

115TH CONGRESS  
1ST SESSION

# H. R. 457

To amend title 38, United States Code, to improve the appeals process  
of the Department of Veterans Affairs.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2017

Ms. TITUS 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 improve the  
appeals process of the Department of Veterans Affairs.

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 “VA Appeals Mod-  
5 ernization Act of 2017”.

6 **SEC. 2. APPEALS REFORM.**

7 (a) Section 101 of title 38, United States Code, is  
8 amended by adding at the end the following new para-  
9 graphs:

1           “(34) The term ‘Agency of Original Jurisdic-  
2           tion’ means the activity which entered the original  
3           determination with regard to a claim for benefits  
4           under this title.

5           “(35) The term ‘relevant evidence’ means evi-  
6           dence that tends to prove or disprove a matter in  
7           issue.”.

8           (b) Section 5103 of title 38, United States Code, is  
9           amended—

10           (1) in subsection (a)(2)(B)(i) by striking “, a  
11           claim for reopening a prior decision on a claim, or  
12           a claim for an increase in benefits;” and inserting  
13           “or a supplemental claim;”; and

14           (2) in subsection (b) by adding at the end the  
15           following new paragraph:

16           “(6) Nothing in this section shall require notice  
17           to be sent for a supplemental claim that is filed  
18           within the timeframe set forth in subsections  
19           (a)(2)(B) and (a)(2)(D) of section 5110 of this  
20           title.”.

21           (c) Section 5103A(f) of title 38, United States Code,  
22           is amended to read as follows:

23           “(a) RULE WITH RESPECT TO DISALLOWED  
24           CLAIMS.—Nothing in this section shall be construed to re-  
25           quire the Secretary to readjudicate a claim that has been

1 disallowed except when new and relevant evidence is pre-  
2 sented or secured, as described in section 5108 of this  
3 title.”.

4 (d) Chapter 51 of title 38, United States Code, is  
5 amended by adding the following new sections:

6 **“§ 5103B. Applicability of duty to assist**

7 “(a) The Secretary’s duty to assist under section  
8 5103A of this title shall apply only to a claim, or supple-  
9 mental claim, for a benefit under a law administered by  
10 the Secretary until the time that a claimant is provided  
11 notice of the Agency of Original Jurisdiction’s decision  
12 with respect to such claim, or supplemental claim, under  
13 section 5104 of this title.

14 “(b) The Secretary’s duty to assist under section  
15 5103A of this title shall not apply to higher-level review  
16 by the Agency of Original Jurisdiction, pursuant to section  
17 5104B of this title, or to review on appeal by the Board  
18 of Veterans’ Appeals.

19 “(c) CORRECTION OF DUTY TO ASSIST ERRORS.—

20 “(1) HIGHER-LEVEL REVIEW.—If, during re-  
21 view of the Agency of Original Jurisdiction’s deci-  
22 sion under section 5104B of this title, the higher-  
23 level reviewer identifies an error on the part of the  
24 Agency of Original Jurisdiction to satisfy its duties  
25 under section 5103A of this title, and that error oc-

1 curred prior to the Agency of Original Jurisdiction’s  
2 decision being reviewed, unless the claim can be  
3 granted in full, the higher-level reviewer shall return  
4 the claim for correction of such error and readjudi-  
5 cation.

6 “(2) BOARD OF VETERANS’ APPEALS.—If the  
7 Board, during review on appeal of an Agency of  
8 Original Jurisdiction decision, identifies an error on  
9 the part of the Agency of Original Jurisdiction to  
10 satisfy its duties under section 5103A of this title,  
11 and that error occurred prior to the Agency of Ori-  
12 ginal Jurisdiction decision on appeal, unless the claim  
13 can be granted in full, the Board shall remand the  
14 claim to the Agency of Original Jurisdiction for cor-  
15 rection of such error and readjudication. Remand for  
16 correction of such error may include directing the  
17 Agency of Original Jurisdiction to obtain an advi-  
18 sory medical opinion under section 5109 of this title.

