

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2349

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IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 2011

Received; read twice and referred to the Committee on Veterans' Affairs

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## AN ACT

To amend title 38, United States Code, to improve the determination of annual income with respect to pensions for certain veterans, to direct the Secretary of Veterans Affairs to establish a pilot program to assess the skills of certain employees and managers of the Veterans Benefits Administration, 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 “Veterans’ Benefits Act  
5 of 2011”.

6 **SEC. 2. ASSESSMENT OF CLAIMS-PROCESSING SKILLS**  
7 **PILOT PROGRAM.**

8 (a) PILOT PROGRAM.—Commencing not later than  
9 180 days after the date of the enactment of this Act, in  
10 addition to providing employee certification under section  
11 7732A of title 38, United States Code, the Secretary of  
12 Veterans Affairs shall carry out a pilot program to assess  
13 skills and provide training described under subsection (b).

14 (b) BIENNIAL SKILLS ASSESSMENT AND INDIVID-  
15 UALIZED TRAINING.—

16 (1) IN GENERAL.—The Secretary shall—

17 (A) biennially assess the skills of appro-  
18 priate employees and managers of the Veterans  
19 Benefits Administration who are responsible for  
20 processing claims for compensation and pension  
21 benefits under the laws administered by the  
22 Secretary, including by requiring such employ-  
23 ees and managers to take the examination pro-  
24 vided under section 7732A(a)(1) of title 38,  
25 United States Code; and

1 (B) on the basis of the results of such as-  
2 sessment and examination, and on any relevant  
3 regional office quality review, develop and im-  
4 plement an individualized training plan related  
5 to such skills for each such employee and man-  
6 ager.

7 (2) REMEDIATION.—

8 (A) REMEDIATION PROVIDED.—In pro-  
9 viding training under paragraph (1)(B), if any  
10 employee or manager receives a less than satis-  
11 factory result on any portion of an assessment  
12 under paragraph (1)(A), the Secretary shall  
13 provide such employee or manager with remedi-  
14 ation of any deficiency in the skills related to  
15 such portion of the assessment and, within a  
16 reasonable period following the remediation,  
17 shall require the employee or manager to take  
18 the examination again.

19 (B) PERSONNEL ACTIONS.—In accordance  
20 with titles 5 and 38, United States Code, the  
21 Secretary shall take appropriate personnel ac-  
22 tions with respect to any employee or manager  
23 who, after being given two opportunities for re-  
24 mediation under subparagraph (A), does not re-

1           ceive a satisfactory result on an assessment  
2           under paragraph (1)(A).

3           (c) LOCATIONS AND DURATION.—The Secretary shall  
4 carry out the pilot program under this section at five re-  
5 gional offices of the Veterans Benefits Administration dur-  
6 ing the four-year period beginning on the date of the com-  
7 mencement of the pilot program.

8           (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
9 authorized to be appropriated to carry out this section a  
10 total of \$5,000,000 for fiscal years 2012 through 2016.

11          (e) REPORTS.—Not later than November 1 of each  
12 year in which the pilot program under this section is car-  
13 ried out, the Secretary shall submit to the Committee on  
14 Veterans' Affairs of the House of Representatives and the  
15 Committee on Veterans' Affairs of the Senate a report on  
16 any assessments and training conducted under this section  
17 during the previous year. Each such report shall include—

18           (1) a summary of—

19                   (A) the results of the assessments under  
20 subsection (b)(1)(A);

21                   (B) remediation provided under subsection  
22 (b)(2)(A); and

23                   (C) personnel actions taken under sub-  
24 section (b)(2)(B); and

1           (2) any changes made to the training program  
2           under subsection (b)(1)(B) based on the results of  
3           such assessments and remediation and the examina-  
4           tions provided under section 7732A(a)(1) of title 38,  
5           United States Code.

