

110TH CONGRESS  
2D SESSION

# H. R. 5892

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to modernize the disability benefits claims processing system of the Department of Veterans Affairs to ensure the accurate and timely delivery of compensation to veterans and their families and survivors, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2008

Mr. HALL of New York introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to modernize the disability benefits claims processing system of the Department of Veterans Affairs to ensure the accurate and timely delivery of compensation to veterans and their families and survivors, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Veterans Disability Benefits Claims Modernization Act  
6 of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—MATTERS RELATING TO MODERNIZING THE DIS-  
 ABILITY COMPENSATION SYSTEM OF DEPARTMENT OF VET-  
 ERANS AFFAIRS

Sec. 101. Clarification of meaning of “combat with the enemy” for purposes of  
 service-connection of disabilities.

Sec. 102. Study on readjustment of schedule for rating disabilities.

Sec. 103. Study on employee work credit system of Veterans Benefits Adminis-  
 tration.

Sec. 104. Study on work management system.

Sec. 105. Certification and training of employees of Veterans Benefits Adminis-  
 tration responsible for processing claims.

Sec. 106. Annual assessment of quality assurance program.

Sec. 107. Expedited treatment of fully developed claims and requirement for  
 checklist to be provided to individuals submitting incomplete  
 claims.

Sec. 108. Study and report on employing medical professionals to assist em-  
 ployees of Veterans Benefits Administration.

Sec. 109. Assignment of partial disability ratings to qualifying veterans.

Sec. 110. Review and enhancement of use of information technology at Vet-  
 erans Benefits Administration.

Sec. 111. Treatment of claims upon death of claimant.

TITLE II—MATTERS RELATING TO UNITED STATES COURT OF  
 APPEALS FOR VETERANS CLAIMS

Sec. 201. Annual reports on workload of United States Court of Appeals for  
 Veterans Claims.

Sec. 202. Modification of jurisdiction and finality of decisions of United States  
 Court of Appeals for Veterans Claims.

3 **SEC. 2. FINDINGS.**

4 Congress makes the following findings:

5 (1) At the end of fiscal year 2007, there were  
 6 nearly 24,000,000 veterans in America.

7 (2) According to the latest Annual Report from  
 8 the Veterans Benefits Administration, there were  
 9 3,582,255 veterans and survivors receiving com-  
 10 pensation and pension benefits under laws adminis-

1       tered by the Secretary of Veterans Affairs at the end  
2       of fiscal year 2006.

3           (3) The number of veterans and survivors at  
4       the end of fiscal year 2006 included 2,725,824 vet-  
5       erans receiving service-connected disability benefits,  
6       325,939 survivors receiving service-connected death  
7       benefits, 329,856 veterans receiving non-service-con-  
8       nected disability benefits, and 200,636 survivors re-  
9       ceiving non-service-connected death benefits.

10          (4) During fiscal year 2006, almost 250,000  
11       beneficiaries began receiving benefits with 162,805  
12       of these being veterans whose compensation claims  
13       were granted.

14          (5) Since October 7, 2001, the number of  
15       claims for new or increased benefits has risen sharp-  
16       ly, exceeding 838,000 in 2007.

17          (6) The Department of Veterans Affairs  
18       projects that the number of claims will surpass  
19       1,000,000 by the end of fiscal year 2008.

20          (7) The number of disability compensation  
21       claims pending before the Department stands at  
22       nearly 650,000, as of the date of the enactment of  
23       this Act, about a quarter of which have been back-  
24       logged for over six months.

1           (8) Processing times have increased from an av-  
2           erage of 177 days in 2006 to 183 days in 2007.

3           (9) The paper-based, labor-intensive process  
4           employed by the Department leaves many disabled  
5           veterans and survivors waiting months or years to  
6           receive the benefits they have earned.

7           (10) The most prevalent disabilities among vet-  
8           erans that are service-connected are auditory, with  
9           almost 840,000 veterans receiving compensation for  
10          such a disability, followed by musculoskeletal disabil-  
11          ities and arthritis.

12          (11) Post-traumatic stress disorder is the sixth  
13          most common disability, with more than 269,399  
14          service-connected veterans.

15          (12) In 2006, the Veterans Health Administra-  
16          tion treated 345,713 veterans with post-traumatic  
17          stress disorder, which was an increase of 27,099  
18          over 2005.

19          (13) By January 2008, of the 1,600,000 vet-  
20          erans who served in the Armed Forces after October  
21          7, 2001, the Veterans Health Administration had  
22          treated 59,838 for post-traumatic stress disorder.

23          (14) Disabilities are evaluated in accordance  
24          with the Department of Veterans Affairs Schedule  
25          for Rating Disabilities (referred to in this section as

1 the “VASRD”) under title 38, United States Code  
2 of Federal Regulations, part 4.

3 (15) This schedule was originally created in  
4 1917 and was last comprehensively revised in 1945.

5 (16) The VASRD contains many outdated and  
6 archaic criteria and lacks more commonly accepted  
7 medical practices and procedures.

8 (17) Studies conducted by the Institute of Med-  
9 icine found it to be an inadequate instrument for  
10 compensating disabilities for the average impair-  
11 ments of earning capacity, especially in areas of  
12 mental health, unemployability, and for younger and  
13 severely injured veterans, and recommended it be re-  
14 vised using more modern medical concepts.

15 (18) The Department of Veterans Affairs must  
16 modernize the claims processing system of the Vet-  
17 erans Benefits Administration to make it a first-  
18 class, veteran-centered system that uses 21st cen-  
19 tury technologies and paradigms and reflects the  
20 dignity and sacrifices made by disabled veterans,  
21 their families, and survivors.

