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REPORT
112–241

VETERANS' BENEFITS ACT OF 2011

OCTOBER 6, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 2349]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2349) to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to annually assess the skills of certain employees and managers of the Veterans Benefits Administration, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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19–006

AMENDMENTS

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Benefits Act of 2011".

SEC. 2. ASSESSMENT OF CLAIMS-PROCESSING SKILLS PILOT PROGRAM.

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

(b) BIENNIAL SKILLS ASSESSMENT AND INDIVIDUALIZED TRAINING.—

(1) IN GENERAL.—The Secretary shall—

(A) biennially assess the skills of appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary, including by requiring such employees and managers to take the examination provided under section 7732A(a)(1) of title 38, United States Code; and

(B) on the basis of the results of such assessment and examination, and on any relevant regional office quality review, develop and implement an individualized training plan related to such skills for each such employee and manager.

(2) REMEDIATION.—

(A) REMEDIATION PROVIDED.—In providing training under paragraph (1)(B), if any employee or manager receives a less than satisfactory result on any portion of an assessment under paragraph (1)(A), the Secretary shall provide such employee or manager with remediation of any deficiency in the skills related to such portion of the assessment and, within a reasonable period following the remediation, shall require the employee or manager to take the examination again.

(B) PERSONNEL ACTIONS.—In accordance with titles 5 and 38, United States Code, the Secretary shall take appropriate personnel actions with respect to any employee or manager who, after being given two opportunities for remediation under subparagraph (A), does not receive a satisfactory result on an assessment under paragraph (1)(A).

(c) LOCATIONS AND DURATION.—The Secretary shall carry out the pilot program under this section at five regional offices of the Veterans Benefits Administration during the four-year period beginning on the date of the commencement of the pilot program.

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

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

(1) a summary of—

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

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

(C) personnel actions taken under subsection (b)(2)(B); and

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

SEC. 3. EXCLUSION OF CERTAIN REIMBURSEMENTS OF EXPENSES FROM DETERMINATION OF ANNUAL INCOME WITH RESPECT TO PENSIONS FOR VETERANS AND SURVIVING SPOUSES AND CHILDREN OF VETERANS.

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

"(5) payments regarding—

"(A) reimbursements of any kind (including insurance settlement payments) for—

"(i) expenses related to the repayment, replacement, or repair of equipment, vehicles, items, money, or property resulting from—

"(I) any accident (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this subclause shall not exceed the greater of the fair market value or reasonable replacement value of the equipment or vehicle involved at the time immediately preceding the accident;

"(II) any theft or loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this subclause shall not exceed the greater of the fair market value or reasonable replacement value of the item or the amount of the money (including legal tender of the United States or of a foreign country) involved at the time immediately preceding the theft or loss; or

"(III) any casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this subclause shall not exceed the greater of the fair market value or reasonable replacement value of the property involved at the time immediately preceding the casualty loss; and

"(ii) medical expenses resulting from any accident, theft, loss, or casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this clause shall not exceed the costs of medical care provided to the victim of the accident, theft, loss, or casualty loss; and

"(B) pain and suffering (including insurance settlement payments and general damages awarded by a court) related to an accident, theft, loss, or casualty loss, but the amount excluded under this subparagraph shall not exceed an amount determined by the Secretary on a case-by-case basis;".

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

(c) EXTENSION OF AUTHORITY TO OBTAIN CERTAIN INFORMATION FROM DEPARTMENT OF TREASURY.—Section 5317(g) of title 38, United States Code, is amended by striking "2011" and inserting "2013".

SEC. 4. AUTHORIZATION OF USE OF ELECTRONIC COMMUNICATION TO PROVIDE NOTICE TO CLAIMANTS FOR BENEFITS UNDER LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS.

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

(1) in subsection (a)(1)—

(A) by striking "Upon receipt of a complete or substantially complete application, the" and inserting "The";

(B) by striking "notify" and inserting "provide to"; and

(C) by inserting "by the most effective means available, including electronic communication or notification in writing" before "of any information"; and

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

"(4) Nothing in this section shall require the Secretary to provide notice for a subsequent claim that is filed while a previous claim is pending if the notice previously provided for such pending claim—

"(A) provides sufficient notice of the information and evidence necessary to substantiate such subsequent claim; and

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

"(5)(A) This section shall not apply to any claim or issue where the Secretary may award the maximum benefit in accordance with this title based on the evidence of record.

"(B) For purposes of this paragraph, the term 'maximum benefit' means the highest evaluation assignable in accordance with the evidence of record, as long as such evaluation is supported by such evidence of record at the time the decision is rendered.".

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

SEC. 5. DUTY TO ASSIST CLAIMANTS IN OBTAINING PRIVATE RECORDS.

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

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

"(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 to the claim. Such a notification shall—

"(i) identify the records the Secretary is unable to obtain;

"(ii) briefly explain the efforts that the Secretary made to obtain such records; and

"(iii) explain that the Secretary will decide the claim based on the evidence of record but that this section does not prohibit the submission of records at a later date if such submission is otherwise allowed.

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

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

"(B) For purposes of this paragraph, the term 'maximum benefit' means the highest evaluation assignable in accordance with the evidence of record, as long as such evaluation is supported by such evidence of record at the time the decision is rendered.

"(4) Under regulations prescribed by the Secretary, the Secretary—

"(A) shall encourage claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant; and

"(B) in obtaining relevant private records under paragraph (1), may require the claimant to authorize the Secretary to obtain such records if such authorization is required to comply with Federal, State, or local law.".

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

"(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under this section shall include obtaining the following records if relevant to the claim:

"(A) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

"(B) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

"(C) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

"(2) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection, the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.".

SEC. 6. CONDITIONS FOR TREATMENT OF CERTAIN PERSONS AS ADJUDICATED MENTALLY INCOMPETENT FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 5511. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes

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

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

"5511. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.".

SEC. 7. REINSTATEMENT OF PENALTIES FOR CHARGING VETERANS UNAUTHORIZED FEES.

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

"§ 5905. Penalty for certain acts

"Except as provided in section 5904 or 1984 of this title, whoever—

"(1) in connection with a proceeding before the Department, knowingly solicits, contracts for, charges, or receives any fee or compensation in connection for—

"(A) the provision of advice on how to file a claim for benefits under the laws administered by the Secretary; or

"(B) the preparation, presentation, or prosecution of such a claim before the date on which a notice of disagreement is filed in a proceeding on the claim,

or attempts to do so;

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

"(3) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures the commission of such an act; or

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

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

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

SEC. 8. PERFORMANCE AWARDS IN THE SENIOR EXECUTIVE SERVICE.

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

SEC. 9. BUDGETARY EFFECTS OF THIS ACT.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Amend the title so as to read:

A bill 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.

PURPOSE AND SUMMARY

H.R. 2349 was introduced on June 24, 2011, by Representative Jon Runyan of New Jersey. H.R. 2349, as amended, would amend title 38, United States Code, to make certain improvements in the laws administered by the Secretary of Veterans Affairs (VA).