6 **SEC. 3. EXCLUSION OF CERTAIN REIMBURSEMENTS OF EX-**  
7                           **PENSES FROM DETERMINATION OF ANNUAL**  
8                           **INCOME WITH RESPECT TO PENSIONS FOR**  
9                           **VETERANS AND SURVIVING SPOUSES AND**  
10                          **CHILDREN OF VETERANS.**

11           (a) IN GENERAL.—Paragraph (5) of section 1503(a)  
12           of title 38, United States Code, is amended to read as  
13           follows:

14                       “(5) payments regarding—

15                           “(A) reimbursements of any kind (includ-  
16                           ing insurance settlement payments) for—

17                                   “(i) expenses related to the repay-  
18                                   ment, replacement, or repair of equipment,  
19                                   vehicles, items, money, or property result-  
20                                   ing from—

21   “(I) any accident (as defined in  
22   regulations which the Secretary shall  
23   prescribe), but the amount excluded  
24   under this subclause shall not exceed  
25   the greater of the fair market value or

1 reasonable replacement value of the  
2 equipment or vehicle involved at the  
3 time immediately preceding the acci-  
4 dent;

5 “(II) any theft or loss (as defined  
6 in regulations which the Secretary  
7 shall prescribe), but the amount ex-  
8 cluded under this subclause shall not  
9 exceed the greater of the fair market  
10 value or reasonable replacement value  
11 of the item or the amount of the  
12 money (including legal tender of the  
13 United States or of a foreign country)  
14 involved at the time immediately pre-  
15 ceding the theft or loss; or

16 “(III) any casualty loss (as de-  
17 fined in regulations which the Sec-  
18 retary shall prescribe), but the  
19 amount excluded under this subclause  
20 shall not exceed the greater of the fair  
21 market value or reasonable replace-  
22 ment value of the property involved at  
23 the time immediately preceding the  
24 casualty loss; and

1           “(ii) medical expenses resulting from  
2           any accident, theft, loss, or casualty loss  
3           (as defined in regulations which the Sec-  
4           retary shall prescribe), but the amount ex-  
5           cluded under this clause shall not exceed  
6           the costs of medical care provided to the  
7           victim of the accident, theft, loss, or cas-  
8           ualty loss; and

9           “(B) pain and suffering (including insur-  
10          ance settlement payments and general damages  
11          awarded by a court) related to an accident,  
12          theft, loss, or casualty loss, but the amount ex-  
13          cluded under this subparagraph shall not exceed  
14          an amount determined by the Secretary on a  
15          case-by-case basis;”.

16          (b) EFFECTIVE DATE.—The amendment made by  
17          subsection (a) shall take effect on the date that is one  
18          year after the date of the enactment of this Act.

19          (c) EXTENSION OF AUTHORITY TO OBTAIN CERTAIN  
20          INFORMATION FROM DEPARTMENT OF TREASURY.—Sec-  
21          tion 5317(g) of title 38, United States Code, is amended  
22          by striking “2011” and inserting “2013”.

1 **SEC. 4. AUTHORIZATION OF USE OF ELECTRONIC COMMU-**  
2 **UNICATION TO PROVIDE NOTICE TO CLAIM-**  
3 **ANTS FOR BENEFITS UNDER LAWS ADMINIS-**  
4 **TERED BY THE SECRETARY OF VETERANS AF-**  
5 **FAIRS.**

6 (a) IN GENERAL.—Section 5103 of title 38, United  
7 States Code, is amended—

8 (1) in subsection (a)(1)—

9 (A) by striking “Upon receipt of a com-  
10 plete or substantially complete application, the”  
11 and inserting “The”;

12 (B) by striking “notify” and inserting  
13 “provide to”; and

14 (C) by inserting “by the most effective  
15 means available, including electronic commu-  
16 nication or notification in writing” before “of  
17 any information”; and

18 (2) in subsection (b), by adding at the end the  
19 following new paragraphs:

20 “(4) Nothing in this section shall require the Sec-  
21 retary to provide notice for a subsequent claim that is filed  
22 while a previous claim is pending if the notice previously  
23 provided for such pending claim—

24 “(A) provides sufficient notice of the informa-  
25 tion and evidence necessary to substantiate such  
26 subsequent claim; and



1           “(B) was sent within one year of the date on  
2           which the subsequent claim was filed.