19 **“§ 5104A. Binding nature of favorable findings**

20 “Any finding favorable to the claimant as described  
21 in section 5104(b)(4) of this title shall be binding on all  
22 subsequent adjudicators within the department, unless  
23 clear and convincing evidence is shown to the contrary to  
24 rebut such favorable finding.

1 **“§ 5104B. Higher-level review by the Agency of Original**  
2 **Jurisdiction**

3       “(a) IN GENERAL.—The claimant may request a re-  
4 view of the decision of the Agency of Original Jurisdiction  
5 by a higher-level adjudicator within the Agency of Original  
6 Jurisdiction.

7       “(b) TIME AND MANNER OF REQUEST.—A request  
8 for higher-level review by the Agency of Original Jurisdic-  
9 tion must be in writing in the form prescribed by the Sec-  
10 retary and made within one year of the notice of the Agen-  
11 cy of Original Jurisdiction’s decision. Such request may  
12 specifically indicate whether such review is requested by  
13 a higher-level adjudicator at the same office within the  
14 Agency of Original Jurisdiction or by an adjudicator at  
15 a different office of the Agency of Original Jurisdiction.

16       “(c) DECISION.—Notice of a higher-level review deci-  
17 sion under this section shall be provided in writing.

18       “(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-  
19 dentiary record before the higher-level reviewer shall be  
20 limited to the evidence of record in the Agency of Original  
21 Jurisdiction’s decision being reviewed.

22       “(e) DE NOVO REVIEW.—Higher-level review under  
23 this section shall be de novo.”.

24       (e) Section 5104(b) of title 38, United States Code,  
25 is amended to read as follows:

1 “(b) In any case where the Secretary denies a benefit  
2 sought, the notice required by subsection (a) shall also in-  
3 clude—

4 “(1) identification of the issues adjudicated;

5 “(2) a summary of the evidence considered by  
6 the Secretary;

7 “(3) a summary of the applicable laws and reg-  
8 ulations;

9 “(4) identification of findings favorable to the  
10 claimant;

11 “(5) identification of elements not satisfied  
12 leading to the denial;

13 “(6) an explanation of how to obtain or access  
14 evidence used in making the decision; and

15 “(7) if applicable, identification of the criteria  
16 that must be satisfied to grant service connection or  
17 the next higher level of compensation.”.

18 (f) Section 5108 of title 38, United States Code, is  
19 amended to read as follows:

20 **“§ 5108. Supplemental claims**

21 “If new and relevant evidence is presented or secured  
22 with respect to a supplemental claim, the Secretary shall  
23 readjudicate the claim taking into consideration any evi-  
24 dence added to the record prior to the former disposition  
25 of the claim.”.

1 (g) Section 5109 of title 38, United States Code, is  
2 amended by adding at the end the following new sub-  
3 section:

4 “(d) The Board of Veterans’ Appeals may remand  
5 a claim to direct the Agency of Original Jurisdiction to  
6 obtain an advisory medical opinion under this section to  
7 correct an error on the part of the Agency of Original Ju-  
8 risdiction to satisfy its duties under section 5103A of this  
9 title when such error occurred prior to the Agency of  
10 Original Jurisdiction’s decision on appeal. The Board’s re-  
11 mand instructions shall include the questions to be posed  
12 to the independent medical expert providing the advisory  
13 medical opinion.”.

14 (h) Section 5110 of title 38, United States Code, is  
15 amended—

16 (1) by amending subsection (a) to read as fol-  
17 lows:

18 “(a)(1) IN GENERAL.—Unless specifically provided  
19 otherwise in this chapter, the effective date of an award  
20 based on an initial claim, or a supplemental claim, of com-  
21 pensation, dependency and indemnity compensation, or  
22 pension, shall be fixed in accordance with the facts found,  
23 but shall not be earlier than the date of receipt of applica-  
24 tion therefor.