H.R. 2349, as amended, is comprised of a number of bills introduced in the 112th Congress. These bills include: H.R. 2349; H.R. 923, a bill to amend title 38, United States Code, to exempt reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to pensions for veterans and surviving spouses and children of veterans, and for other purposes, introduced by Represenative Alcee Hastings of Florida; H.R. 2383, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to use electronic communication to provide required notice to claimants for benefits under laws administered by the Secretary, and for other purposes, introduced by Represenative Bill Johnson of Ohio; H.R. 1898, a bill to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes, introduced by Represenative Denny Rehberg of Montana; and a free-standing provision to establish an authorization cap of $2,000,000 for each of fiscal years 2012

through 2016 on performance awards payable to VA employees in the Senior Executive Service.

Background and Need for Legislation

Section 2—Assessment of Claims-Processing Skills Pilot Program

Section 7732A of title 38, United States Code, currently requires employees and managers of the Veterans Benefits Administration (VBA) who are responsible for processing claims for compensation and pension benefits to undergo a certification examination. The mandate for employee certification had its genesis in the 110th Congress in legislation introduced by Representative John Hall of New York, the Chairman of the Disability Assistance and Memorial Affairs Subcommittee. In justifying the certification mandate, the Committee report accompanying the legislation (H.R. 5892), H. Rept. 110–789, pointed out that "gaps in training and inconsistencies between the [VA Regional Offices] clearly persist" in spite of the VA's plan to "require at least 80 hours of training for each employee and centralize the training program at its National Training Academy in Baltimore." In discussing the Systematic Technical Accuracy Review (STAR) program and the VA's response to these reviews, the Committee noted that "[i]t is uncertain what additional training is conducted or whether or not there is any level of accountability for an individual [VA Regional Office] when mistakes are made." The Committee noted near the beginning of its account of the background underlying section 105 of H.R. 5892 that "certification testing is an appropriate means to measure an employee's qualifications and skills and should be a part of VA's human resources evaluation system." The Veterans' Benefits Improvement Act of 2008, Public Law 110–389, 122 Stat. 4145, contained modified language from section 105 of H.R. 5892.

In implementing the mandate of Public Law 110–389, VA has used certification testing as a means to gauge whether certain employees should advance in pay grade, rather than using certification as a means to measure performance, ensure accountability, and reinforce required training at the individual level. Although testing to certify proficiency in a subject matter is certainly a worthwhile standard for promotion, the Committee believes that certification testing could be used to more broadly influence the type of training or remediation necessary at the individual employee level. Indeed, VA's own performance measures suggest that different approaches are needed. From January of 2009 to September of 2011, there has been a 99 percent increase in the reported backlog of claims for disability benefits. Over that same period, the average number of days to complete a claim rose from 160.7 days in fiscal year (FY) 2009 to 182.2 in FY 2011. Accuracy of claims decisions has been stagnant at 84 percent over the last 3 years, well below VA's stated goal of 98 percent.

The Committee is sensitive to concerns expressed by VA regarding the costs and management difficulties associated with annual testing of every employee, with follow-up remediation, at every Regional Office (RO). Therefore, section 2 of H.R. 2349, as amended, allows for VA to take a more deliberate approach to skills assessments by requiring biennial assessments of appropriate employees and managers at only five Regional Offices from 2012 through

2016. The assessments would be required of appropriate employees and managers responsible for processing claims for compensation and pension benefits. If employees or managers receive a less-than-satisfactory score on the assessment exam, VA would be required to provide appropriate remediation training so that the assessment exam could be taken again. If after remediation an employee or manager again gets a less-than-satisfactory score, VA would then be required to take appropriate personnel actions. Section 2 would authorize $5 million over five years to carry out the biennial assessments, the results of which VA would be required to report to Congress.

Section 3—Exclusion of certain reimbursements of expenses from determiniation of annual income with respect to pensions for veterans and surviving spouses and children of veterans

The purpose of VA pension benefits is to ensure that wartime veterans with limited means, who are unable to work due to age or non service-connected disability, have a minimum level of income support. Certain spouses and dependent children are also eligible for VA pension. In assessing a claimant's eligibility for pension benefits, VA must determine annual countable income, then calculate and pay a pension benefit that is equal to the difference between countable income and the maximum allowable pension level established in law. In order to verify certain kinds of countable income to ensure accurate pension payments, VA uses existing legal authority to match income data it receives with data possessed by the Internal Revenue Service. However, that legal authority is set to expire on November 18, 2011.

Current law exempts from income determinations reimbursements for any kind of "casualty loss," which is defined in VA regulation as "the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature." However, current law does not exempt from income determinations reimbursements received as a result of accident, theft, or ordinary loss, and it does not exempt from income determinations reimbursements received as a result of pain and suffering associated with a casualty loss. Thus, if a pension recipient receives reimbursement from an insurance company for these items, it may cause an immediate reduction or elimination of monthly VA pension, even though the recipient may have needed to use proceeds from the insurance reimbursement to cover immediate or near-term expenses related to the casualty loss, such as purchasing a replacement automobile. The Committee believes that it is appropriate to have some measure of flexibility in these instances so that those who depend on monthly VA pension to survive are not punished when they suffer from an accident or loss.

Section 3 would prevent the offset of pension benefits for veterans, surviving spouses and children of veterans due to the receipt of payments by insurance, court award, settlement or other means to reimburse expenses incurred after an accident, theft, loss, or casualty. Section 3 would also exempt "pain and suffering" income from pension calculations, but only in amounts determined by VA on a case-by-case basis. It is the Committee's hope that the individual facts of a case will enable VA to exempt an amount for pain

and suffering that is in keeping with the intended purpose of VA pension.

Section 3 would also extend the authority of VA to verify income information with the Internal Revenue Service to November 18, 2013.

Section 4—Authorization of use of electronic communications to provide notice to claimants for benefits under laws administered by the Secretary of Veterans Affairs.

Section 5103 of title 38, United States Code, requires VA, upon receipt of a complete or substantially complete application from a claimant seeking any benefit from VA, to issue a written notice to claimants requesting evidence needed to substantiate their claims. Section 5103 further requires VA to issue a separate written notice to claimants upon receipt of any subsequent claims, regardless of whether the information contained in a subsequent notice is different from any prior notices issued.

This written notice, commonly referred to as a "notice of responsibility" or "VCAA notice" because of its origin within the Veterans Claims Assistance Act of 2000, Public Law 106–475, 114 Stat. 2096, requires a statement as to the issue or issues being claimed, lists the evidence the claimant wishes to be considered, and informs the claimant if there is any additional information or evidence required, including private medical treatment records for service connection, secondary service connection, increased evaluations, individual unemployability, or other claims. The VCAA notice further requests that the claimant complete and return a VA Form 21–4142 ("Authorization and Consent to Release Information") authorizing VA to obtain private medical treatment records. The claimant is also asked to include detailed information regarding health provider, facilities, findings and diagnoses. The claimant is further instructed to identify any VA medical treatment, including dates and specific facilities, so VA can obtain those medical records. Additionally, the claimant is informed he or she may provide a statement regarding the claimed condition or conditions as well as lay records including statements from persons with knowledge of how the claimed condition or conditions may affect the claimant.

Information contained in the VCAA notice includes specific time periods in which additional information or evidence must be received and what actions VA has already taken, such as requesting records or a medical examination from a VA medical center. The notice also informs the claimant that, should the VA medical examination be missed without good cause, VA may move forward and decide the claim based on the evidence of record.

