

VETERANS APPEALS IMPROVEMENT ACT OF 2011

MAY 20, 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

R E P O R T

[To accompany H.R. 1484]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1484) to amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs and to establish a commission to study judicial review of the determination of veterans' benefits, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment .....	2
Purpose and Summary .....	3
Background and Need for Legislation .....	4
Hearings .....	5
Subcommittee Consideration .....	5
Committee Consideration .....	5
Committee Votes .....	5
Committee Oversight Findings .....	6
Statement of General Performance Goals and Objectives .....	6
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	6
Earmarks and Tax and Tariff Benefits .....	6
Committee Cost Estimate .....	6
Congressional Budget Office Cost Estimate .....	6
Federal Mandates Statement .....	7
Advisory Committee Statement .....	7
Applicability to Legislative Branch .....	7
Section-by-Section Analysis of the Legislation .....	7
Changes in Existing Law Made by the Bill as Reported .....	8

## AMENDMENT

The amendment is as follows:

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1484

OFFERED BY MR. MCNERNEY OF CALIFORNIA

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Veterans Appeals Improvement Act of 2011”.

**SEC. 2. WAIVER OF REGIONAL OFFICE JURISDICTION OVER INCORPORATION OF SUPPLEMENTAL EVIDENCE INTO PREVIOUSLY SUBMITTED CLAIMS.**

(a) **WAIVER.**—Section 7104 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(f) If a claimant or the claimant’s representative submits new evidence in support of a case for which a substantive appeal has been filed, such evidence shall be submitted to the Board directly and not to the agency of jurisdiction, unless the claimant or the claimant’s representative requests that the evidence be reviewed by the agency of jurisdiction before being submitted to the Board.”

(b) **EFFECTIVE DATE.**—Subsection (f) of section 7104 of title 38, United States Code, as added by subsection (a) of this section, shall apply with respect to evidence submitted on or after the date that is 90 days after the date of the enactment of this Act.

**SEC. 3. COMMISSION TO STUDY JUDICIAL REVIEW OF THE DETERMINATION OF VETERANS’ BENEFITS.**

(a) **ESTABLISHMENT.**—There is established a commission to be known as the “Veterans Judicial Review Commission” (in this section referred to as the “Commission”).

(b) **DUTIES.**—The Commission shall—

(1) evaluate the administrative and judicial appellate review processes of veterans’ and survivors’ benefits determinations; and

(2) make specific recommendations and offer solutions to improve the accuracy, fairness, transparency, predictability, timeliness, and finality of such appellate review processes, including a recommendation as to whether the Court of Appeals for Veterans Claims should have the authority to hear class action or associational standing cases.

(c) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Commission shall be composed of 13 members appointed as follows:

(A) Two individuals appointed by the Speaker of the House of Representatives.

(B) Two individuals appointed jointly by the President of the Senate and the President pro tempore.

(C) Two individuals appointed by the minority leader of the House of Representatives.

(D) Two individuals appointed by the minority leader of the Senate.

(E) Four individuals appointed by the President.

(F) One individual appointed by the President, by and with the advice and consent of the Senate, who shall serve as chairperson.

(2) **QUALIFICATIONS.**—Individuals appointed under paragraph (1) shall—

(A) be specially qualified to serve on the Commission by virtue of their expert education, training, or experience associated with veterans’ benefits, judicial review, constitutional law, or other areas of expertise pertinent to the duties of the Commission; and

(B) include individuals who—

(i) are current or retired members of the judiciary;

(ii) are members of the legal or academic community; or

(iii) represent—

(I) veterans service organizations;

(II) legal service organizations; or

(III) other affected entities.

(3) **TERMS.**—Each member shall be appointed for the life of the Commission.

(4) **VACANCY.**—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) **MEETINGS.**—

- (1) IN GENERAL.—The Commission shall meet at the call of the Chairperson or a majority of its members.
- (2) QUORUM.—A majority of the Commission shall constitute a quorum but a lesser number may hold hearings.
- (e) PAY.—
- (1) RATES OF PAY.—Except as provided in paragraph (2), members shall serve without pay.
- (2) TRAVEL EXPENSE.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.
- (f) STAFF.—
- (1) DIRECTOR.—The Commission shall have a director who shall be appointed by the Chairperson.
- (2) STAFF.—Subject to rules prescribed by the Commission, the Chairperson may appoint additional personnel as the Chairperson considers appropriate.
- (3) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The director and staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.
- (4) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.
- (5) STAFF TO FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.
- (g) POWERS OF COMMISSION.—
- (1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.
- (2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.
- (3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.
- (4) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.
- (5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.
- (h) REPORTS.—
- (1) INTERIM REPORT.—Not later than July 1, 2012, the Commission shall submit to Congress an interim report of the evaluation and recommendations made under subsection (b).
- (2) FINAL REPORT.—Not later than December 31, 2012, the Commission shall submit to Congress a final report on the activities of the Commission, including—
- (A) specific recommendations and solutions proposed by the Commission under subsection (b), including a recommendation as to whether the Court of Appeals for Veterans Claims should have the authority to hear class action or associational standing cases;
- (B) relevant background and statistical information associated with such recommendations and solutions; and
- (C) other information the Commission determines appropriate.
- (i) TERMINATION.—The Commission shall terminate on the date that is two years after the date on which the Commission submits the final report pursuant to section (h)(2).