3           “(5)(A) This section shall not apply to any claim or  
4           issue where the Secretary may award the maximum ben-  
5           efit in accordance with this title based on the evidence of  
6           record.

7           “(B) For purposes of this paragraph, the term ‘max-  
8           imum benefit’ means the highest evaluation assignable in  
9           accordance with the evidence of record, as long as such  
10          evaluation is supported by such evidence of record at the  
11          time the decision is rendered.”.

12          (b) CONSTRUCTION.—Nothing in the amendments  
13          made by subsection (a) shall be construed as eliminating  
14          any requirement with respect to the contents of a notice  
15          under section 5103 of such title that are required under  
16          regulations prescribed pursuant to subsection (a)(2) of  
17          such section as of the date of the enactment of this Act.

18          **SEC. 5. DUTY TO ASSIST CLAIMANTS IN OBTAINING PRI-  
19                                  VATE RECORDS.**

20          (a) IN GENERAL.—Section 5103A(b) of title 38,  
21          United States Code, is amended to read as follows:

22          “(b) ASSISTANCE IN OBTAINING PRIVATE  
23          RECORDS.—(1) As part of the assistance provided under  
24          subsection (a), the Secretary shall make reasonable efforts  
25          to obtain relevant private records.

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

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

8           “(ii) briefly explain the efforts that the Sec-  
9 retary made to obtain such records; and

10          “(iii) explain that the Secretary will decide the  
11 claim based on the evidence of record but that this  
12 section does not prohibit the submission of records  
13 at a later date if such submission is otherwise al-  
14 lowed.

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

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

1       “(B) For purposes of this paragraph, the term ‘max-  
2 imum benefit’ means the highest evaluation assignable in  
3 accordance with the evidence of record, as long as such  
4 evaluation is supported by such evidence of record at the  
5 time the decision is rendered.

6       “(4) Under regulations prescribed by the Secretary,  
7 the Secretary—

8               “(A) shall encourage claimants to submit rel-  
9 evant private medical records of the claimant to the  
10 Secretary if such submission does not burden the  
11 claimant; and

12               “(B) in obtaining relevant private records under  
13 paragraph (1), may require the claimant to author-  
14 ize the Secretary to obtain such records if such au-  
15 thorization is required to comply with Federal,  
16 State, or local law.”.

17       (b) PUBLIC RECORDS.—Section 5103A(c) of such  
18 title is amended to read as follows:

19       “(c) OBTAINING RECORDS FOR COMPENSATION  
20 CLAIMS.—(1) In the case of a claim for disability com-  
21 pensation, the assistance provided by the Secretary under  
22 this section shall include obtaining the following records  
23 if relevant to the claim:

24               “(A) The claimant’s service medical records  
25 and, if the claimant has furnished the Secretary in-

1       formation sufficient to locate such records, other rel-  
2       evant records pertaining to the claimant’s active  
3       military, naval, or air service that are held or main-  
4       tained by a governmental entity.

5               “(B) Records of relevant medical treatment or  
6       examination of the claimant at Department health-  
7       care facilities or at the expense of the Department,  
8       if the claimant furnishes information sufficient to lo-  
9       cate those records.

10              “(C) Any other relevant records held by any  
11       Federal department or agency that the claimant ade-  
12       quately identifies and authorizes the Secretary to ob-  
13       tain.

14              “(2) Whenever the Secretary attempts to obtain  
15       records from a Federal department or agency under this  
16       subsection, the efforts to obtain those records shall con-  
17       tinue until the records are obtained unless it is reasonably  
18       certain that such records do not exist or that further ef-  
19       forts to obtain those records would be futile.”.