The VCAA notice also outlines VA's duty to assist the claimant in obtaining evidence, including what steps the VA will take, and explains the role the claimant can play to ensure all relevant evidence is submitted for consideration. The VCAA notice explains how a disability rating and effective date will be determined. Finally, each VCAA notice contains a VCAA Notice Response Form, which identifies the date of claim and provides a brief explanation regarding the submission of any additional information or evidence. If the claimant has nothing further to submit in support of the claim, he or she may elect to have the claim decided as soon as pos-

sible, which may alleviate unnecessary delays in processing, or the claimant may elect to submit additional information or evidence.

VA, in testimony before the Subcommittee on Oversight and Investigations on July 20, 2011, noted the unintended consequences, including court interpretations, of VCAA that have resulted in delays in claims processing instead of creating "more efficient and effective development of claims" as originally intended. The Committee believes that sensible modifications to VCAA can be made without undoing the intent of VCAA, while also expediting the claims process.

Accordingly, section 4 of H.R. 2349, as amended, would remove the requirement that the VCAA notice be sent only after receipt of a claim, thereby allowing VA to put notice on new claims forms, as is currently done with the Department's 526–EZ form for Fully Developed Claims (FDC). Together with the provisions in Section 5 of H.R. 2349, as amended, which would authorize VA to encourage veterans to gather and submit private medical records in support of their claims, some veterans could be encouraged to take additional time to find, procure, and submit private medical evidence before submitting their claim. VA must ensure that veterans are adequately informed that they have the right to submit an informal claim for the purpose of establishing an earlier effective date in rewriting new application forms. Such information is currently included on the 526–EZ form for those filing under the FDC program, and it should similarly be included for those submitting standard non-FDC forms to ensure that veterans do not lose any benefit.

Although not its central purpose, current VCAA notice provides a claimant with an acknowledgement that the claim was received and is being processed. Upon enactment of section 4, it is imperative that when VA moves the VCAA notice onto the application form itself, it continues to keep in place a system that acknowledges receipt of all submitted claims. Currently, the VBA has stated that most ROs send out such letters acknowledging receipt of claims, and that such a system could be implemented throughout the remaining ROs.

For claimants who file electronically, the acknowledgement of receipt can easily be auto-generated and delivered via email or other means, as chosen by the veterans during the application process. However, as long as veterans may file claims on paper forms or other non-electronic means, it is imperative that VA also continue to send acknowledgement of receipt of claims. In addition, to the extent feasible, VA should include a listing of any other records or evidence that was submitted along with the claim.

The requirement that VA issue a separate written VCAA notice upon receipt of any subsequent claim presents two issues that contribute to the claims backlog. The first is that, in many cases, VA is forced to take a redundant step of producing the exact same notice it has already provided to the veteran, which increases the processing time without affecting the outcome of the claim.

The second issue is that the notices provided by VA must be in writing and mailed through the postal system. Because it is not authorized to do so, VA cannot utilize the speed and efficiency provided by electronic mail, even if that were the claimant's preferred method of communication regarding the claim. This restriction of

VA's means of communication prevents it from utilizing a widely-used and accepted form of efficient and timely correspondence.

Section 4 of H.R. 2349, as amended, would correct both of these inefficiencies in two ways. First, it would authorize VA to use the most effective means available for communication, including electronic or written communication. Second, section 4 would remove the requirement that VA send a notice for a subsequent claim if the issue is already covered under a previous claim. However, under this section, VA would still be required to send a notice if over one year has passed since any notice of responsibility was last sent to the claimant, ensuring easier tracking of a claim by the veteran.

Authorizing the use of the most effective means available for communication would allow VA the option of sending a notice of responsibility to the claimant using either electronic correspondence or written correspondence. This section contains no requirement limiting correspondence to electronic mail. With its enactment, VA would have the ability to communicate quickly and efficiently with claimants. VA would no longer be statutorily restricted in its means of communicating with claimants, nor would it still be subject to the inherent added time of only using written mail delivered through the postal system.

As VA continues modernizing toward an electronic and paperless system of filing, adjudicating, and awarding claims for benefits, it must ensure that veterans retain the ability to choose the best means of communicating with VA. For those who file their online claims, they should be given an option to opt-out of electronic communications and those who file via non-electronic means should be given the opportunity to opt-in to electronic communication. Further, as VA integrates VCAA notice into the online claims application process, it must also take special care to do so in a manner that assures the greatest likelihood that veterans will read and understand such online notice. In order to maintain the value of the VCAA notice, VA must carefully consider how best to present such notice during an online application process, such as dividing the notice into sections and highlighting key parts of the notice on relevant screens during the application process. Section 4 contains added protections for veterans with the inclusion of a provision specifying that nothing in the legislation shall change the contents of the notice provided to claimants. While providing a notice of responsibility to a claimant electronically is a different medium from a notice written on paper, and therefore the visual appearance would likely be different, the purpose of the notice would remain the same.

Removing the requirement that an additional notice for a subsequent claim be provided when the issue is covered under the original claim is a straightforward method of saving valuable time in processing a claim. As noted above, VA is required to send a notice of responsibility to a claimant for the initial claim as well as any subsequent claims. However, many of these notices are identical to what had already been sent to the claimant, and often the subsequent claim is covered under the initial claim. Therefore, VA can sometimes send multiple copies of the exact same notice of responsibility to a claimant, even though the final result is not affected. By reducing the unnecessary actions taken by claims processors,

overall processing time is also reduced. However, Section 4 does contain a requirement that VA send a notice of responsibility for a subsequent claim if the previous notice was sent more than one year prior. The Committee considers this provision helpful to claimants in monitoring progress of claims.

Section 4 of H.R. 2349, as amended, would further amend section 5103 of title 38, United States Code, by authorizing VA to waive the requirements for issuing a VCAA notice when "the Secretary may award the maximum benefit in accordance with this title based on the evidence of record." This provision will eliminate delays that occur when a VCAA notice would be sent in connection with claims for which VA will award a benefit, and when such notice has little likelihood of leading to a higher level of benefit. Under the definition of "maximum" in section 4, it is clear that before VA could make such an award, it must have evidence that is sufficient to meet all aspects of the rating schedule for each condition.

This provision is intended to reduce the number of situations wherein VA spends unnecessary time and resources to pursue private medical records that may already have been submitted in the claimant's file, may not exist, may not be obtainable, are not relevant to the claim or, even if obtained, are highly unlikely to change the rating that would otherwise be assigned based on the evidence of record. The provision is not in any way intended to encourage VA to speed claims through the process by waiving VCAA notice requirements when fulfilling these duties could result in a higher rating for veterans, nor is the provision constructed that way. With enactment of this legislation, VA would continue to have an obligation to obtain or assist veterans in obtaining relevant medical records, both public and private, but it would be able to do so in a more efficient manner by removing the requirement to seek irrelevant, duplicative, or unnecessary records that do not substantiate a claim.

In implementing this new authority, it is important that VA continue to provide VCAA notice when such notice and assistance could lead to a higher benefit for the veterans. It is the Committee's expectation that with this new authority, VA would continue to obtain all records that are in the constructive custody of governmental entities, agencies, or departments, such as military health records. Further, VA would continue to be obligated to seek to obtain private medical records that veterans ask VA to obtain by completing the requisite medical release forms, unless such records are not relevant to the claim. In determining the relevancy of evidence, the Committee would expect that VA would instruct its employees that the threshold question would be whether the veteran could be harmed in any way if the evidence is not obtained.