#### PURPOSE AND SUMMARY

H.R. 1484 was introduced on April 12, 2011, by Ranking Member Bob Filner of California. H.R. 1484, as amended, would direct the

Board of Veterans' Appeals (BVA) to consider evidence submitted by a claimant after a substantive appeal has been filed unless the claimant elects to have the evidence considered first by the Agency of Original Jurisdiction (AOJ). H.R. 1484, as amended, would also create a Veterans Judicial Review Commission charged with reviewing and making recommendations to improve the appellate review process for veterans' benefits.

#### BACKGROUND AND NEED FOR LEGISLATION

A claimant who files for benefits administered by the Department of Veterans Affairs (VA) must submit evidence in support of a claim to the appropriate AOJ. For claims arising under benefit programs administered by the Veterans Benefits Administration (VBA), the AOJ is generally one of 57 VBA regional offices. Although the Veterans Health Administration and the National Cemetery Administration render decisions on benefit programs under their purview, the predominant arena for claims decisions is at VA regional offices.

An AOJ is responsible for rendering a judgment on a claim based on the evidence before it. Such a judgment represents the initial decision of the Secretary of VA. Section 7104 of title 38, United States Code, affords claimants the opportunity to appeal final AOJ decisions to the BVA. However, the law limits claimants to one review on appeal and precludes BVA's ability to consider new evidence submitted in connection with a claim unless the claimant affirmatively waives the right for that evidence to first be considered by the AOJ. The default requirement for an AOJ to initially consider all evidence often delays the final adjudication of claims. Newly submitted evidence in support of claims on appeal must be sent back to an AOJ for consideration when, in many instances, the claimant would benefit from that evidence being considered *de novo* by BVA.

Section 2 of H.R. 1484, as amended, would require new evidence submitted by a claimant in support of a claim, for which a substantive appeal has already been filed, to be submitted directly to BVA and not an AOJ, unless a claimant requests initial AOJ consideration of the evidence. Testifying on behalf of the Disabled American Veterans (DAV) at the May 3, 2011, Subcommittee on Disability Assistance and Memorial Affairs hearing, Mr. Jeffrey Hall stated that section two of H.R. 1484 would help by "avoiding a time consuming remand process that delays final decisions to veterans and also wastes VA resources in the process." The Committee agrees with the expressed DAV position that section 2 of H.R. 1484 "would be beneficial to all parties involved."

Section 3 of H.R. 1484, as amended, would establish a Veterans Judicial Review Commission charged with reviewing and making recommendations to Congress to improve the appellate review process for veterans' benefits. The 13-member Commission would also be charged with making a recommendation on whether the U.S. Court of Appeals for Veterans Claims (CAVC) should have the authority to hear class action or associated standing cases. Testifying in support of H.R. 1484 at the May 3, 2011, Subcommittee on Disability Assistance and Memorial Affairs hearing, Ms. Christina Roof of AMVETS stated that the Commission could help VBA "gain valuable information that could lead to great improvements to the

entire claims process.” Given the seriousness of the disability claims backlog problem, and the contribution of the appellate workload as part of it, the Committee would welcome any new ideas for improvement that a focused Commission might provide.

#### HEARINGS

On May 3, 2011, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 112th Congress, including H.R. 1484. The following witnesses testified:

Ms. Christina M. Roof, National Acting Legislative Director, AMVETS; Mr. Jeffrey C. Hall, Assistant National Legislative Director, Disabled American Veterans; Mr. Shane Barker, Senior Legislative Associate, National Legislative Service Veterans of Foreign Wars of the United States; Mr. Barton F. Stichman, Joint Executive Director, National Veterans Legal Service Program; The Honorable Bruce E. Kasold, Chief Judge, United States Court of Appeals for Veterans Claims; Ms. Diana M. Rubens, Associate Deputy Under Secretary for Field Operations, Veterans Benefits Administration, who was accompanied by Mr. Richard J. Hipolit, Assistant General Counsel, U.S. Department of Veterans Affairs; and Mr. Steve Keller, Acting Chairman, Board of Veterans’ Appeals, U.S. Department of Veterans Affairs.

Those submitting statements for the record included: The Paralyzed Veterans of America.

