) The term “0-down” means a downpayment, if any, of less than 5 percent of the total purchase price or construction cost of the dwelling.

(H) The term “5-down” means a downpayment of at least 5 percent or more, but less than 10 percent, of the total purchase price or construction cost of the dwelling.

(I) The term “10-down” means a downpayment of 10 percent or more of the total purchase price or construction cost of the dwelling.

(c) WAIVER OF FEE.—(1) A fee may not be collected under this section from a veteran who is receiving compensation (or who, but for the receipt of retirement pay or active service pay, would be entitled to receive compensation), from a surviving spouse of any veteran (including a person who died in the active military, naval, air, or space service) who died from a service-connected disability, or from a member of the Armed Forces who is serving on active duty and who provides, on or before the date of loan closing, evidence of having been awarded the Purple Heart.

(2)(A) A veteran described in subparagraph (B) shall be treated as receiving compensation for purposes of this subsection as of the date of the rating described in such subparagraph without regard to whether an effective date of the award of compensation is established as of that date.

(B) A veteran described in this subparagraph is a veteran who is rated eligible to receive compensation—

(i) as the result of a pre-discharge disability examination and rating; or

(ii) based on a pre-discharge review of existing medical evidence (including service medical and treatment records) that results in the issuance of a memorandum rating.

\* \* \* \* \*

## **PART IV—GENERAL ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

### **CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS**

#### **SUBCHAPTER I—CLAIMS**

\* \* \* \* \*

#### **§ 5103A. Duty to assist claimants**

(a) DUTY TO ASSIST.—(1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary.

(2) The Secretary is not required to provide assistance to a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

(3) The Secretary may defer providing assistance under this section pending the submission by the claimant of essential information missing from the claimant's application.

(b) ASSISTANCE IN OBTAINING PRIVATE RECORDS.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant private records that the claimant adequately identifies to the Secretary.

(2)(A) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall—

(i) identify the records the Secretary is unable to obtain;

(ii) briefly explain the efforts that the Secretary made to obtain such records; and

(iii) explain that the Secretary will decide the claim based on the evidence of record but that this section does not prohibit the submission of records at a later date if such submission is otherwise allowed.

(B) The Secretary shall make not less than two requests to a custodian of a private record in order for an effort to obtain relevant private records to be treated as reasonable under this section, unless it is made evident by the first request that a second request would be futile in obtaining such records.

(3)(A) This section shall not apply if the evidence of record allows for the Secretary to award the maximum benefit in accordance with this title based on the evidence of record.

(B) For purposes of this paragraph, the term “maximum benefit” means the highest evaluation assignable in accordance with the evidence of record, as long as such evidence is adequate for rating purposes and sufficient to grant the earliest possible effective date in accordance with section 5110 of this title.

(4) Under regulations prescribed by the Secretary, the Secretary—

(A) shall encourage claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant; and

(B) in obtaining relevant private records under paragraph (1), may require the claimant to authorize the Secretary to obtain such records if such authorization is required to comply with Federal, State, or local law.

(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under this section shall include obtaining the following records if relevant to the claim:

(A) The claimant’s service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant’s active military, naval, air, or space service that are held or maintained by a governmental entity.

(B) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(C) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

(2) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection, the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

(d) MEDICAL EXAMINATIONS FOR [COMPENSATION CLAIMS] CLAIMS FOR BENEFITS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim.

(2) The Secretary shall [treat an examination or opinion as being necessary to make a decision on a claim for purposes of] *provide for a medical examination or obtain a medical opinion under* paragraph (1) if the evidence of record before the Secretary, taking into consideration all information and lay or medical evidence (including statements of the claimant)—

(A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and

(B) indicates that the disability or symptoms may be associated with the claimant’s active military, naval, air, or space service; but

(C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

(3) *If a veteran fails to appear for a medical examination provided by the Secretary in conjunction with a claim for a benefit under a law administered by the Secretary, the Secretary may not deny such claim on the sole basis that such veteran failed to appear for such medical examination.*

(e) **APPLICABILITY OF DUTY TO ASSIST.**—(1) The Secretary's duty to assist under this section shall apply only to a claim, or supplemental claim, for a benefit under a law administered by the Secretary until the time that a claimant is provided notice of the agency of original jurisdiction's decision with respect to such claim, or supplemental claim, under section 5104 of this title.

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

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

(2)(A) If the Board of Veterans' Appeals, during review on appeal of an agency of original jurisdiction decision, identifies or learns of an error on the part of the agency of original jurisdiction to satisfy its duties under this section, and that error occurred prior to the agency of original jurisdiction decision on appeal, unless the Secretary may award the maximum benefit in accordance with this title based on the evidence of record, the Board shall remand the claim to the agency of original jurisdiction for correction of such error and readjudication.

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

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

(g) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section.

(h) **RULE WITH RESPECT TO DISALLOWED CLAIMS.**—Nothing in this section shall be construed to require the Secretary to readjudicate a claim that has been disallowed except when new and relevant evidence is presented or secured, as described in section 5108 of this title.

(i) **OTHER ASSISTANCE NOT PRECLUDED.**—Nothing in this section shall be construed as precluding the Secretary from providing such other assistance under subsection (a) to a claimant in substantiating a claim as the Secretary considers appropriate.