In the judgment of the Committee, the following are examples of records that would normally be considered irrelevant, and for which VA would no longer be obligated to provide assistance in obtaining:

(1) The medical release form (currently VA Form 21–4142) indicates treatment for an issue that is not being claimed by the veteran;

(2) The VA Form 21–4142 indicates treatment for a claimed condition 20 years ago, when service-connection can be granted

with records present in the claims folder, and there's no possibility that an earlier effective date can be established with the requested records; or

(3) The VA Form 21–4142 indicates that the same treatment records are already present in the claims folder.

In implementing this section, the Committee would expect VA to include in the claims decision and award letter information regarding when it determined that records properly identified to VA on a medical release form are not relevant to the veteran's claim, including the reasons for such determination. Such information would allow the veteran or the veteran's representative, if any, to better understand how VA reached its decision in a timely manner.

Section 5—Duty to assist claimants in obtaining private records

Section 5103A of title 38, United States Code, outlines VA's duty to assist claimants in obtaining evidence needed to substantiate a claim. Under current law, VA must make "reasonable efforts" to obtain private medical records on behalf of a claimant who adequately identifies and authorizes VA to obtain them. What constitutes a "reasonable effort" by VA to obtain private medical records on behalf of a claimant is undefined. VA historically has made multiple attempts for each claimant to obtain private medical records out of concern that courts might construe VA's imposition of a defined limit as a violation of the statute. Such uncertainty, and resulting multiple requests of private medical evidence, unnecessarily delays final resolution to a claim.

Section 5 would establish a standard of reasonableness for requests for private records as "not less than two requests." Quantifying a reasonable number of requests removes the uncertainty and latitude for interpretation, and provides more certainty that an initial attempt was not possibly overlooked or misplaced by a custodian of private medical records, or sent to an incorrect address. In addition, if a first request is received by a custodian of private medical records who can definitively respond that they no longer have the records, the Department can refocus its efforts at developing a claim with the evidence that can be obtained. Section 5 would further clarify, for the veteran's protection, that the veteran retains the ability to submit additional evidence at a later date should it be obtained.

Section 5 would also remove an additional administrative obstacle to claims development. As with Section 4 of H.R. 2349, as amended, this section would authorize VA to waive its duty to assist requirements when "the Secretary may award the maximum benefit in accordance with this title based on the evidence of record." The effect of this provision would prevent both the claimant and VA from having to collect further evidence that would have no impact on the claim. Under the definition of "maximum" benefit, it is clear that before VA could make such an award, it must have evidence that is sufficient to meet all aspects of the rating schedule for each condition.

As with the similar provision in Section 4, this provision is intended to reduce the number of situations wherein VA spends unnecessary time and resources to pursue private medical records that may already have been submitted in the claimant's file, may not exist, may not be obtainable, are not relevant to the claim or

even if obtained are highly unlikely to change the rating that would otherwise be assigned based on the evidence of record. It must not be used to speed claims through the process by waiving notice or duty to assist requirements when fulfilling these duties could result in a higher rating for veterans. The Committee believes that with enactment of this legislation, VA would continue to have an obligation to obtain or assist veterans in obtaining relevant medical records, both public and private, but it would be able to do so in a smarter manner so that VA stops chasing irrelevant, duplicative or unnecessary records. This provision makes clear that the purpose of VA's duty to assist should be limited to situations where it will actually assist veterans in substantiating their claims.

Section 5 would also add a provision to encourage claimants to take a proactive role in the claims process. By encouraging "claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant," the collection of evidence necessary to render a decision can be greatly facilitated. A claimant's knowledge of where certain medical records may be located is invaluable to claim development, and in many cases a claimant can identify, obtain, and submit that evidence more quickly than if VA were to receive a claim and subsequently endeavored to locate and request those same records. It follows that facilitating the development portion of the claims process can facilitate the claims process overall, and awarding of decisions to claimants could be made in a more timely fashion.

Section 6—Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes

The following background material is taken from S. Rpt. 111–27 in its description of S. 669, a bill reported from the Senate Committee on Veterans' Affairs during the 111th Congress that is identical to the language within section 6 of H.R. 2349, as amended:

> The Federal Gun Control Act of 1968 (hereinafter, "GCA"), Public Law 90–618, 82 Stat. 1213, and subsequent amendments established categories of persons who are prohibited from receiving or possessing firearms. Included among the categories is any person who has been "adjudicated as a mental defective or who has been committed to a mental institution." Part 478.11 of title 27, Code of Federal Regulations, defines the meaning of "adjudicated as a mental defective" as follows:
>
> (a) a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
>
> (1) is a danger to himself or to others; or
>
> (2) lacks the mental capacity to contract or manage his own affairs.
>
> The Brady Handgun Violence Prevention Act of 1993 (hereinafter, the "Brady Act"), Public Law 103–159, 107 Stat. 1536, required the Attorney General to establish a system to assist federally licensed gun dealers in determining whether a gun buyer is prohibited under the GCA from purchasing a firearm. The system developed pursu-

ant to the Brady Act, the [National Instant Criminal Background Check System] NICS, is a computerized database operated by the FBI NICS Section. The NICS can be queried by gun dealers to determine whether the name of a prospective buyer is on the list and, therefore, legally prohibited from purchasing a firearm.

The Brady Act also requires Federal agencies, upon the request of the Attorney General, to submit to the FBI information on persons prohibited from purchasing a firearm. The Attorney General made such a request to VA in 1998. Under a Memorandum of Understanding entered into between the FBI and VA, VA agreed to make available for inclusion on the NICS database information about VA beneficiaries who are determined to be mentally incompetent on account of their inability to contract or manage their own affairs pursuant to part 3.353 of title 38, Code of Federal Regulations. Determinations of incompetency under part 3.353 result in an appointment of a fiduciary.

The evidence gathered to support a finding of incompetency, under part 3.353 of VA's regulations, is used to inform a judgment about whether a beneficiary is capable of managing their VA benefit payments. No evidence is gathered as part of this process to inform a judgment about whether a beneficiary presents a danger to themselves or others, or whether they should be prohibited from purchasing, possessing, or operating a firearm. Furthermore, although beneficiaries are entitled to a hearing once notified that it is proposed they will be determined incompetent, the initial hearing is before VA personnel, not an independent authority. From the date of the initial request of the Attorney General through October, 2007, VA has shared information with NICS on over 116,000 individuals for whom it has appointed a fiduciary. VA was unable to provide the Committee with updated information about how many additional names have been added or removed from NICS since October 2007. Despite the fact that other agencies, such as the Social Security Administration, appoint fiduciaries to manage benefit payments for their beneficiaries in a manner similar to VA's process, VA beneficiaries constitute the overwhelming majority of individuals referred to the FBI by the Federal Government.

Testimony submitted by the Reserve Officers Association (ROA) in connection with the Subcommittee on Disability Assistance and Memorial Affairs hearing on July 7, 2011, pointed out the risks of VA assigning labels through an administrative process to those who have served in the military, which only serve to inflame the public's distrust of the mental capacity of those same individuals. In this case, VA's designation of veterans appointed a fiduciary as "mentally incompetent" automatically attaches to it a placement on the NICS list, a list filled with criminals and others who have demonstrated through their actions that they present a danger to society. The GCA process VA has been directed to follow unfairly labels veterans as potentially dangerous without appropriate due process.