#### SUBCOMMITTEE CONSIDERATION

On May 5, 2011, the Subcommittee on Disability Assistance and Memorial Affairs met in an open markup session and ordered favorably forwarded to the full committee H.R. 1484, as amended, by voice vote. During consideration of the bill the following amendment was considered.

An amendment in the nature of substitute offered by Mr. McNerney of California to make technical and conforming changes to reflect issues raised by VA at the May 3, 2011 hearing was agreed to by voice vote.

#### COMMITTEE CONSIDERATION

On May 12, 2011, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 1484, as amended, reported favorably to the House of Representatives, 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. 1484, as amended, reported to the House. A motion by Ranking Member Bob Filner of California to order H.R. 1484, as amended, reported favorably 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. 1484, 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. 1484, 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. 1484, 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, May 16, 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. 1484, the Veterans Appeals Improvement 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. 1484—Veterans Appeals Improvement Act of 2011*

H.R. 1484 would establish a commission to evaluate the process of judicial review for veterans' and survivors' benefits. The Veterans Judicial Review Commission would be charged with recommending ways to improve aspects of the appellate review process as it relates to veterans' benefits, including its accuracy, timeliness, and transparency. The commission also would be asked to determine the advisability of authorizing the Court of Appeals for Veterans Claims to hear cases brought on behalf of a group, such as class action suits.

The commission would consist of 13 members and would be required to submit a final report to the Congress on its activities by December 31, 2012. Members would serve without pay but would be reimbursed for travel expenses. In addition, the commission could hire staff and use personnel from other federal agencies. The commission would terminate two years after submitting its final report. Based on an analysis of the costs of similar commissions, CBO estimates that implementing H.R. 1484 would cost \$2 million over the 2012–2015 period, assuming the availability of appropriated funds.

Enacting H.R. 1484 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1484 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Theresa A. Gullo, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1484, 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. 1484, as amended.

## 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. 1484 as the “Veterans Appeals Improvement Act of 2011.”

*Section 2. Waiver of regional office jurisdiction over incorporation of supplemental evidence into previously submitted claims—*

This section would amend Section 7104 of title 38, United States Code by requiring that any new evidence submitted in support of a case for which a substantive appeal has been filed be submitted to the Board of Veterans' Appeals directly and not to a VA regional office unless requested otherwise by the veteran. The effective date of this provision is 90 days after enactment.

*Section 3. Veterans Judicial Review Commission*

*Subsection (a and b)* would establish a "Veterans Judicial Review Commission" with the purpose of evaluating the appellate review process of veterans' and survivors' benefits determinations and to make recommendations for improvement.

*Subsection (c)* would require the Commission to have 11 members, 2 appointed by the Speaker of the House of Representatives, 1 by the Minority Leader of the House, 2 appointed jointly by the President of the Senate and the President pro tempore, 1 by the minority leader of the Senate, 4 appointed by the President, and 1 Chairperson appointed by the President with the advice and consent of the Senate. These individuals would be highly qualified to serve the interests of the Commission and would represent veterans service organizations, the judiciary, legal service organizations, academia, and other affected organizations. All members are appointed for the life of the Commission and any vacancy would follow the manner in which the original appointment was made.

*Subsection (d)* would establish the rules of meetings, whereby the Commission shall meet at the call of the Chairperson or a majority of the members. A majority of the Commission would constitute a quorum, but less than a majority may hold hearings.

*Subsection (e)* would establish that all members serve on the Commission without pay and would receive travel expenses and per diem in accordance with applicable provisions under subchapter I of chapter 57 of title 5, USC.

*Subsection (f)* would establish a director and staff as appointed by the Chairperson.

*Subsection (g)* would give the Commission the power to hold hearings and sessions, including the taking of testimony, administration of oaths, and affirmations to witnesses to appear before it. Any member, if authorized by the Commission, would be able to take any action which the Commission is authorized to take.

*Subsection (h)* would require the Commission to submit an interim report no later than July 1, 2011 on the evaluation and recommendations made under subsection (b), including whether the CAVC should have class action or associational standing authority. A final report would be required by the Commission no later than December 31, 2011 and be submitted to Congress.

*Subsection (i)* would terminate the Commission on the date that is two years after the date on which the Commission submitted the final report.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

**PART V—BOARDS, ADMINISTRATIONS, AND SERVICES**

\* \* \* \* \*

**CHAPTER 71—BOARD OF VETERANS' APPEALS**

\* \* \* \* \*

**§ 7104. Jurisdiction of the Board**

(a) \* \* \*

\* \* \* \* \*

*(f) If a claimant or the claimant's representative submits new evidence in support of a case for which a substantive appeal has been filed, such evidence shall be submitted to the Board directly and not to the agency of jurisdiction, unless the claimant or the claimant's representative requests that the evidence be reviewed by the agency of jurisdiction before being submitted to the Board.*