1       “(2) EFFECT OF CONTINUOUS PURSUIT OF A CLAIM  
2 ON EFFECTIVE DATE OF AWARD.—For purposes of ap-  
3 plying the effective date rules in this section, the date of  
4 application shall be considered the date of the filing of  
5 the initial application for a benefit provided that the claim  
6 is continuously pursued by filing any of the following ei-  
7 ther alone or in succession—

8               “(A) a request for higher-level review under sec-  
9 tion 5104B of this title within one year of an Agen-  
10 cy of Original Jurisdiction decision;

11              “(B) a supplemental claim under section 5108  
12 of this title within one year of an Agency of Original  
13 Jurisdiction decision;

14              “(C) a notice of disagreement within one year  
15 of an Agency of Original Jurisdiction decision; or

16              “(D) a supplemental claim under section 5108  
17 of this title within one year of a decision of the  
18 Board of Veterans’ Appeals.

19       “(3) SUPPLEMENTAL CLAIMS RECEIVED MORE  
20 THAN ONE YEAR AFTER AN AGENCY OF ORIGINAL JU-  
21 RISDICTION DECISION OR DECISION BY THE BOARD OF  
22 VETERANS’ APPEALS.—Except as otherwise provided in  
23 this section, for supplemental claims received more than  
24 one year after an Agency of Original Jurisdiction decision  
25 or a decision by the Board of Veterans’ Appeals, the effec-



1 tive date shall be fixed in accordance with the facts found,  
2 but shall not be earlier than the date of receipt of the  
3 supplemental claim.”; and

4 (2) in subsection (i) by—

5 (A) striking “reopened” and replacing it  
6 with “readjudicated”;

7 (B) striking “material” and replacing it  
8 with “relevant”; and

9 (C) striking “reopening” and replacing it  
10 with “readjudication”.

11 (i) Section 5111(d)(1) of title 38, United States  
12 Code, is amended by striking “or reopened award;” and  
13 replacing it with “award or award based on a supple-  
14 mental claim;”.

15 (j) Section 5904 of title 38, United States Code, is  
16 amended—

17 (1) in subsection (c)(1) by striking “notice of  
18 disagreement is filed” and replacing it with “claim-  
19 ant is provided notice of the Agency of Original Ju-  
20 risdiction’s initial decision under section 5104 of this  
21 title”; and

22 (2) in subsection (c)(2) by striking “notice of  
23 disagreement is filed” and replacing it with “claim-  
24 ant is provided notice of the Agency of Original Ju-

1 jurisdiction’s initial decision under section 5104 of this  
2 title”.

3 (k) Section 7103 of title 38, United States Code, is  
4 amended—

5 (1) in subsection (b)(1)(A) by striking “heard”  
6 and replacing it with “decided”; and

7 (2) in subsection (b)(1)(B) by striking “heard”  
8 and replacing it with “decided”.

9 (l) Section 7104(b) of title 38, United States Code,  
10 is amended by striking “reopened” and replacing it with  
11 “readjudicated”.

12 (m) Section 7105 of title 38, United States Code, is  
13 amended—

14 (1) in subsection (a)—

15 (A) by striking the first sentence and re-  
16 placing it with “Appellate review will be initi-  
17 ated by the filing of a notice of disagreement in  
18 the form prescribed by the Secretary.”; and

19 (B) by striking “hearing and”;

20 (2) by amending subsection (b) to read as fol-  
21 lows:

22 “(b)(1) Except in the case of simultaneously con-  
23 tested claims, notice of disagreement shall be filed within  
24 one year from the date of the mailing of notice of the  
25 Agency of Original Jurisdiction’s decision under section

1 5104, 5104B, or 5108. A notice of disagreement post-  
2 marked before the expiration of the one-year period will  
3 be accepted as timely filed. A question as to timeliness  
4 or adequacy of the notice of disagreement shall be decided  
5 by the Board.

6 “(2) Notices of disagreement must be in writing,  
7 must set out specific allegations of error of fact or law,  
8 and may be filed by the claimant, the claimant’s legal  
9 guardian, or such accredited representative, attorney, or  
10 authorized agent as may be selected by the claimant or  
11 legal guardian. Not more than one recognized organiza-  
12 tion, attorney, or agent will be recognized at any one time  
13 in the prosecution of a claim. Notices of disagreement  
14 must be filed with the Board.