The Committee is in absolute agreement that individuals who are a danger to themselves or others should not be permitted to

own or possess a firearm. However, the Committee is deeply troubled with what appears to be an arbitrary and discriminatory process that allows a non-judicial authority to presume individuals seeking help from VA as threats to society when they may only need help managing their financial affairs. The Committee believes a rational process, in an appropriate forum, is an absolute necessity before Constitutional rights are abridged for any American, but especially America's veterans.

Accordingly, section 6 would clarify that in any case arising out of VA's administration of benefits under title 38, a VA beneficiary who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness, shall not be considered adjudicated as a mental defective under the GCA without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such individual is a danger to him- or herself or others.

Section 7—Reinstatement of penalties for charging veterans unauthorized fees

Chapter 59 of title 38, United States Code, establishes policies and procedures with respect to individuals acting as agents and attorneys before VA. In general, an agent or attorney must be recognized by VA in order to act in the preparation, presentation, or prosecution of a claim before VA. Further, VA is authorized to recognize representatives of certain organizations to act in that capacity for claims before VA and to recognize an individual for purposes of a specific claim before VA. VA may suspend or exclude an individual from practicing before VA for any of the reasons set forth in section 5904(b) of title 38, United States Code. Section 5904(c) of title 38 generally provides that an agent or attorney may not charge a fee for services "provided before the date on which a notice of disagreement is filed with respect to the case." Finally, Section 5905 of title 38 specifies that whoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

The purpose of existing law is to protect veterans from being charged excessive fees for aid in prosecuting applications to VA for benefits under various statutes passed for their relief and assistance. Further, the law is designed to prevent unscrupulous persons from receiving compensation or fees for obtaining benefits for veterans from VA.

Recent investigative news reports and testimony before the Committee has identified that since 2006, there has been an increase in non-accredited individuals, organizations and private companies that have been taking advantage of veterans by charging fees to assist them with filing claims for veterans' benefits with the VA that may or may not have actually been filed. Since these individuals, groups and companies are not accredited, suspension and disbarment are not a viable deterrent and the language of existing law provides little avenue for successful prosecution of these unscrupulous individuals.

Accordingly, section 7 would provide the Secretary of VA and the Department of Justice with the appropriate tools to effectively and successfully prosecute these individuals, groups and companies

that are preying on our veterans population, often at the time they are most vulnerable and in need of assistance.

Section 8—Performance awards in the Senior Executive Service

In an acknowledgment of the damage that unrestrained government spending has wrought on the national economy, one of the first actions of the 112th Congress was to adopt a 5 percent budget cut for Congressional offices. A further 6 percent cut is anticipated for FY 2012. In addition, a freeze on raises in Federal employee pay is in effect through 2012. Despite this step toward fiscal restraint, VA reserved the right to offer pay increases, performance awards, and bonuses to certain health care and information technology employees. In response to pre-hearing questions for the record submitted by Chairman Jeff Miller in connection with the Committee's February 17, 2011, hearing on VA's Fiscal Year 2012 budget, VA cited a need for these bonuses to improve its ability to retain such employees.

However, Committee investigations and news reports discovered that this type of employee was not always the recipient of these bonuses. Committee investigations uncovered bonuses being paid to facility directors with multiple citations of mismanagement, and news reports showed large retention bonuses being paid to medical facility directors who were at or near retirement.

Section 5384 of title 5, United States Code, sets out the authority for Federal agencies to allocate performance incentives to employees of the Senior Executive Service (SES). According to information supplied by VA, 221 SES bonuses were awarded in FY 2008 at a total cost of $3,816,330; 219 bonuses were awarded in FY 2009 at a total cost of $3,728,536; and 227 bonuses were awarded in FY 2010 at a total cost of $3,342,100. At a time when the entire Legislative Branch is reducing spending, and many Executive Branch employees will not see pay increases, it is appropriate that VA reevaluate its entire bonus program and exercise restraint in its awarding of bonuses.

In order to facilitate that reevaluation, section 8 would establish for each of fiscal years 2012 through 2016, an annual authorized amount of bonuses and performance awards payable to VA employees within the Senior Executive Service. The cap established would be $2,000,000 per year, a reduction from the 3–year average of over $3,500,000.

HEARINGS

On July 7, 2011, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 112th Congress, including: H.R. 923, H.R. 1025, H.R. 1826, H.R. 1898, and H.R. 2349. The following witnesses testified: Mr. Raymond Kelley, Director, National Legislative Service of the Veterans of Foreign Wars of the United States; Mr. Ian de Planque, Deputy Director, National Legislative Commission of The American Legion; Mr. Jeffrey C. Hall, Assistant National Legislative Director, Disabled American Veterans; Mr. Al Garver, Executive Director of the Enlisted Association of the National Guard of the United States; Mr. Jimmy F. Sims, Jr., Rating Veteran Service Represenative of the Veterans Benefits Administration Regional Office, Winston-Salem, NC, and Steward, Local

1738 of the American Federation of Government Employees; Mr. Richard Paul Cohen, Esq., Executive Director of the National Organization of Veterans' Advocates, Inc.; and Mr. Thomas Murphy, Director of the Compensation Service, Veterans Benefits Administration of the U.S. Department of Veterans Affairs, accompanied by Mr. Richard J. Hipolit Assistant General Counsel, Office of General Counsel of the U.S. Department of Veterans Affairs. The Paralyzed Veterans of America, and the Reserve Officers Association of the United States and Reserve Enlisted Association of the United States submitted statements for the record.

On July 20, 2011, the Subcommittee on Oversight and Investigation conducted a legislative hearing on various bills introduced during the 112th Congress, including: H.R. 2383, H.R. 2243, and H.R. 2388. The following witnesses testified: Mr. Thomas Murphy, Director, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; accompanying Mr. Murphy were The Honorable Roger Baker, Assistant Secretary for Information and Technology, and Chief Information Officer, U.S. Department of Veterans Affairs, and John H. "Jack" Thompson, Deputy Assistant General Counsel, Office of General Counsel, U.S. Department of Veterans; The Honorable Elizabeth A. McGrath, Deputy Chief Management Officer, U.S. Department of Defense; Debra Filippi, Former Director, U.S. Department of Defense/U.S. Department of Veterans Affairs Interagency Program Office; Jeffrey C. Hall, Assistant National Legislative Director, Disabled American Veterans; and Ryan M. Gallucci, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States. The Veterans' Employment and Training Service, U.S. Department of Labor submitted a statement for the record.

SUBCOMMITTEE CONSIDERATION

On July 22, 2011, the Subcommittee on Disability Assistance and Memorial Affairs met in an open markup session and took the following actions:

The Subcommittee ordered favorably reported H.R. 1826, as amended, to the full Committee, by voice vote. During consideration of the bill the following amendment was considered:

An amendment in the nature of a substitute by Mr. Runyan of New Jersey was agreed to by voice vote.

The Subcommittee ordered favorably forwarded H.R. 1898 to the full Committee, by voice vote.

An amendment in the nature of a substitute was offered by Mr. Runyan of New Jersey to H.R. 2349. The bill was subsequently withdrawn by unaniomous consent.

The Subcommittee ordered favorably forwarded H.R. 923, as amended, to the full Committee, by voice vote. During consideration of the bill the following amendments were considered:

An amendment in the nature of a substitute by Mr. Runyan of New Jersey was agreed to by voice vote.

