

115TH CONGRESS
1ST SESSION

H. R. 4369

To amend title 38, United States Code, to codify the authority of the Secretary of Veterans Affairs to assign a disability rating of total to a veteran by reason of unemployability, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2017

Ms. MAXINE WATERS of California (for herself, Mr. EVANS, Mrs. BEATTY, Mr. SEAN PATRICK MALONEY of New York, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to codify the authority of the Secretary of Veterans Affairs to assign a disability rating of total to a veteran by reason of unemployability, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Benefits
5 for Disabled Veterans Act of 2017”.

1 **SEC. 2. CODIFICATION OF INDIVIDUAL UNEMPLOYABILITY.**

2 (a) IN GENERAL.—Chapter 11 of title 38, United
3 States Code, is amended by inserting after section 1163
4 the following:

5 **“§ 1164. Determination of total disability by reason of**
6 **unemployability**

7 “(a) IN GENERAL.—Subject to subsection (b), for the
8 purposes of this chapter, in the case of a veteran who has
9 a service-connected disability, or service-connected disabili-
10 ties, not rated as total, the Secretary may assign a dis-
11 ability rating of total to the veteran if the Secretary deter-
12 mines the veteran—

13 “(1) is unable to secure or maintain substan-
14 tially gainful employment as a result of, in part or
15 in whole, a service-connected disability; and

16 “(2) has—

17 “(A) a service-connected disability rated at
18 least 60 percent; or

19 “(B) two or more service-connected disabili-
20 ties—

21 “(i) at least one of which is rated at
22 least 40 percent; and

23 “(ii) that, combined, are rated at least
24 70 percent.

25 “(b) ADDITIONAL AUTHORITY OF THE SECRETARY
26 TO ASSIGN A DISABILITY RATING OF TOTAL.—The Sec-

1 retary may assign a disability rating of total to a veteran
2 who has a service-connected disability or disabilities de-
3 scribed in subsection (a)(2)—

4 “(1) if the veteran maintains marginal employ-
5 ment; or

6 “(2) if—

7 “(A) the veteran maintains substantially
8 gainful employment; and

9 “(B) the Secretary, considering the totality
10 of circumstances (including total household
11 medical expenses and the cost of living in the
12 area in which the veteran resides), determines
13 that such assignment is appropriate.

14 “(c) PROHIBITION ON THE CONSIDERATION OF CER-
15 TAIN FACTORS.—In making any determination under sub-
16 section (a) or (b), the Secretary may not consider the fol-
17 lowing:

18 “(1) The age of a veteran.

19 “(2) The eligibility of a veteran for any retire-
20 ment benefit, including any benefit under title II of
21 the Social Security Act (42 U.S.C. 401 et seq.).

22 “(d) DEFINITIONS.—In this section:

23 “(1) The term ‘marginal employment’ means
24 employment for which the earned annual income is
25 less than 100 percent of the official poverty thresh-

1 old for an individual established by the United
2 States Census Bureau.

3 “(2) The term ‘substantially gainful employ-
4 ment’ means employment for which the earned an-
5 nual income equals or exceeds 100 percent of the of-
6 ficial poverty threshold for an individual established
7 by the United States Census Bureau.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of chapter 11 of title 38, United States
10 Code, is amended by adding after the item relating to sec-
11 tion 1163 the following:

“1164. Determination of total disability by reason of unemployability.”.

12 (c) REGULATIONS.—Not later than 180 days after
13 the effective date of this Act, the Secretary of Veterans
14 Affairs shall prescribe such regulations as may be nec-
15 essary to carry out this section.

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