1 **TITLE I—MATTERS RELATING**  
2 **TO MODERNIZING THE DIS-**  
3 **ABILITY COMPENSATION SYS-**  
4 **TEM OF DEPARTMENT OF**  
5 **VETERANS AFFAIRS**

6 **SEC. 101. CLARIFICATION OF MEANING OF “COMBAT WITH**  
7 **THE ENEMY” FOR PURPOSES OF SERVICE-**  
8 **CONNECTION OF DISABILITIES.**

9 (a) CLARIFICATION.—Section 1154(b) of title 38,  
10 United States Code, is amended—

11 (1) by striking “In the case” and inserting “(1)  
12 In the case”; and

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

15 “(2) For the purposes of this subsection, the term  
16 ‘combat with the enemy’ includes service on active duty—

17 “(A) in a theater of combat operations (as de-  
18 termined by the Secretary in consultation with the  
19 Secretary of Defense) during a period of war; or

20 “(B) in combat against a hostile force during a  
21 period of hostilities.”.

22 (b) EFFECTIVE DATE.—Paragraph (2) of subsection  
23 (b) of section 1154 of title 38, United States Code, as  
24 added by subsection (a), shall apply with respect to a claim

1 for disability compensation under chapter 11 of such title  
2 pending on or after the date of the enactment of this Act.

3 **SEC. 102. STUDY ON READJUSTMENT OF SCHEDULE FOR**  
4 **RATING DISABILITIES.**

5 (a) STUDY ON ADJUSTMENT OF SCHEDULE.—

6 (1) STUDY REQUIRED.—The Secretary of Vet-  
7 erans Affairs shall conduct a study on adjusting the  
8 schedule for rating disabilities adopted and applied  
9 by the Secretary under section 1155 of title 38,  
10 United States Code, so as to base the schedule on  
11 standards, practices, and codes in common use by  
12 the medical, mental health, and disability professions  
13 that are current as of the date of the enactment of  
14 this Act.

15 (2) CONTENTS OF STUDY.—In conducting the  
16 study under this subsection, the Secretary shall—

17 (A) determine how the schedule could be  
18 adjusted to take into account the loss of quality  
19 of life and loss of earnings that result from spe-  
20 cific disabilities;

21 (B) examine the nature of the disabilities  
22 for which disability compensation is payable  
23 under laws other than laws administered by the  
24 Secretary;

1 (C) examine whether disparities exist be-  
2 tween the rating of physical and mental disabil-  
3 ities, especially with respect to how the severity  
4 of mental disabilities should be adjudicated to  
5 ensure parity with physical disabilities whereby  
6 a veteran can be rated totally disabled while  
7 maintaining some level of employment;

8 (D) measure the effect of disabilities on  
9 the psychological states, physical integrity, and  
10 social adaptability of veterans with such disabil-  
11 ities; and

12 (E) examine the effect of a veteran's injury  
13 or combination of injuries on—

14 (i) the average loss of the veteran's  
15 earnings capacity, including the veteran's  
16 inability to work in certain occupations;

17 (ii) the veteran's quality of life, in-  
18 cluding activities of independent living, rec-  
19 reational and community activities, and  
20 personal relationships, including the inabil-  
21 ity to participate in favorite activities, so-  
22 cial problems related to disfigurement or  
23 cognitive difficulties, and the need to spend  
24 increased amounts of time performing ac-  
25 tivities of daily living; and

1                   (iii) the extent to which benefits for  
2                   veterans may be used to encourage vet-  
3                   erans to seek and undergo vocational reha-  
4                   bilitation.

5                   (3) CONSULTATION.—In conducting the study  
6                   under this subsection, the Secretary shall consult  
7                   with appropriate public and private entities, agen-  
8                   cies, and veterans service organizations, and shall  
9                   employ consultants.

10                  (4) DEADLINE FOR COMPLETION.—The Sec-  
11                  retary shall complete the study required under this  
12                  subsection by not later than 180 days after the date  
13                  of the enactment of this Act.

14                  (5) REPORT TO CONGRESS.—Not later than 60  
15                  days after completing the study required under this  
16                  subsection, the Secretary shall submit to Congress a  
17                  report on the study. The report shall include—

18                         (A) the results of the study on quality of  
19                         life and the payment of compensation for serv-  
20                         ice-connected disabilities for which the Sec-  
21                         retary entered into a contract on January 28,  
22                         2008;

23                         (B) the Secretary's findings and conclu-  
24                         sions with respect to adjusting the schedule for  
25                         rating disabilities adopted and applied by the

1 Secretary under section 1155 of title 38, United  
2 States Code, to account for the loss of quality  
3 of life and loss of earnings that result from spe-  
4 cific disabilities;

5 (C) the Secretary's findings and conclu-  
6 sions with respect to—

7 (i) the report of the Veterans' Dis-  
8 ability Benefits Commission;

9 (ii) the report of the President's Com-  
10 mission on the Care for America's Return-  
11 ing Wounded Warriors;

12 (iii) the report of the Institute of  
13 Medicine entitled "A 21st Century System  
14 for Evaluating Veterans for Disability  
15 Benefits"; and

16 (iv) any other independent or advisory  
17 commission report on matters relating to  
18 such schedule that the Secretary deter-  
19 mines is appropriate;

20 (D) the Secretary's recommendations with  
21 respect to the appropriate disabilities for inclu-  
22 sion in the schedule;

23 (E) the Secretary's recommendations with  
24 respect to the amount of compensation payable

1 to veterans for the loss of quality of life and the  
2 basis for such recommendations;

3 (F) the Secretary's recommendations with  
4 respect to the amount of compensation payable  
5 to veterans for average loss of earnings capacity  
6 and the appropriate standards for determining  
7 whether a disability has caused a veteran to  
8 incur a loss of earnings capacity;

9 (G) the Secretary's assessment of the ef-  
10 fect of the treatment of mental disabilities  
11 under the schedule for rating disabilities, as in  
12 effect on the date of the enactment of this Act;  
13 and

14 (H) the Secretary's determination with re-  
15 spect to whether the regulations prescribed pur-  
16 suant to section 1154 of title 38, United States  
17 Code, are consistent with providing, to the max-  
18 imum extent possible, the benefit of the doubt  
19 to veterans covered by that section in the ab-  
20 sence of official military records pertaining to  
21 the service-connection of a veteran's disability,  
22 and in particular, of post-traumatic stress dis-  
23 order, when a determination of service-con-  
24 nection would be consistent with the duties, condi-

1           tions, and hardships of service in the Armed  
2           Forces.