15 “(3) The notice of disagreement shall indicate wheth-  
16 er the claimant requests a hearing before the Board, re-  
17 quests an opportunity to submit additional evidence with-  
18 out a Board hearing, or requests review by the Board  
19 without a hearing or submission of additional evidence. If  
20 the claimant does not expressly request a Board hearing  
21 in the notice of disagreement, no Board hearing will be  
22 held.”;

23 (3) by amending subsection (c) to read as fol-  
24 lows:

1       “(c) If no notice of disagreement is filed in accord-  
2       ance with this chapter within the prescribed period, the  
3       Agency of Original Jurisdiction’s action or decision shall  
4       become final and the claim will not thereafter be readjudi-  
5       cated or allowed, except as may otherwise be provided by  
6       section 5104B or 5108 of this title or regulations not in-  
7       consistent with this title.”;

8               (4) by striking subsections (d)(1) through  
9       (d)(5);

10              (5) by adding a new subsection (d) to read as  
11       follows:

12       “(d) The Board of Veterans’ Appeals may dismiss  
13       any appeal which fails to allege specific error of fact or  
14       law in the decision being appealed.”; and

15              (6) by striking subsection (e).

16       (n) Section 7105A(b) of title 38, United States Code,  
17       is amended to read as follows:

18       “(b) The substance of the notice of disagreement will  
19       be communicated to the other party or parties in interest  
20       and a period of thirty days will be allowed for filing a brief  
21       or argument in response thereto. Such notice shall be for-  
22       warded to the last known address of record of the parties  
23       concerned, and such action shall constitute sufficient evi-  
24       dence of notice.”.

1 (o) Strike section 7106 of title 38, United States  
2 Code.

3 (p) Section 7107 of title 38, United States Code, is  
4 amended—

5 (1) by amending subsection (a) to read as fol-  
6 lows:

7 “(a) The Board shall maintain two separate dockets.  
8 A non-hearing option docket shall be maintained for cases  
9 in which no Board hearing is requested and no additional  
10 evidence will be submitted. A separate and distinct hearing  
11 option docket shall be maintained for cases in which a  
12 Board hearing is requested in the notice of disagreement  
13 or in which no Board hearing is requested, but the appel-  
14 lant requests, in the notice of disagreement, an oppor-  
15 tunity to submit additional evidence. Except as provided  
16 in subsection (b), each case before the Board will be de-  
17 cided in regular order according to its respective place on  
18 the Board’s non-hearing option docket or the hearing op-  
19 tion docket.”;

20 (2) by amending subsection (b) to read as fol-  
21 lows:

22 “(b) **ADVANCEMENT ON THE DOCKET.**—A case on ei-  
23 ther the Board’s non-hearing option docket or hearing op-  
24 tion docket, may, for cause shown, be advanced on motion  
25 for earlier consideration and determination. Any such mo-

1 tion shall set forth succinctly the grounds upon which the  
2 motion is based. Such a motion may be granted only—

3 “(1) if the case involves interpretation of law of  
4 general application affecting other claims;

5 “(2) if the appellant is seriously ill or is under  
6 severe financial hardship; or

7 “(3) for other sufficient cause shown.”;

8 (3) by amending subsection (c) to read as fol-  
9 lows:

10 “(c) MANNER AND SCHEDULING OF HEARINGS FOR  
11 CASES ON BOARD HEARING OPTION DOCKET.—(1) For  
12 cases on the Board hearing option docket in which a hear-  
13 ing is requested in the notice of disagreement, the Board  
14 shall notify the appellant whether a Board hearing will  
15 be held—

16 “(A) at its principal location, or

17 “(B) by picture and voice transmission at a fa-  
18 cility of the Department where the Secretary has  
19 provided suitable facilities and equipment to conduct  
20 such hearings.

21 “(2)(A) Upon notification of a Board hearing at the  
22 Board’s principal location as described in subsection  
23 (c)(1)(A) of this section, the appellant may alternatively  
24 request a hearing as described in subsection (c)(1)(B) of

1 this section. If so requested, the Board shall grant such  
2 request.

