

**Suspend the Rules And Pass the Bill, H.R. 2349, with Amendments**

**(The amendments strike all after the enacting clause and insert a new text and a new title)**

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

# 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.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mr. RUNYAN introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans’ Benefits Act  
5 of 2011”.

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

3 (a) PILOT PROGRAM.—Commencing not later than  
4 180 days after the date of the enactment of this Act, in  
5 addition to providing employee certification under section  
6 7732A of title 38, United States Code, the Secretary of  
7 Veterans Affairs shall carry out a pilot program to assess  
8 skills and provide training described under subsection (b).

9 (b) BIENNIAL SKILLS ASSESSMENT AND INDIVID-  
10 UALIZED TRAINING.—

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

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

21 (B) on the basis of the results of such as-  
22 sessment and examination, and on any relevant  
23 regional office quality review, develop and im-  
24 plement an individualized training plan related  
25 to such skills for each such employee and man-  
26 ager.

1 (2) REMEDIATION.—

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

13 (B) PERSONNEL ACTIONS.—In accordance  
14 with titles 5 and 38, United States Code, the  
15 Secretary shall take appropriate personnel ac-  
16 tions with respect to any employee or manager  
17 who, after being given two opportunities for re-  
18 mediation under subparagraph (A), does not re-  
19 ceive a satisfactory result on an assessment  
20 under paragraph (1)(A).

21 (c) LOCATIONS AND DURATION.—The Secretary shall  
22 carry out the pilot program under this section at five re-  
23 gional offices of the Veterans Benefits Administration dur-  
24 ing the four-year period beginning on the date of the com-  
25 mencement of the pilot program.

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

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

11 (1) a summary of—

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

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

16 (C) personnel actions taken under sub-  
17 section (b)(2)(B); and

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

1 **SEC. 3. EXCLUSION OF CERTAIN REIMBURSEMENTS OF EX-**  
2 **PENSES FROM DETERMINATION OF ANNUAL**  
3 **INCOME WITH RESPECT TO PENSIONS FOR**  
4 **VETERANS AND SURVIVING SPOUSES AND**  
5 **CHILDREN OF VETERANS.**

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

9 “(5) payments regarding—

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

12 “(i) expenses related to the repay-  
13 ment, replacement, or repair of equipment,  
14 vehicles, items, money, or property result-  
15 ing from—

16 “(I) any accident (as defined in  
17 regulations which the Secretary shall  
18 prescribe), but the amount excluded  
19 under this subclause shall not exceed  
20 the greater of the fair market value or  
21 reasonable replacement value of the  
22 equipment or vehicle involved at the  
23 time immediately preceding the acci-  
24 dent;

25 “(II) any theft or loss (as defined  
26 in regulations which the Secretary

1 shall prescribe), but the amount ex-  
2 cluded under this subclause shall not  
3 exceed the greater of the fair market  
4 value or reasonable replacement value  
5 of the item or the amount of the  
6 money (including legal tender of the  
7 United States or of a foreign country)  
8 involved at the time immediately pre-  
9 ceding the theft or loss; or

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

19 “(ii) medical expenses resulting from  
20 any accident, theft, loss, or casualty loss  
21 (as defined in regulations which the Sec-  
22 retary shall prescribe), but the amount ex-  
23 cluded under this clause shall not exceed  
24 the costs of medical care provided to the



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

4 (B) by striking “notify” and inserting  
5 “provide to”; and

6 (C) by inserting “by the most effective  
7 means available, including electronic commu-  
8 nication or notification in writing” before “of  
9 any information”; and

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

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

16 “(A) provides sufficient notice of the informa-  
17 tion and evidence necessary to substantiate such  
18 subsequent claim; and

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

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

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

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

12 **SEC. 5. DUTY TO ASSIST CLAIMANTS IN OBTAINING PRI-**  
13 **VATE RECORDS.**

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

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

20           “(2)(A) Whenever the Secretary, after making such  
21 reasonable efforts, is unable to obtain all of the relevant  
22 records sought, the Secretary shall notify the claimant  
23 that the Secretary is unable to obtain records with respect  
24 to the claim. Such a notification shall—

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

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

5           “(iii) explain that the Secretary will decide the  
6           claim based on the evidence of record but that this  
7           section does not prohibit the submission of records  
8           at a later date if such submission is otherwise al-  
9           lowed.

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

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

20          “(B) For purposes of this paragraph, the term ‘max-  
21         imum benefit’ means the highest evaluation assignable in  
22         accordance with the evidence of record, as long as such  
23         evaluation is supported by such evidence of record at the  
24         time the decision is rendered.

1       “(4) Under regulations prescribed by the Secretary,  
2 the Secretary—

3           “(A) shall encourage claimants to submit rel-  
4 evant private medical records of the claimant to the  
5 Secretary if such submission does not burden the  
6 claimant; and

7           “(B) in obtaining relevant private records under  
8 paragraph (1), may require the claimant to author-  
9 ize the Secretary to obtain such records if such au-  
10 thORIZATION is required to comply with Federal,  
11 State, or local law.”.

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

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

19           “(A) The claimant’s service medical records  
20 and, if the claimant has furnished the Secretary in-  
21 formation sufficient to locate such records, other rel-  
22 evant records pertaining to the claimant’s active  
23 military, naval, or air service that are held or main-  
24 tained by a governmental entity.



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

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

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

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

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

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

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

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

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

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

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

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

10 or attempts to do so;

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

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

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

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

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

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

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

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

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

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.”.