3           (b) SUBMISSION OF PLAN.—

4           (1) PLAN REQUIRED.—Not later than 120 days  
5           after the date on which the Secretary submits the  
6           report required under subsection (a)(5), the Sec-  
7           retary shall submit to Congress a plan to readjust  
8           the schedule for rating disabilities adopted and ap-  
9           plied by the Secretary under section 1155 of title 38,  
10          United States Code. In developing the plan required  
11          under this subsection, the Secretary shall consider  
12          the report submitted under subsection (a)(5) and  
13          shall provide for the readjustment of such schedule  
14          for rating disabilities to—

15                 (A) align the schedule with medical con-  
16                 cepts considered best practices as of the date of  
17                 the enactment of this Act, including those pro-  
18                 vided in the Current Procedural Terminology  
19                 Manual, International Classification of Dis-  
20                 eases, the Diagnostic and Statistical Manual of  
21                 Mental Disorders, and applicable American  
22                 Medical Association Guides;

23                 (B) bridge the gap between the schedule,  
24                 as in effect on the date of the enactment of this  
25                 Act, and medical understandings, as of such

1 date, of injuries and diseases and the affects of  
2 such injuries and diseases on the ability of a  
3 person suffering from them to function;

4 (C) prioritize such readjustment with re-  
5 spect to post-traumatic stress disorder, other  
6 mental disorders, neurological disorders, trau-  
7 matic brain injury, orthopedic disabilities, and  
8 digestive disabilities;

9 (D) ensure that the schedule is automated  
10 in accordance with the review and comprehen-  
11 sive plan of the Secretary under section 110 of  
12 this Act; and

13 (E) ensure that a transition plan is pro-  
14 vided to ease the transition from the schedule  
15 for rating disabilities, as in effect on the date  
16 of the enactment of this Act, to the implemen-  
17 tation of the schedule for rating disabilities, as  
18 proposed to be readjusted by the plan under  
19 this subsection.

20 (2) **TIMELINE FOR READJUSTMENT.**—The Sec-  
21 retary shall include in the plan submitted under the  
22 subsection a proposed timeline for when the Sec-  
23 retary intends to readjust the schedule. Such pro-  
24 posed timeline may not exceed three years.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as may be  
3 necessary to carry out subsections (a) and (b).

4 (d) ADVISORY COMMITTEE ON DISABILITY COM-  
5 PENSATION.—

6 (1) ESTABLISHMENT.—Subchapter III of chap-  
7 ter 5 of title 38, United States Code, is amended by  
8 adding at the end the following new section:

9 **“§ 546. Advisory Committee on Disability Compensa-**  
10 **tion**

11 “(a) ESTABLISHMENT.—(1) There is in the Depart-  
12 ment the Advisory Committee on Disability Compensation  
13 (hereinafter in this section referred to as the ‘Committee’).

14 “(2) The Committee shall consist of not more than  
15 18 members appointed by the Secretary from among indi-  
16 viduals who—

17 “(A) have demonstrated significant civic or pro-  
18 fessional achievement; and

19 “(B) have experience with the provision of dis-  
20 ability compensation by the Department or are lead-  
21 ing medical or scientific experts in relevant fields.

22 “(3) The Secretary shall seek to ensure that members  
23 appointed to the Committee include individuals from a  
24 wide variety of geographic areas and ethnic backgrounds,

1 individuals from veterans service organizations, individ-  
2 uals with combat experience, and women.

3 “(4) The Secretary shall determine the terms of serv-  
4 ice and pay and allowances of the members of the Com-  
5 mittee, except that a term of service may not exceed two  
6 years. The Secretary may reappoint any member for addi-  
7 tional terms of service.

8 “(b) RESPONSIBILITIES OF COMMITTEE.—(1) The  
9 Secretary shall, on a regular basis, consult with and seek  
10 the advice of the Committee with respect to the mainte-  
11 nance and periodic readjustment of the schedule for rating  
12 disabilities under section 1155 of this title.

13 “(2)(A) In providing advice to the Secretary under  
14 this subsection, the Committee shall—

15 “(i) assemble and review relevant information  
16 relating to the needs of veterans with disabilities;

17 “(ii) provide information relating to the nature  
18 and character of disabilities arising from service in  
19 the Armed Forces;

20 “(iii) provide an on-going assessment of the ef-  
21 fectiveness of the schedule for rating disabilities; and

22 “(iv) provide on-going advice on the most ap-  
23 propriate means of responding to the needs of vet-  
24 erans relating to disability compensation in the fu-  
25 ture.

1       “(B) In carrying out its duties under subparagraph  
2 (A), the Committee shall take into special account the  
3 needs of veterans who have served in a theater of combat  
4 operations.

