AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2383

OFFERED BY MR. JOHNSON OF OHIO

Strike all after the enacting clause and insert the following:

1	SECTION 1. SHORT TITLE.
2	This Act may be cited as the "Modernizing Notice
3	to Claimants Act".
4	SEC. 2. AUTHORIZATION OF USE OF ELECTRONIC COMMU-
5	NICATION TO PROVIDE NOTICE TO CLAIM-
6	ANTS FOR BENEFITS UNDER LAWS ADMINIS-
7	TERED BY THE SECRETARY OF VETERANS AF-
8	FAIR.
9	(a) In General.—Section 5103 of title 38, United
10	States Code, is amended—
11	(1) in subsection $(a)(1)$ —
12	(A) by striking "Upon receipt of a com-
13	plete or substantially complete application, the"
14	and inserting "The";
15	(B) by striking "notify" and inserting
16	"provide to"; and
17	(C) by inserting "by the most effective
18	means available, including electronic commu-

1	nication or notification in writing" before "of
2	any information"; and
3	(2) in subsection (b), by adding at the end the
4	following new paragraphs:
5	"(4) Nothing in this section shall require the Sec-
6	retary to provide notice for a subsequent claim that is filed
7	while a previous claim is pending if the notice previously
8	provided for such pending claim provides notice of the in-
9	formation and evidence necessary to substantiate such
10	subsequent claim.
11	"(5) This section shall not apply to any claim or issue
12	where the Secretary may award the benefit sought in ac-
13	cordance with this title based on the evidence of record.".
14	(b) Construction.—Nothing in the amendments
15	made by subsection (a) shall be construed as eliminating
16	any requirement with respect to the contents of a notice
17	under section 5103 of such title that are required under
18	regulations prescribed pursuant to subsection (a)(2) of
19	such section as of the date of the enactment of this Act.
20	SEC. 3. DUTY TO ASSIST CLAIMANTS IN OBTAINING PRI-
21	VATE RECORDS.
22	(a) In General.—Section 5103A(b) of title 38,
23	United States Code, is amended to read as follows:
24	"(b) Assistance in Obtaining Private
25	RECORDS.—(1) As part of the assistance provided under

subsection (a), the Secretary shall make reasonable efforts to obtain relevant private records unless the claimant de-3 clines such assistance. 4 "(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 8 to the claim. Such a notification shall— 9 "(i) identify the records the Secretary is unable 10 to obtain; 11 "(ii) briefly explain the efforts that the Sec-12 retary made to obtain such records; and 13 "(iii) explain that the Secretary will decide the 14 claim based on the evidence of record but that this 15 section does not prohibit the submission of records at a later date if such submission is otherwise al-16 17 lowed. 18 "(B) The Secretary shall make not less than two requests to a custodian of a private record in order for an 19 20 effort to obtain relevant private records to be treated as 21 reasonable under this section. 22 "(3) This section shall not apply if the evidence of record allows for the Secretary to award the benefit sought in accordance with this title based on the evidence of 25 record.

1	"(4) Under regulations prescribed by the Secretary,
2	the Secretary—
3	"(A) shall encourage claimants to submit rel-
4	evant private medical records of the claimant to the
5	Secretary if such submission does not burden the
6	claimant; and
7	"(B) in obtaining relevant private records under
8	paragraph (1), may require the claimant to author-
9	ize the Secretary to obtain such records if such au-
10	thorization is required to comply with Federal,
11	State, or local law.
12	"(5) The claimant may waive any requirements under
13	this section.".
14	(b) Public Records.—Section 5103A(c) of such
15	title is amended to read as follows:
16	"(c) Obtaining Records for Compensation
17	Claims.—(1) In the case of a claim for disability com-
18	pensation, the assistance provided by the Secretary under
19	this section shall include obtaining the following records
20	if relevant to the claim:
21	"(A) The claimant's service medical records
22	and, if the claimant has furnished the Secretary in-
23	formation sufficient to locate such records, other rel-
24	evant records pertaining to the claimant's active

1	military, naval, or air service that are held or main-
2	tained by a governmental entity.
3	"(B) Records of relevant medical treatment or
4	examination of the claimant at Department health-
5	care facilities or at the expense of the Department
6	if the claimant furnishes information sufficient to lo-
7	cate those records.
8	"(C) Any other relevant records held by any
9	Federal department or agency that the claimant ade-
10	quately identifies and authorizes the Secretary to ob-
11	tain.
12	"(2) Whenever the Secretary attempts to obtain
13	records from a Federal department or agency under this
14	subsection, the efforts to obtain those records shall con-
15	tinue until the records are obtained unless it is reasonably
16	certain that such records do not exist or that further ef-
17	forts to obtain those records would be futile.".