\* \* \* \* \*

## PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

\* \* \* \* \*

### CHAPTER 71—BOARD OF VETERANS' APPEALS

\* \* \* \* \*

#### § 7104. Jurisdiction of the Board; decisions; notice

(a)(1) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(2) *The Board shall determine, in the first instance, whether the Board has jurisdiction regarding a matter.*

(3) *If the Board, on its own initiative, raises a question of a potential jurisdictional defect, the Board shall notify the parties and allow the parties an opportunity to respond.*

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be readjudicated and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record;

(2) a general statement—

(A) reflecting whether evidence was not considered in making the decision because the evidence was received at a time when not permitted under section 7113 of this title[; and];

(B) *if such evidence was not considered as described in subparagraph (A), identifying the time when such evidence was received and the provision of section 7113 of this title that establishes that such evidence may not be received at such time; and*

[(B)] (C) noting such options as may be available for having the evidence considered by the Department[; and];

(3) *the written determination of the Board whether the notice of disagreement was adequate and timely filed under section 7105 of this title; and*

[(3)] (4) an order granting appropriate relief or denying relief.

(e) After reaching a decision on an appeal, the Board shall promptly issue notice (as that term is defined in section 5100 of this title) of such decision to the following:

(1) The appellant.



(2) Any other party with a right to notice of such decision.

(3) Any authorized representative of the appellant or party described in paragraph (2).

(f)(1) The Secretary may provide notice under subsection (e) electronically if a claimant (or the claimant's representative) elects to receive such notice electronically.

(2) A claimant (or the claimant's representative) may revoke such an election at any time, by means prescribed by the Secretary.

#### **§ 7105. Filing of appeal**

(a) Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the Secretary.

(b)(1)(A) Except in the case of simultaneously contested claims, a notice of disagreement shall be filed within one year from the date of the issuance of notice of the decision of the agency of original jurisdiction pursuant to section 5104, 5104B, or 5108 of this title.

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

[(C) A question as to timeliness or adequacy of the notice of disagreement shall be decided by the Board.]

(2)(A) Notices of disagreement shall be in writing, shall identify the specific determination with which the claimant disagrees, and may be filed by the claimant, the claimant's legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian.

(B) Not more than one recognized organization, attorney, or agent may be recognized at any one time in the prosecution of a claim.

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

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

(A) a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(b) of this title;

(B) an opportunity to submit additional evidence without a hearing before the Board, which shall include an opportunity to submit evidence in accordance with section 7113(c) of this title; or

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

(4) The Secretary shall develop a policy to permit a claimant to modify the information identified in the notice of disagreement after the notice of disagreement has been filed under this section pursuant to such requirements as the Secretary may prescribe.

(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or decision of the agency of original jurisdiction shall become final and the claim shall not thereafter be readjudicated or allowed, except—

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

- (2) as may otherwise be provided by section 5108 of this title;
- or
- (3) as may otherwise be provided in such regulations as are consistent with this title.
- (d) The Board may dismiss any appeal which fails to identify the specific determination with which the claimant disagrees.

\* \* \* \* \*

#### **§ 7107. Appeals: dockets; hearings**

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

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

(3)(A) The Board may assign to each docket maintained under paragraph (1) such cases as the Board considers appropriate, except that cases described in clause (i) of subparagraph (B) may not be assigned to any docket to which cases described in clause (ii) of such paragraph are assigned.

(B) Cases described in this paragraph are the following:

- (i) Cases in which no Board hearing is requested.
- (ii) Cases in which a Board hearing is requested in the notice of disagreement.

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

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

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

(3) Such a motion may be granted only—

- (A) if the case involves interpretation of law of general application affecting other claims;
- (B) if the appellant is seriously ill or is under severe financial hardship; or
- (C) for other sufficient cause shown.

(c) **MANNER AND SCHEDULING OF HEARINGS FOR CASES ON A DOCKET THAT MAY INCLUDE A HEARING.**—(1) For cases on a docket maintained by the Board under subsection (a) that may include a hearing, in which a hearing is requested in the notice of disagreement, the Board shall notify the appellant whether a Board hearing will be held—

- (A) at its principal location; or
- (B) by picture and voice transmission at a facility of the Department where the Secretary has provided suitable facilities and equipment to conduct such hearings.

(2)(A) Upon notification of a Board hearing at the Board's principal location as described in subparagraph (A) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (B) of such paragraph or subparagraph (C) of this paragraph. If so requested, the Board shall grant such request.

(B) Upon notification of a Board hearing by picture and voice transmission as described in subparagraph (B) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (A) of such paragraph or subparagraph (C) of this paragraph. If so requested, the Board shall grant such request.

(C)(i) Upon notification of a Board hearing under subparagraph (A) or (B) of paragraph (1), the appellant may alternatively request a hearing by picture and voice transmission—

(I) at a location selected by the appellant; and

(II) via a secure internet platform established and maintained by the Secretary that protects sensitive personal information from a data breach.

(ii) If an appellant makes a request under clause (i), the Board shall grant such request.

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

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

(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.

(e) POLICY ON CHANGING DOCKETS.—The Secretary shall develop and implement a policy allowing an appellant to move the appellant's case from one docket to another docket.

(f) PUBLICATION OF EXPECTED ACTIONS.—(1) *On a weekly basis, for each docket, the Board shall publish, on a website of the Department, notice of the docket dates of the cases assigned to a Board member for a decision for that week.*

(2) *Each notice published under paragraph (1) shall include a statement that an assignment described in such paragraph does not require the Board to issue a decision regarding the case during such week.*

(3) *Paragraph (1) shall not apply to a case—*

*(A) that has been advanced under subsection (b); or*

*(B) remanded by the United States Court of Appeals for Veterans Claims.*

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