5       “(c) ANNUAL REPORT.—(1) Not later than March 31  
6 of each year, the Committee shall submit to the Secretary  
7 a report on the programs and activities of the Department  
8 that relate to the payment of disability compensation.  
9 Each such report shall include—

10               “(A) an assessment of the needs of vet-  
11               erans with respect to disability compensation;

12               “(B) a review of the programs and activi-  
13               ties of the Department designed to meet such  
14               needs; and

15               “(C) such recommendations (including rec-  
16               ommendations for administrative and legislative  
17               action) as the Committee considers appropriate.

18       “(2) Not later than 90 days after the receipt of a  
19 report under paragraph (1), the Secretary shall transmit  
20 to the Committees on Veterans’ Affairs of the Senate and  
21 House of Representatives a copy of the report, together  
22 with any comments and recommendations concerning the  
23 report that the Secretary considers appropriate.

1       “(3) The Committee may also submit to the Sec-  
2 retary such other reports and recommendations as the  
3 Committee considers appropriate.

4       “(4) The Secretary shall submit with each annual re-  
5 port submitted to the Congress pursuant to section 529  
6 of this title a summary of all reports and recommendations  
7 of the Committee submitted to the Secretary since the pre-  
8 vious annual report of the Secretary submitted pursuant  
9 to that section.

10       “(d) APPLICABILITY OF FEDERAL ADVISORY COM-  
11 MITTEE ACT.—(1) Except as provided in paragraph (2),  
12 the provisions of the Federal Advisory Committee Act (5  
13 U.S.C. App.) shall apply to the activities of the Committee  
14 under this section.

15       “(2) Section 14 of such Act shall not apply to the  
16 Committee.”.

17               (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions at the beginning of such chapter is amended  
19 by adding at the end of the items relating to sub-  
20 chapter III the following new item:

“546. Advisory Committee on Disability Compensation.”.

21 **SEC. 103. STUDY ON EMPLOYEE WORK CREDIT SYSTEM OF**  
22 **VETERANS BENEFITS ADMINISTRATION.**

23       (a) STUDY REQUIRED.—The Secretary of Veterans  
24 Affairs shall conduct a study on the employee work credit  
25 system of the Veterans Benefits Administration of the De-

1 partment of Veterans Affairs, which is used to measure  
2 the work production of employees of the Veterans Benefits  
3 Administration.

4 (b) CONTENTS OF STUDY.—In carrying out the study  
5 under subsection (a), the Secretary shall consider the ad-  
6 visability of implementing—

7 (1) performance standards and accountability  
8 measures to ensure that—

9 (A) claims for benefits under the laws ad-  
10 ministered by the Secretary are processed in an  
11 objective, accurate, consistent, and efficient  
12 manner; and

13 (B) final decisions with respect to such  
14 claims are consistent and issued within the av-  
15 erage amount of time required to process a  
16 claim, as identified by the Secretary in the most  
17 recent annual report submitted by the Secretary  
18 under section 7734 of title 38, United States  
19 Code;

20 (2) guidelines and procedures for the prompt  
21 processing of such claims that are ready to rate  
22 upon submission;

23 (3) guidelines and procedures for the processing  
24 of such claims submitted by severely injured and

1 very severely injured veterans, as determined by the  
2 Secretary; and

3 (4) requirements for assessments of claims  
4 processing at each regional office for the purpose of  
5 producing lessons learned and best practices.

6 (c) REPORT TO CONGRESS.—Not later than 180 days  
7 after the date of the enactment of this Act, the Secretary  
8 shall submit to Congress a report on the study conducted  
9 under this section and the progress of the Secretary in  
10 implementing the new system for evaluating employees of  
11 the Veterans Benefits Administration required under sub-  
12 section (d).

13 (d) EVALUATION OF VETERANS BENEFITS ADMINIS-  
14 TRATION EMPLOYEES.—

15 (1) NEW SYSTEM REQUIRED.—By not later  
16 than 180 days after the date on which the Secretary  
17 of Veterans Affairs submits to Congress the report  
18 required under subsection (d), the Secretary shall es-  
19 tablish a new system for evaluating the work produc-  
20 tion of employees of the Veterans Benefits Adminis-  
21 tration. Such system shall—

22 (A) be based on the findings of the study  
23 conducted by the Secretary under this section;

1 (B) focus on evaluating the accuracy and  
2 quality of ratings decisions made by such em-  
3 ployees; and

4 (C) not resemble or be based on any con-  
5 cept on which the system in effect as of the  
6 date of the enactment of this Act is based.

7 (2) SUSPENSION OF AWARD OF WORK CRED-  
8 ITS.—If the Secretary of Veterans Affairs does not  
9 implement the new system for evaluating work pro-  
10 duction as required under paragraph (1), the Sec-  
11 retary may not award a work credit to any employee  
12 of the Veterans Benefits Administration until the  
13 Secretary has implemented such system.

14 **SEC. 104. STUDY ON WORK MANAGEMENT SYSTEM.**

15 (a) IN GENERAL.—The Secretary of Veterans Affairs  
16 shall conduct a study on the work management system  
17 of the Veterans Benefits Administration of the Depart-  
18 ment of Veterans Affairs, which is designed to improve  
19 accountability, quality, and accuracy, and reduce the time  
20 for processing claims for benefits under laws administered  
21 by the Secretary that are adjudicated by the Veterans  
22 Benefits Administration.

23 (b) CONTENTS OF STUDY.—In conducting the study  
24 required under subsection (a), the Secretary shall con-  
25 sider—

1 (1) accountability for claims adjudication out-  
2 comes;

3 (2) the quality of claims adjudicated;

4 (3) a simplified process to adjudicate claims;

5 (4) the maximum use of information technology  
6 applications;

7 (5) rules-based applications and tools for proc-  
8 essing and adjudicating claims efficiently and effec-  
9 tively; and

10 (6) methods of reducing the time required to  
11 obtain information from outside sources.