An amendment to the amendment in the nature of a substitute to provide a reimbursement by VA for military funeral honor services performed by volunteers at veterans' funerals by Mr. McNerney of California was defeated by a roll call vote of 4 to 4. The vote is as follows: Chairman Runyan, Mr. Lamborn, Ms. Buerkle, and

Mr. Stutzman voted No; Ranking Member McNerney, Mr. Barrow, Mr. Michaud, and Mr. Walz voted Yes.

On July 28, 2011, the Subcommittee on Oversight and Investigations met in an open markup session, a quorum being present, and ordered favorably forwarded H.R. 2383 to the full Committee, by voice vote.

COMMITTEE CONSIDERATION

On September 8, 2011, the full Committee met in an open markup session, a quorum being present, and ordered reported favorably H.R. 2349, as amended, to the House of Representatives, by voice vote. During consideration of the bill, the following amendment was considered:

An amendment in the nature of a substitute by Mr. Runyan of New Jersey was agreed to by voice vote, incorporating provisions from H.R. 2349, H.R. 923, H.R. 2383, H.R. 1898, and a free-standing provision. The amendment was agreed to by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 2349, as amended, reported to the House. A motion by Mr. Bilirakis of Florida to order reported favorably H.R. 2349, as amended, to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 2349, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 2349, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 2349, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 2011.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2349, the Veterans' Benefits Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2349—Veterans' Benefits Act of 2011

Summary: H.R. 2349 would modify the eligibility requirements for veterans' pension awards. The bill also would require the Department of Veterans Affairs (VA) to undertake a pilot program to assess the skill level of claims processing personnel, and would make several other administrative changes to veterans' benefits programs.

On net, CBO estimates that enacting H.R. 2349 would decrease direct spending by $11 million over the 2012–2016 period and by $16 million over the 2012–2021 period. In addition, CBO estimates that implementing H.R. 2349 would reduce net discretionary costs by $1 million over the 2012–2016 period, assuming appropriation actions consistent with the bill. Enacting the bill would have an insignificant effect on revenues. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

H.R. 2349 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2349 is shown in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

Basis of estimate: This estimate is based on information from the VA. For the purposes of this estimate, CBO assumes the bill will be enacted near the beginning of fiscal year 2012, that the necessary amounts will be appropriated each year, and that outlays will follow historical patterns for similar and existing programs.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2349, THE VETERANS' BENEFITS ACT OF 2011

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN DIRECT SPENDING [a]						
Estimated Budget Authority	*	−4	−3	−2	−2	−11
Estimated Outlays	*	−4	−3	−2	−2	−11
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Budget Authority	2	*	*	−1	−1	−1
Estimated Outlays	2	*	*	−1	−1	−1

[a] In addition to the direct spending effects shown here, enacting H.R. 2349 would have additional effects on direct spending beyond 2016 (see Table 2). CBO estimates that net direct spending would decrease by $16 million over the 2012–2021 period.
Note: Components may not sum to totals because of rounding; * = less than $500,000.

Direct spending

H.R. 2349 would extend the authority for VA to conduct an income verification match with the Internal Revenue Service (IRS); VA also would be required to exclude certain reimbursements from income when determining a disability pension award. On net, those provisions would decrease direct spending by $16 million over the 2012–2021 period, CBO estimates.

Extension of Income Verification Match. Section 3 would extend authorities under current law that allow VA to access information on income reported to the IRS for the purpose of verifying the income reported by recipients of veterans pension benefits. Authority for the IRS to provide such information to VA was extended indefinitely in Public Law 110–245, and authority for VA to acquire that information is scheduled to expire on September 30, 2011. Section 3 would extend VA's authority through September 30, 2013.

According to VA, the department saved approximately $4 million in newly identified overpayments of pension awards by verifying veterans' incomes in 2010 and an average of $4 million annually over the 2006–2010 period. Using that information and accounting for mortality, CBO estimates that enacting section 3 would result in direct spending savings of $31 million over the 2012–2016 period and $56 million over the 2012–2021 period.

TABLE 2.—ESTIMATED CHANGES IN DIRECT SPENDING UNDER H.R. 2349

	Outlays, in millions of dollars, by fiscal year—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
Extension of Income Verification Match	−4	−8	−7	−6	−6	−6	−5	−5	−5	−4	−31	−56
Exclusion of Certain Reimbursements for Pension Purposes	4	4	4	4	4	4	4	4	4	4	20	40
Total Changes	*	−4	−3	−2	−2	−2	−1	−1	−1	*	−11	−16

Note: * = between −$500,000 and $500,000.

Exclusion of Certain Reimbursements for Pension Purposes. Section 3 also would exclude certain reimbursements and insurance settlements made to a veteran, surviving spouse, or child from being counted as income in determining disability pension awards. Under current law, certain payments can be counted as income and

reduce a veteran's or surviving spouse's pension award. Thus, the effect of section 3 would be to increase the size of pension awards.

According to VA, under current practice, payments for casualty losses are already excluded from income determinations. Awards for pain and suffering are included as income and make up the majority of reductions in pension awards. VA does not keep track of the number of pensioners who have had their pensions reduced because they received an award for pain and suffering; therefore, CBO used general population statistics on accidents that result in settlements for pain and suffering.

Based on national data about the frequency of car accidents in the United States, about 6.3 million people (or 2 percent of the population) are involved in car accidents every year. About 30 percent of those accidents result in an injury that could lead to a pain and suffering settlement. Insurance companies do not generally publish information on how many injury claims result in pain and suffering awards. Absent such information, CBO assumes that about one-half of the individuals injured receive a payment for pain and suffering.

Based on information from VA on the population of veterans and spouses who receive pensions and using general population figures on accidents that result in injuries, CBO estimates that in 2012, about 7,500 veterans and surviving spouses will be involved in car accidents and that about 2,240 of them will be injured. Of those, we expect about half (1,120) will receive pain and suffering settlements. After accounting for a declining population of pension recipients, CBO estimates that by 2021 the number of veterans and surviving spouses receiving pain and suffering payments will decline to about 1,060 in 2021. After reviewing data on pain and suffering payments, CBO determined that the average award was about $4,000. Thus, CBO estimates that enacting section 2 would increase direct spending by $4 million a year, or $40 million over the 2012–2021 period.

Reinstatement of Penalties. Section 7 would reinstate penalties for any individual found to be soliciting a fee or compensation for the assistance to a veteran in filing an application for benefits. The provision would expand the number of individuals who could be federally prosecuted. Because those prosecuted and convicted under section 7 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely affected.

Spending subject to appropriation

H.R. 2349 would limit the amount VA could pay for performance awards, establish a pilot program to assess the skills of claims processors and provide necessary training where those skills are deficient, and make other administrative reforms. CBO estimates that, on net, implementing H.R. 2349 would reduce discretionary costs by $1 million over the 2012–2016 period, assuming appropriation actions consistent with the bill.

Performance Awards for Senior Executive Staff. Section 8 would limit the amount that VA could pay in performance awards to sen-

ior staff to $2 million per year over the 2012–2016 period. In 2010, VA paid about $3.3 million in performance award payments. Assuming a similar amount over the applicable period, CBO estimates that implementing section 8 would reduce discretionary spending for pay and performance by about $7 million over the 2012–2016 period.