3 “(B) Upon notification of a Board hearing by picture  
4 and voice transmission as described in subsection  
5 (c)(1)(B) of this section, the appellant may alternatively  
6 request a hearing as described in subsection (c)(1)(A) of  
7 this section. If so requested, the Board shall grant such  
8 request.”; and

9 (4) by striking subsections (d) and (e) and re-  
10 designating subsection (f) as subsection (d).

11 (q) Strike section 7109 of title 38, United States  
12 Code.

13 (r) Section 7111(e) of title 38, United States Code,  
14 is amended by striking “merits, without referral to any  
15 adjudicative or hearing official acting on behalf of the Sec-  
16 retary.” and replacing it with “merits.”.

17 (s) Chapter 71 of title 38, United States Code, is  
18 amended by adding the following new section:

19 **“§ 7113. Evidentiary record before the board**

20 “(a) NON-HEARING OPTION DOCKET.—For cases in  
21 which a Board hearing is not requested in the notice of  
22 disagreement, the evidentiary record before the Board  
23 shall be limited to the evidence of record at the time of  
24 the Agency of Original Jurisdiction decision on appeal.

1       “(b) HEARING OPTION DOCKET.—(1) HEARING RE-  
2       QUESTED.—Except as provided in paragraph (2) of this  
3       subsection, for cases on the hearing option docket in which  
4       a hearing is requested in the notice of disagreement, the  
5       evidentiary record before the Board shall be limited to the  
6       evidence of record at the time of the Agency of Original  
7       Jurisdiction decision on appeal.

8       “(2) EXCEPTIONS.—The evidentiary record before  
9       the Board for cases on the hearing option docket in which  
10      a hearing is requested, shall include each of the following,  
11      which the Board shall consider in the first instance—

12             “(A) evidence submitted by the appellant and  
13             his or her representative, if any, at the Board hear-  
14             ing; and

15             “(B) evidence submitted by the appellant and  
16             his or her representative, if any, within 90 days fol-  
17             lowing the Board hearing.

18      “(3) HEARING NOT REQUESTED.—(A) Except as  
19      provided in subparagraph (B) of this paragraph, for cases  
20      on the hearing option docket in which a hearing is not  
21      requested in the notice of disagreement, the evidentiary  
22      record before the Board shall be limited to the evidence  
23      considered by the Agency of Original Jurisdiction in the  
24      decision on appeal.



1       “(B) The evidentiary record before the Board for  
2 cases on the hearing option docket in which a hearing is  
3 not requested, shall include each of the following, which  
4 the Board shall consider in the first instance—

5               “(i) evidence submitted by the appellant and his  
6 or her representative, if any, with the notice of dis-  
7 agreement; and

8               “(ii) evidence submitted by the appellant and  
9 his or her representative, if any, within 90 days fol-  
10 lowing receipt of the notice of disagreement.”.

11       (t) CONFORMING AMENDMENT.—The heading of sec-  
12 tion 7105 is amended by striking “notice of disagreement  
13 and”.

14       (u) CLERICAL AMENDMENTS.—

15               (1) The table of sections at the beginning of  
16 chapter 51 of title 38, United States Code, is  
17 amended—

18                       (A) by inserting after the item relating to  
19 section 5103A the following new item:

“5103B. Applicability of duty to assist.”;

20                       and

21                       (B) by inserting after the item relating to  
22 section 5104 the following new items:

“5104A. Binding nature of favorable findings.

“5104B. Higher-level review by the Agency of Original Jurisdiction.”.

1           (2) The item relating to section 5108 in the  
2 table of sections at the beginning of chapter 51 of  
3 title 38, United States Code, is amended by striking  
4 “Reopening disallowed claims.” and replacing it with  
5 “Supplemental claims.”.

6           (3) The table of sections at the beginning of  
7 chapter 71 of title 38, United States Code, is  
8 amended by—

9                   (A) striking the item relating to section  
10                   7106;

11                   (B) striking the item relating to section  
12                   7109; and

13                   (C) adding at the end the following new  
14                   item:

“7113. The evidentiary record before the Board.”.

15           (4) The item relating to section 7105 in the  
16 table of sections at the beginning of chapter 71 of  
17 title 38, United States Code, is amended by striking  
18 “notice of disagreement and”.

○