12 (c) REPORT TO CONGRESS.—Not later than 180 days  
13 after the date of the enactment of this Act, the Secretary  
14 shall submit to Congress a report on the study conducted  
15 under this section.

16 **SEC. 105. CERTIFICATION AND TRAINING OF EMPLOYEES**  
17 **OF VETERANS BENEFITS ADMINISTRATION**  
18 **RESPONSIBLE FOR PROCESSING CLAIMS.**

19 (a) EMPLOYEE CERTIFICATION REQUIRED.—

20 (1) IN GENERAL.—Subchapter II of chapter 77  
21 of title 38, United States Code, is amended by add-  
22 ing at the end the following new section:

23 **“§ 7735. Employee certification**

24 “(a) DEVELOPMENT OF CERTIFICATION EXAMINA-  
25 TION.—The Secretary shall develop a certification exam-

1 ination for appropriate employees and managers of the  
2 Veterans Benefits Administration who are responsible for  
3 processing claims for benefits under the laws administered  
4 by the Secretary. The Secretary shall develop such exam-  
5 ination in consultation with examination development ex-  
6 perts, interested stakeholders, including such appropriate  
7 employees, employee representatives, and managers, and  
8 appropriate public and private entities, including veterans  
9 service organizations and other service organizations.

10       “(b) EMPLOYEE AND MANAGER REQUIREMENT.—  
11 The Secretary shall require appropriate employees and  
12 managers of the Veterans Benefits Administration who  
13 are responsible for processing claims for benefits under  
14 the laws administered by the Secretary to take a certifi-  
15 cation examination.

16       “(c) LIMITATION.—The Secretary may not satisfy  
17 any requirement of this section through the use of any  
18 certification examination or program that exists as of the  
19 date of the enactment of the Veterans Disability Benefits  
20 Claims Modernization Act of 2008.”.

21               (2) DEADLINES FOR IMPLEMENTATION.—The  
22 Secretary of Veterans Affairs shall—

23                       (A) develop the certification examination  
24                       required to be developed under section 7735 of  
25                       title 38, United States Code, as added by sub-

1 section (a), by not later than one year after the  
2 date of the enactment of this Act; and

3 (B) implement procedures for admin-  
4 istering the certification of employees under  
5 such section and begin administering the certifi-  
6 cation examination required under such section  
7 by not later than 90 days after the date on  
8 which the development of such certification ex-  
9 amination is complete.

10 (3) CLERICAL AMENDMENT.—The table of sec-  
11 tions at the beginning of such chapter is further  
12 amended by adding at the end of the items relating  
13 to subchapter II the following new item:

“7735. Employee certification.”.

14 (b) EVALUATION OF TRAINING.—

15 (1) EVALUATION REQUIRED.—The Secretary of  
16 Veterans Affairs shall enter into a contract with a  
17 private entity with experience evaluating training  
18 processes, continuing education needs, and central-  
19 ized training requirements, under which that entity  
20 shall—

21 (A) conduct an evaluation of the items re-  
22 quired to be included in the annual report of  
23 the Secretary under section 7734 of title 38,  
24 United States Code, that were included in the  
25 last such report submitted before the date of

1 the enactment of this Act, that relate to the  
2 training and performance assessment programs  
3 of the Department of Veterans Affairs for em-  
4 ployees of the Veterans Benefits Administration  
5 who are responsible for matters relating to com-  
6 pensation or pension benefits under the laws  
7 administered by the Secretary; and

8 (B) not later than 180 days after the date  
9 of the enactment of this Act, submit to the Sec-  
10 retary the results of such evaluation.

11 (2) SUBMISSION OF RESULTS TO CONGRESS.—

12 The Secretary shall include the results of the evalua-  
13 tion required under paragraph (1) with the first an-  
14 nual report required to be submitted to Congress  
15 under section 529 of title 38, United States Code,  
16 submitted after the date on which the Secretary re-  
17 ceives such results.

18 (3) REPORT.—Not later than 180 days after  
19 the date on which the Secretary submits the report  
20 referred to in paragraph (2), the Secretary shall  
21 submit to Congress a report on any actions the Sec-  
22 retary has taken or plans to take in response to the  
23 results of the evaluation required under paragraph  
24 (1).

1 **SEC. 106. ANNUAL ASSESSMENT OF QUALITY ASSURANCE**  
2 **PROGRAM.**

3 (a) ANNUAL ASSESSMENT REQUIRED.—Section 7731  
4 of title 38, United States Code, is amended by adding at  
5 the end the following new subsection:

6 “(c)(1) The Secretary shall enter into a contract with  
7 an independent third-party entity for the conduct of an  
8 annual assessment of the quality assurance program  
9 under this section. Each such assessment shall—

10 “(A) evaluate a statistically valid sample of em-  
11 ployees of the Veterans Benefits Administration and  
12 a statistically valid sample of the work product of  
13 such employees to assess the quality and accuracy of  
14 such work product;

15 “(B) measure the performance of each regional  
16 office of the Veterans Benefits Administration;

17 “(C) measure the accuracy of the disability rat-  
18 ings assigned under the schedule for rating disabil-  
19 ities under section 1155 of this title;

20 “(D) compare disability ratings and evaluate  
21 consistency between regional offices;

22 “(E) assess the performance of employees and  
23 managers of the Veterans Benefits Administration;  
24 and

25 “(F) produce automated categorizable data to  
26 help identify trends.

1       “(2) The Secretary shall use information gathered  
2 through the annual assessments required under this sec-  
3 tion in developing the employee certification required  
4 under section 7735 of this title.

5       “(3) Nothing in this subsection shall require the Sec-  
6 retary to replace the quality assurance program under this  
7 section, as in effect on the date of the enactment of the  
8 Veterans Disability Benefits Claims Modernization Act of  
9 2008.”.