Assessment of Claims-Processing Skills Pilot Program. Section 2 would establish a four-year pilot program at five VA regional offices to test the skills and proficiency of claims processors (both managers and employees) and to provide remediation and training to those individuals who do not pass the tests. Employees who failed the skills assessment after two attempts would be subject to unspecified personnel action. The bill also would require an annual report on the pilot program. Section 2 would authorize the appropriation of $5 million over the 2012–2016 period for those purposes. CBO estimates that implementing section 2 would cost $5 million over that period, assuming appropriation of the specified amount.

TABLE 3.—ESTIMATED CHANGES IN DISCRETIONARY SPENDING UNDER H.R. 2349

	In millions of dollars, by fiscal year—					
	2012	2013	2014	2015	2016	2012–2016
Performance Awards for Senior Executive Staff:						
Estimated Authorization Level	−1	−1	−1	−1	−1	−7
Estimated Outlays	−1	−1	−1	−1	−1	−7
Assessment of Claims-Processing Skills Pilot Program:						
Authorization Level	3	1	1	*	*	5
Estimated Outlays	3	1	1	*	*	5
Other Provisions:						
Estimated Authorization Level	*	*	*	*	*	1
Estimated Outlays	*	*	*	*	*	1
Total Changes:						
Estimated Authorization Level	2	*	*	−1	−1	−1
Estimated Outlays	2	*	*	−1	−1	−1

Note: Components may not sum to totals because of rounding; * = less than $500,000.

Other Provisions. The following provisions would each have an insignificant impact on spending subject to appropriation, but together would cost $1 million over the 2012–2016 period, assuming availability of appropriated funds.

- Section 4 would allow VA to use electronic communications when possible to inform a veteran with a pending claim that more information is needed to substantiate a claim for benefits.
- Section 5 would require VA to make no less than two attempts to obtain private medical records for use in completing a pending claim for benefits.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table. Changes in revenues under the bill would be insignificant.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2349, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS ON SEPTEMBER 8, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	−4	−3	−2	−2	−2	−1	−1	−1	0	−11	−16

Intergovernmental and private-sector impact: H.R. 2349 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Dwayne M. Wright; Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 2349, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 2349, as amended.

LETTER OF JURISDICTIONALWAIVER FROM THE CHAIRMAN OF THE HOUSE COMMITTEE ON THE JUDICIARY

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September 6, 2011

The Honorable Jeff Miller
Chairman, Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, D.C. 20515

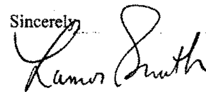
Dear Chairman Miller,

I am writing in response to your letter concerning H.R. 1826, a bill to reinstate penalties for persons charging veterans unauthorized fees, which the Committee on Veterans' Affairs reported favorably. You indicated in your letter that you intend to move H.R. 1826 as a part of H.R. 2349, the "Veterans Benefits Training Improvements Act of 2011." As a result of your having consulted with us on provisions in H.R. 1826 that fall within the Rule X jurisdiction of the Committee on the Judiciary, we are able to agree to discharging our Committee from further consideration of this bill or similar legislation in order that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 1826 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

I appreciate your including our exchange of letters on this matter in your committee report, or in the *Congressional Record* during floor consideration of H.R. 1826.

Sincerely,



Lamar Smith
Chairman

cc: The Honorable John Boehner
The Honorable Bob Filner
The Honorable John Conyers, Jr.
Mr. John Sullivan, Parliamentarian

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section would provide the short title of H.R. 2349, as amended, as the "Veterans' Benefits Act of 2011."

Section 2. Assessment of Claims-Processing Skills Pilot Program

This section would directs the VA to carry out a pilot program to assess skills and provide training described under subsection (b) no later than 180 days after the enactment of the act.

(1) Directs the Secretary to assess the skills of appropriate employees and managers of the Veterans Benefits Administration biennially who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary. This includes requiring such employees and managers to take the examination provided under section 7732A(a)(1) of title 38, United States Code. The Secretary must then develop and implement an individualized training plan related to such skills for each such employee and manager on the basis of the results of the aforementioned assessment and examination, as well as with any relevant regional office quality review.

(2) This subsection directs the Secretary to provide such employee or manager with remediation of any deficiency and to retake the exam if any employee or manager receives a less than satisfactory result on any portion of an assessment under paragraph (1)(A).

(b) Directs the Secretary to take appropriate personnel actions with respect to any employee or manager under certain circumstances.

(c) Directs the Secretary to carry out the pilot program under this section at five regional offices of the Veterans Benefits Administration during the five-year period beginning on the date of the commencement of the pilot program.

(d) Authorizes appropriations of $5,000,000 to carry out this section for fiscal years 2012 through 2016.

(e) Directs the Secretary to submit a report, which includes a summary of results, the remediation, and personnel actions to the Committee on Veterans' Affairs of the House of Representatives and the Committee on Veterans' Affairs of the Senate.

(1) Defines the contents within the subsection (e) report.

(2) Requires any changes made to the training program under subsection (b)(1)(B) based on the results of such assess-

ments and remediation and the examinations provided under section 7732A(a)(1) of title 38, United States Code, to be included in the report.

Section 3. Exclusion of certain reimbursements of expenses from determination of annual income with respect to pensions for veterans and surviving spouses and children of veterans

This section would amend paragraph (5) of section 1503(a) of title 38, United States Code, to exempt reimbursements of any kind, including insurance settlement payments, expenses related to the repayment, replacement, or repair of equipment, vehicles, items, money, or property resulting from any accidents, any theft or loss, and any casualty loss, included medical expenses resulting from any accident, theft, loss, or casualty loss.

(I) Defines limitations to accident exemption.

(II) Defines limitations to theft or loss exemption.

(III) Defines limitations to casualty loss exemption.

(B) Defines definition and limitation to pain and suffering exception related to an accident, theft, loss, or casualty loss.

(b) Defines the date this subsection takes effect.

(c) Amends section 5317(g) of title 38, United States Code, by striking "2011" and inserting "2013".

Section 4. Authorization of use of electronic communication to provide notice to claimants for benefits under laws administered by the Secretary of Veterans Affairs

(a) Amends section 5103 of title 38, United States Code, by authorizing the use of election communication to provide notice to claimants for benefits under laws administered by the Secretary.

(4) Amends section 5103 of title 38, United States Code, by adding a new paragraph, which clarifies that nothing in this section would compel the Secretary to provide notice for a subsequent claim that is filed while a previous claim is pending if the notice previously provided for such pending claim provided that:

(A) sufficient notice of the information and evidence necessary to substantiate such subsequent claim; and

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

(5)(A) Defines this section as having no applicability to any claim or issue where the Secretary may award the maximum benefit in accordance with this title based on the evidence of record.

(B) Defines the term "maximum benefit' for purposes of this paragraph.

(b) Defines proper interpretation of subsection (a).

Section 5. Duty to assist claimants in obtaining private records

(a) Amends Section 5103A(b) of title 38, United States Code, is amended to direct the Secretary to make reasonable efforts to obtain relevant private records as part of the assistance provided under subsection:

(2)(A) Requires the Secretary to notify the claimant that the Secretary is unable to obtain records with respect to the claim when reasonable efforts have been made without obtaining all

of the relevant records sought. This subsection also defines what must be contained within the notice under this section.

(B) Requires the Secretary to make no less than two requests to a custodian of a private record in order for an effort to obtain relevant private records to be treated as reasonable under this section, unless it is made evident by the first request that a second request would be futile in obtaining such records.