20       **SEC. 6. CONDITIONS FOR TREATMENT OF CERTAIN PER-**  
21                               **SONS AS ADJUDICATED MENTALLY INCOM-**  
22                               **PETENT FOR CERTAIN PURPOSES.**

23              (a) IN GENERAL.—Chapter 55 of title 38, United  
24       States Code, is amended by adding at the end the fol-  
25       lowing new section:

1 **“§ 5511. Conditions for treatment of certain persons**  
 2 **as adjudicated mentally incompetent for**  
 3 **certain purposes**

4 “In any case arising out of the administration by the  
 5 Secretary of laws and benefits under this title, a person  
 6 who is mentally incapacitated, deemed mentally incom-  
 7 petent, or experiencing an extended loss of consciousness  
 8 shall not be considered adjudicated as a mental defective  
 9 under subsection (d)(4) or (g)(4) of section 922 of title  
 10 18 without the order or finding of a judge, magistrate,  
 11 or other judicial authority of competent jurisdiction that  
 12 such person is a danger to himself or herself or others.”.

13 (b) CLERICAL AMENDMENT.—The table of sections  
 14 at the beginning of chapter 55 of such title is amended  
 15 by adding at the end the following new item:

“5511. Conditions for treatment of certain persons as adjudicated mentally in-  
 competent for certain purposes.”.

16 **SEC. 7. REINSTATEMENT OF PENALTIES FOR CHARGING**  
 17 **VETERANS UNAUTHORIZED FEES.**

18 (a) IN GENERAL.—Section 5905 of title 38, United  
 19 States Code, is amended to read as follows:

20 **“§ 5905. Penalty for certain acts**

21 “Except as provided in section 5904 or 1984 of this  
 22 title, whoever—

23 “(1) in connection with a proceeding before the  
 24 Department, knowingly solicits, contracts for,

1 charges, or receives any fee or compensation in con-  
2 nection for—

3 “(A) the provision of advice on how to file  
4 a claim for benefits under the laws adminis-  
5 tered by the Secretary; or

6 “(B) the preparation, presentation, or  
7 prosecution of such a claim before the date on  
8 which a notice of disagreement is filed in a pro-  
9 ceeding on the claim,

10 or attempts to do so;

11 “(2) unlawfully withholds from any claimant or  
12 beneficiary any part of a benefit or claim under the  
13 laws administered by the Secretary that is allowed  
14 and due to the claimant or beneficiary, or attempts  
15 to do so;

16 “(3) commits an offense punishable by this  
17 chapter, or aids, abets, counsels, commands, or pro-  
18 cures the commission of such an act; or

19 “(4) causes an act to be done, which if directly  
20 performed would be punishable by this chapter,

21 shall be fined as provided in title 18, or imprisoned for  
22 not more than one year, or both.”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall apply with respect to acts committed  
25 after the date of the enactment of this Act.

1 **SEC. 8. PERFORMANCE AWARDS IN THE SENIOR EXECU-**  
2 **TIVE SERVICE.**

3 For each of fiscal years 2012 through 2016, the Sec-  
4 retary of Veterans Affairs may not pay more than  
5 \$2,000,000 in performance awards under section 5384 of  
6 title 5, United States Code.

7 **SEC. 9. BUDGETARY EFFECTS OF THIS ACT.**

8 The budgetary effects of this Act, for the purpose of  
9 complying with the Statutory Pay-As-You-Go Act of 2010,  
10 shall be determined by reference to the latest statement  
11 titled “Budgetary Effects of PAYGO Legislation” for this  
12 Act, submitted for printing in the Congressional Record  
13 by the Chairman of the House Budget Committee, pro-  
14 vided that such statement has been submitted prior to the  
15 vote on passage.

Passed the House of Representatives October 11,  
2011.

Attest:

KAREN L. HAAS,

*Clerk.*