10       (b) REPORT TO CONGRESS.—Section 7734 of such  
11 title is amended—

12               (1) in paragraph (2), by striking “and” at the  
13 end;

14               (2) by redesignating paragraph (3) as para-  
15 graph (4); and

16               (3) by inserting after paragraph (2) the fol-  
17 lowing new paragraph (3):

18               “(3) the results and findings of the most recent  
19 annual assessment conducted under section 7731(c)  
20 of this title; and”.

1 **SEC. 107. EXPEDITED TREATMENT OF FULLY DEVELOPED**  
2 **CLAIMS AND REQUIREMENT FOR CHECKLIST**  
3 **TO BE PROVIDED TO INDIVIDUALS SUBMIT-**  
4 **TING INCOMPLETE CLAIMS.**

5 (a) EXPEDITED TREATMENT OF FULLY DEVELOPED  
6 CLAIMS.—

7 (1) IN GENERAL.—Subchapter I of chapter 51  
8 of title 38, United States Code, is amended by add-  
9 ing at the end the following new section:

10 **“§ 5109C. Expedited treatment of fully developed**  
11 **claims**

12 “(a) EXPEDITED TREATMENT REQUIRED.—The Sec-  
13 retary shall take such actions as may be necessary to pro-  
14 vide for the expeditious treatment by the appropriate re-  
15 gional office of the Veterans Benefits Administration of  
16 any fully developed claim to ensure that any such claim  
17 is adjudicated not later than 90 days after the date on  
18 which the claim is submitted.

19 “(b) NOTICE OF REQUIRED INFORMATION AND EVI-  
20 DENCE.—Nothing in this section shall affect the responsi-  
21 bility of the Secretary to provide notice under section 5103  
22 to a claimant and a claimant’s representative of required  
23 information and evidence that is necessary to substantiate  
24 a fully developed claim.

25 “(c) FULLY DEVELOPED CLAIM DEFINED.—For  
26 purposes of this section, the term ‘fully developed claim’

1 means a claim for a benefit under a law administered by  
2 the Secretary—

3 “(1) for which the claimant—

4 “(A) received assistance from a veterans  
5 service officer, a State or county veterans serv-  
6 ice officer, an agent, or an attorney; or

7 “(B) submits along with the claim an ap-  
8 propriate indication that the claimant does not  
9 intend to submit any additional information in  
10 support of the claim and does not require addi-  
11 tional assistance with respect to the claim; and

12 “(2) for which the claimant submits a certifi-  
13 cation in writing that is signed by the claimant stat-  
14 ing that at the time of signature, no additional in-  
15 formation is available or needs to be submitted in  
16 order for the claim to be adjudicated.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions at the beginning of such chapter is amended  
19 by adding at the end of the items relating to sub-  
20 chapter I the following new item:

“5109C. Expedited treatment of fully developed claims.”.

21 (3) DEADLINES FOR IMPLEMENTATION.—By  
22 not later than 180 days after the date of the enact-  
23 ment of this Act, the Secretary of Veterans Affairs  
24 shall establish a process for expediting claims under

1 section 5109C of title 38, United States Code, as  
2 added by paragraph (1).

3 (b) PROVISION OF CHECKLIST TO INDIVIDUALS SUB-  
4 MITTING INCOMPLETE CLAIMS.—

5 (1) CHECKLIST.—Section 5103 of title 38,  
6 United States Code, is amended—

7 (A) by redesignating subsection (b) as sub-  
8 section (c); and

9 (B) by inserting after subsection (a) the  
10 following new subsection (b):

11 “(b) PROVISION OF CHECKLIST.—In providing notice  
12 of required information and evidence to a claimant and  
13 a claimant’s representative, if any, under subsection (a),  
14 the Secretary shall provide to the claimant and any such  
15 representative a checklist that includes a detailed descrip-  
16 tion of information or evidence required to be submitted  
17 by the claimant to substantiate the claim.”.

18 (2) EFFECTIVE DATE.—Subsection (b) of sec-  
19 tion 5103 of title 38, United States Code, as added  
20 by paragraph (1) shall apply with respect to notice  
21 provided after the date that is one year after the  
22 date of the enactment of this Act.

23 (3) DEADLINE FOR CREATION OF CHECK-  
24 LIST.—By not later than 180 days after the date of  
25 the enactment of this Act, the Secretary of Veterans

1       Affairs shall create the checklist required under such  
2       subsection, as so added.

3               (4) SUBMITTAL TO CONGRESS.—Not later than  
4       60 days after the Secretary creates the checklist re-  
5       quired by such subsection, as so added, the Sec-  
6       retary shall submit to Congress the checklist.

7 **SEC. 108. STUDY AND REPORT ON EMPLOYING MEDICAL**  
8               **PROFESSIONALS TO ASSIST EMPLOYEES OF**  
9               **VETERANS BENEFITS ADMINISTRATION.**

10       (a) STUDY.—The Secretary of Veterans Affairs shall  
11       conduct a study to evaluate the need of the Veterans Ben-  
12       efits Administration of the Department of Veterans Af-  
13       fairs to employ, in addition to medical professionals of the  
14       Veterans Health Administration, medical professionals, in-  
15       cluding medical professionals who are not physicians, to  
16       act as a medical reference for employees of the Adminis-  
17       tration so that such employees may accurately assess med-  
18       ical evidence submitted in support of claims for benefits  
19       under laws administered by the Secretary. In no case shall  
20       any such medical professional be employed to rate any dis-  
21       ability or evaluate any claim. In conducting the study, the  
22       Secretary shall conduct statistically significant surveys of  
23       employees of the Administration to ascertain whether,  
24       how, and to what degree medical professionals could pro-  
25       vide assistance to such employees.