(3)(A) Defines this section as inapplicable if the evidence of record allows for the Secretary to award the maximum benefit in accordance with this title based on the evidence of record.

(B) Defines "maximum benefit" for purposes of this paragraph.

(4) Requires the Secretary to encourage claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant; and may require the claimant to authorize the Secretary to obtain such records.

(b) Amends section 5103A(c) giving instructions to obtain records for compensation claims.

(1) Directs the Secretary, with respect to assistance required of the Secretary under this section, to obtain certain records if relevant to the claim. They include records defined in (A), (B), and (C) of this subsection.

(2) Directs the Secretary to continue effects to obtain records described under this subsection until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

Section 6. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes

(a) Amends chapter 55 of title 38, United States Code, by requiring that a person mentally incompetent, incapacitated, or experiencing an extended loss of consciousness to not be considered adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18 without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.

(b) Amends the table of sections in chapter 55.

Section 7. Reinstatement of penalties for charging veterans unauthorized fees

(a) Amends section 5905 of title 38, United States Code, to reinstate penalties for a knowing solicitation, contracting, charging, or receiving any fee or compensation in connection for various services defined in subsections (A) or (B). Subsections (2), (3), and (4) expound on the penalties described in this section.

(b) Defines the date this subsection takes effect.

Section 8. Performance awards in the Senior Executive Service

Prohibits the Secretary from paying more than $2,000,000 in performance awards under section 5384 of title 5, United States Code, for each of fiscal years 2012 through 2016.

Section 9. Budgetary effects of this act

Defines the budgetary effects of this Act for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, and Amends title 38, United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART II—GENERAL BENEFITS

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CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

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SUBCHAPTER I—GENERAL

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§ 1503. Determinations with respect to annual income

(a) In determining annual income under this chapter, all payments of any kind or from any source (including salary, retirement or annuity payments, or similar income, which has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise) shall be included except—

(1) * * *

* * * * * * *

[(5) reimbursements of any kind for any casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this clause may not exceed the greater of the fair market value or reasonable replacement value of the property involved at the time immediately preceding the loss;**]**

(5) payments regarding—

(A) reimbursements of any kind (including insurance settlement payments) for—

(i) expenses related to the repayment, replacement, or repair of equipment, vehicles, items, money, or property resulting from—

(I) any accident (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this subclause shall not exceed the greater of the fair market value or reasonable replacement value of the equipment or vehicle involved at the time immediately preceding the accident;

(II) any theft or loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this subclause shall not exceed the greater of the fair market value or reasonable replacement value of the item or the amount of the money (including legal tender of the United States or of a foreign country) involved at the time immediately preceding the theft or loss; or

(III) any casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this subclause shall not exceed the greater of the fair market value or reasonable replacement value of the property involved at the time immediately preceding the casualty loss; and

(ii) medical expenses resulting from any accident, theft, loss, or casualty loss (as defined in regulations which the Secretary shall prescribe), but the amount excluded under this clause shall not exceed the costs of medical care provided to the victim of the accident, theft, loss, or casualty loss; and

(B) pain and suffering (including insurance settlement payments and general damages awarded by a court) related to an accident, theft, loss, or casualty loss, but the amount excluded under this subparagraph shall not exceed an amount determined by the Secretary on a case-by-case basis;

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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SUBCHAPTER I—CLAIMS

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§ 5103. Notice to claimants of required information and evidence

(a) REQUIRED INFORMATION AND EVIDENCE.—(1) 【Upon receipt of a complete or substantially complete application, the】 *The* Secretary shall 【notify】 *provide to* the claimant and the claimant's representative, if any, *by the most effective means available, including electronic communication or notification in writing* of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance

with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

* * * * * * *

(b) TIME LIMITATION.—(1) * * *

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(4) Nothing in this section shall require the Secretary to provide notice for a subsequent claim that is filed while a previous claim is pending if the notice previously provided for such pending claim—

(A) provides sufficient notice of the information and evidence necessary to substantiate such subsequent claim; and

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

(5)(A) This section shall not apply to any claim or issue where the Secretary may award the maximum benefit in accordance with this title based on the evidence of record.

(B) For purposes of this paragraph, the term "maximum benefit" means the highest evaluation assignable in accordance with the evidence of record, as long as such evaluation is supported by such evidence of record at the time the decision is rendered.

§ 5103A. Duty to assist claimants

(a) * * *

⟦(b) ASSISTANCE IN OBTAINING RECORDS.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.

⟦(2) 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 to the claim. Such a notification shall—

⟦(A) identify the records the Secretary is unable to obtain;

⟦(B) briefly explain the efforts that the Secretary made to obtain those records; and

⟦(C) describe any further action to be taken by the Secretary with respect to the claim.

⟦(3) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection or subsection (c), the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

⟦(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (b) shall include obtaining the following records if relevant to the claim:

⟦(1) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

⟦(2) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the ex-

pense of the Department, if the claimant furnishes information sufficient to locate those records.

[(3) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.]

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

(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 to the claim. Such a notification shall—

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

(ii) briefly explain the efforts that the Secretary made to obtain such records; and

(iii) explain that the Secretary will decide the claim based on the evidence of record but that this section does not prohibit the submission of records at a later date if such submission is otherwise allowed.

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

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

(B) For purposes of this paragraph, the term "maximum benefit" means the highest evaluation assignable in accordance with the evidence of record, as long as such evaluation is supported by such evidence of record at the time the decision is rendered.

(4) Under regulations prescribed by the Secretary, the Secretary—

(A) shall encourage claimants to submit relevant private medical records of the claimant to the Secretary if such submission does not burden the claimant; and

(B) in obtaining relevant private records under paragraph (1), may require the claimant to authorize the Secretary to obtain such records if such authorization is required to comply with Federal, State, or local law.

(c) OBTAINING RECORDS FOR COMPENSATION CLAIMS.—(1) In the case of a claim for disability compensation, the assistance provided by the Secretary under this section shall include obtaining the following records if relevant to the claim:

(A) The claimant's service medical records and, if the claimant has furnished the Secretary information sufficient to locate such records, other relevant records pertaining to the claimant's active military, naval, or air service that are held or maintained by a governmental entity.

(B) Records of relevant medical treatment or examination of the claimant at Department health-care facilities or at the expense of the Department, if the claimant furnishes information sufficient to locate those records.

(C) Any other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

(2) Whenever the Secretary attempts to obtain records from a Federal department or agency under this subsection, the efforts to obtain those records shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

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CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

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§ 5317. Use of income information from other agencies: notice and verification

(a) * * *

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(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Commissioner of Social Security under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, ❲2011❳ *2013*.

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CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.
5501. Commitment actions.

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5511. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.

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§ 5511. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes

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

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CHAPTER 59—AGENTS AND ATTORNEYS

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❲§ 5905. Penalty for certain acts

❲Whoever wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.❳

§ 5905. Penalty for certain acts

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

(1) in connection with a proceeding before the Department, knowingly solicits, contracts for, charges, or receives any fee or compensation in connection for—

(A) the provision of advice on how to file a claim for benefits under the laws administered by the Secretary; or

(B) the preparation, presentation, or prosecution of such a claim before the date on which a notice of disagreement is filed in a proceeding on the claim,

or attempts to do so;

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

(3) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures the commission of such an act; or

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

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

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