1 (b) REPORT TO CONGRESS.—Not later than 180 days  
2 after the date of the enactment of this Act, the Secretary  
3 shall submit to Congress a report on the study conducted  
4 under subsection (a).

5 (c) ACCESS TO MEDICAL PROFESSIONALS.—If the  
6 Secretary hires medical professionals pursuant to the  
7 study conducted under this section, the Secretary shall en-  
8 sure that employees employed by all regional offices of the  
9 Veterans Benefits Administration have access to such  
10 medical professionals.

11 **SEC. 109. ASSIGNMENT OF PARTIAL DISABILITY RATINGS**  
12 **TO QUALIFYING VETERANS.**

13 (a) IN GENERAL.—Chapter 11 of title 38, United  
14 States Code, is amended by inserting after section 1155  
15 the following new section:

16 **“§ 1156. Partial disability ratings**

17 “(a) ASSIGNMENT OF PARTIAL RATINGS.—For the  
18 purpose of providing disability compensation under this  
19 chapter to a qualifying veteran, the Secretary shall assign  
20 a partial disability rating to the veteran as follows:

21 “(1) In the case of a qualifying veteran de-  
22 scribed in subsection (b)(3)(A), a rating of 100 per-  
23 cent.

1           “(2) In the case of a qualifying veteran de-  
2           scribed in subsection (b)(3)(B), a rating of 50 per-  
3           cent.

4           “(b) QUALIFYING VETERAN.—For the purposes of  
5 this section, a qualifying veteran is a veteran—

6           “(1) who has been discharged from active duty  
7           service for 365 days or less;

8           “(2) for whom a permanent disability rating is  
9           not immediately assignable under the regular provi-  
10          sions of the schedule for rating disabilities under  
11          section 1155 of this title or on the basis of indi-  
12          vidual unemployability; and

13          “(3) who has—

14                 “(A) a severe disability for whom substan-  
15                 tially gainful employment is not feasible or ad-  
16                 visable; or

17                 “(B) a wound or injury, whether healed,  
18                 unhealed or incompletely healed for whom ma-  
19                 terial impairment of employability is likely.

20          “(c) EXAMINATIONS.—A medical examination of a  
21          qualifying veteran is not required to be performed before  
22          assigning a partial disability rating to the veteran under  
23          this section, but the fact that such an examination is con-  
24          ducted shall not prevent the Secretary from assigning such  
25          a rating.

1       “(d) TERMINATION OF PARTIAL RATING.—(1) EX-  
2 cept as provided in paragraph (2), a partial disability rat-  
3 ing assigned to a veteran under this section shall remain  
4 in effect until the earlier of the following dates:

5           “(A) The date on which the veteran receives a  
6 permanent disability rating based on the schedule  
7 for rating disabilities under section 1155 of this  
8 title.

9           “(B) The date that is 365 days after the date  
10 of the veteran’s last separation or release from ac-  
11 tive duty.

12       “(2) The Secretary may extend a partial disability  
13 rating assigned to a veteran under this section beyond the  
14 applicable termination date under paragraph (1), if the  
15 Secretary determines that such an extension is appro-  
16 priate.”.

17       (b) EFFECTIVE DATE.—Section 1156 of title 38,  
18 United States Code, as added by paragraph (1), shall take  
19 effect on the date of the enactment of this Act.

20       (c) CLERICAL AMENDMENT.—The table of sections  
21 at the beginning of such chapter is amended by inserting  
22 after the item relating to section 1155 the following new  
23 item:

“1156. Partial disability ratings.”.

1 **SEC. 110. REVIEW AND ENHANCEMENT OF USE OF INFOR-**  
2 **MATION TECHNOLOGY AT VETERANS BENE-**  
3 **FITS ADMINISTRATION.**

4 (a) REVIEW AND COMPREHENSIVE PLAN.—By not  
5 later than one year after the date of the enactment of this  
6 Act, the Secretary of Veterans Affairs shall conduct a re-  
7 view of the use of information technology at the Veterans  
8 Benefits Administration and develop a comprehensive plan  
9 for the use of such technology in processing claims for  
10 benefits under laws administered by the Secretary of Vet-  
11 erans Affairs that would reduce subjectivity, avoidable re-  
12 mands, and regional office variances in disability ratings.

13 (b) INFORMATION TECHNOLOGY.—The plan devel-  
14 oped under subsection (a) shall include—

15 (1) the use of rules-based processing and infor-  
16 mation technology systems and automated decision  
17 support software at all levels of processing claims;

18 (2) the enhancement of the use of information  
19 technology for all aspects of the claims process;

20 (3) a technological platform that allows for the  
21 use of information that members of the Armed  
22 Forces, veterans, and dependents have submitted  
23 electronically, including uploaded military records,  
24 medical evidence, and other appropriate documenta-  
25 tion, and the capability to view applications for bene-  
26 fits submitted online;

1           (4) the use of electronic examination templates  
2           in conjunction with the schedule for rating disabili-  
3           ties under section 1155 of title 38, United States  
4           Code;

5           (5) making such changes as may be required to  
6           the information technology system of the Depart-  
7           ment so as to ensure that users of such system are  
8           able to access the service medical records of the De-  
9           partment of Defense by not later than one year after  
10          the date on which the plan is implemented;

11          (6) the provision of bi-directional access to med-  
12          ical records and service records between the Depart-  
13          ment of Veterans Affairs and the Department of De-  
14          fense; and

15          (7) the availability, on the Internet website of  
16          the Department, of a mechanism that can be used  
17          by a claimant to check on the status of any claim  
18          submitted by that claimant and that provides infor-  
19          mation on—

20                 (A) whether a decision has been reached  
21                 with respect to such a claim, notice of the deci-  
22                 sion; or

23                 (B) if no such decision has been reached,  
24                 notice of—

1 (i) whether the application submitted  
2 by the claimant is complete;

3 (ii) whether the Secretary requires ad-  
4 ditional information or evidence to process  
5 the claim;

6 (iii) the estimated date on which a de-  
7 cision with respect to the claim is expected  
8 to be made; and

9 (iv) the stage at which the claim is  
10 being processed as of the date on which  
11 such status is checked.

12 (c) REVIEW OF BEST PRACTICES AND LESSONS  
13 LEARNED.—In carrying out this section, the Secretary  
14 shall review best practices and lessons learned within the  
15 Department of Veterans Affairs and the use of the tech-  
16 nology known as “VistA” by other Government entities  
17 and private sector organizations who employ information  
18 technology and automated decision support software

19 (d) REDUCTION OF CLAIMS PROCESSING TIME.—In  
20 carrying out this section, the Secretary shall ensure that  
21 a plan is developed that, within three years of implementa-  
22 tion, would reduce the processing time for each claim proc-  
23 essed by the Veterans Benefits Administration to not  
24 longer than the average amount of time to required to  
25 process a claim, as identified by the Secretary in the most

1 recent annual report submitted by the Secretary under  
2 section 7734 of title 38, United States Code.

3 (e) CONSULTATION.—In carrying out this section, the  
4 Secretary of Veterans Affairs shall consult with informa-  
5 tion technology designers at the Veterans Health Adminis-  
6 tration, VistA managers, the Secretary of Defense, appro-  
7 priate officials of other Government agencies, appropriate  
8 individuals in the private and public sectors, veterans serv-  
9 ice organizations, and other relevant service organizations.

10 (f) REPORT TO CONGRESS.—By not later than Janu-  
11 ary 1, 2009, the Secretary shall submit to Congress a re-  
12 port on the review and comprehensive plan required under  
13 this section.

14 **SEC. 111. TREATMENT OF CLAIMS UPON DEATH OF CLAIM-**  
15 **ANT.**

16 (a) TREATMENT OF BENEFICIARY OF VETERAN'S  
17 ACCRUED BENEFITS AS CLAIMANT FOR PURPOSES OF IN-  
18 COMPLETE CLAIMS UPON DEATH OF VETERAN.—Chapter  
19 51 of title 38, United States Code, is amended by inserting  
20 after section 5121 the following new section:

21 **“§ 5121A. Substitution in case of death of claimant**

22 “(a) SUBSTITUTION.—If a veteran who is a claimant  
23 dies while a claim for any benefit under a law administered  
24 by the Secretary, or an appeal of a decision with respect  
25 to such a claim, is pending and awaiting adjudication, the

1 person who would receive any accrued benefits due to the  
2 veteran under section 5121(a)(2) of this title shall be  
3 treated as the claimant for the purposes of processing the  
4 claim to completion, except that such person may only  
5 submit new evidence in support of the claim during the  
6 one-year period beginning on the date of the death of the  
7 veteran.

8 “(b) LIMITATION.—Only one person may be treated  
9 as the claimant under subsection (a).

10 “(c) DESIGNATION OF THIRD PARTY.—If the person  
11 who would be eligible to be treated as the claimant under  
12 subsection (a) certifies to the Secretary that the person  
13 does not want to be treated as the claimant for such pur-  
14 poses, such person may designate the person who would  
15 receive the benefits under section 5121(a)(2) upon the  
16 death of the person who would otherwise be treated as  
17 the claimant under subsection (a) to be treated as the  
18 claimant for the purposes of processing the claim to com-  
19 pletion.”.

20 (b) CLERICAL AMENDMENT.—The table of sections  
21 at the beginning of such chapter is amended by inserting  
22 after the item relating to section 5121 the following new  
23 item:

“5121A. Death of claimant.”.

24 (c) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply with respect to the claim of any

1 veteran who dies on or after the date of the enactment  
2 of this Act.

3 **TITLE II—MATTERS RELATING**  
4 **TO UNITED STATES COURT**  
5 **OF APPEALS FOR VETERANS**  
6 **CLAIMS**

7 **SEC. 201. ANNUAL REPORTS ON WORKLOAD OF UNITED**  
8 **STATES COURT OF APPEALS FOR VETERANS**  
9 **CLAIMS.**

10 (a) IN GENERAL.—Subchapter III of chapter 72 of  
11 title 38, United States Code, is amended by adding at the  
12 end the following new section:

13 **“§ 7288. Annual report**

14 “The chief judge of the Court shall annually submit  
15 to the Committee on Veterans’ Affairs of the Senate and  
16 the Committee on Veterans’ Affairs of the House of Rep-  
17 resentatives a report summarizing the workload of the  
18 Court during the last fiscal year that ended before the sub-  
19 mission of such report. Such report shall include, with re-  
20 spect to such fiscal year, the following information:

21 “(1) The number of appeals filed.

22 “(2) The number of petitions filed.

23 “(3) The number of applications filed under  
24 section 2412 of title 28.



1           (2) by adding at the end the following new sen-  
2           tence: “The Court shall have power to affirm, mod-  
3           ify, reverse, remand, or vacate and remand a deci-  
4           sion of the Board after deciding all relevant assign-  
5           ments of error raised by an appellant for each par-  
6           ticular claim for benefits. In a case in which the  
7           Court reverses a decision on the merits of a par-  
8           ticular claim and orders an award of benefits, the  
9           Court need not decide any additional assignments of  
10          error with respect to that claim.”

11          (b) **EFFECTIVE DATE.**—The amendments made by  
12          subsection (a) shall apply with respect to a decision of the  
13          Board of Veterans’ Appeals made on or after the date of  
14          the enactment of this Act.

○