

116TH CONGRESS
1ST SESSION

S. 805

To amend title 38, United States Code, to improve the processing of veterans benefits by the Department of Veterans Affairs, to limit the authority of the Secretary of Veterans Affairs to recover overpayments made by the Department and other amounts owed by veterans to the United States, to improve the due process accorded veterans with respect to such recovery, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2019

Mr. TESTER (for himself, Mr. BOOZMAN, Mr. BROWN, Mr. BLUMENTHAL, Ms. STABENOW, Ms. HARRIS, Ms. WARREN, Mr. WYDEN, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the processing of veterans benefits by the Department of Veterans Affairs, to limit the authority of the Secretary of Veterans Affairs to recover overpayments made by the Department and other amounts owed by veterans to the United States, to improve the due process accorded veterans with respect to such recovery, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Veteran Debt Fairness
3 Act of 2019”.

4 **SEC. 2. IMPROVING PROCESSING OF VETERANS BENEFITS**
5 **BY DEPARTMENT OF VETERANS AFFAIRS.**

6 (a) NOTIFICATION OF DEBTS INCURRED.—The Sec-
7 retary of Veterans Affairs shall make such changes to such
8 information technology systems of the Department of Vet-
9 erans Affairs, including the eBenefits system or successor
10 system, as may be necessary so that a person who is enti-
11 tled to a payment from the Department by virtue of the
12 person’s participation in a benefits program administered
13 by the Secretary will receive, at the request of the person,
14 a notice from the Department through means selected by
15 the individual (by electronic mail or other mechanism)
16 whenever such person incurs a debt to the United States
17 by virtue of such participation.

18 (b) UPDATING DEPENDENT INFORMATION.—The
19 Secretary shall make such changes to such information
20 technology systems of the Department, including the
21 eBenefits system or successor system, as may be necessary
22 so that whenever the Secretary records in such systems
23 information about a dependent of a person, the person is
24 able to review and revise such information.

25 (c) TRACKING OF METRICS.—The Secretary shall
26 make such changes to such information technology sys-

1 tems of the Department as may be necessary to track the
2 following:

3 (1) The number and amount of payments made
4 by the Department to persons as part of a benefits
5 program administered by the Secretary which result
6 in the persons incurring a debt to the United States
7 by virtue of such payments.

8 (2) The average debt to the United States in-
9 curred by a person by virtue of a payment described
10 in paragraph (1).

11 (3) The frequency by which applications for re-
12 lief under section 5302(a) of title 38, United States
13 Code, are approved and denied.

14 (4) Such other metrics as the Secretary con-
15 siders appropriate.

16 **SEC. 3. REFORMS RELATING TO RECOVERY BY DEPART-**
17 **MENT OF VETERANS AFFAIRS OF AMOUNTS**
18 **OWED BY VETERANS TO THE UNITED STATES.**

19 (a) INDEBTEDNESS OFFSETS.—

20 (1) LIMITATION ON SCOPE OF AUTHORITY.—

21 Subsection (a) of section 5314 of title 38, United
22 States Code, is amended—

23 (A) by inserting “(1)” before “Subject to”;

24 (B) in paragraph (1), as designated by
25 subparagraph (A), by striking “to subsections

1 (b) and (d) of this section” and inserting “to
2 paragraphs (2) through (6) of this subsection,
3 subsections (b) and (e) of this section,”; and

4 (C) by adding at the end the following new
5 paragraph:

6 “(2) Notwithstanding any other provision of law, the
7 Secretary may only deduct under paragraph (1) an
8 amount of the indebtedness of a veteran, the estate of a
9 veteran, a spouse or child of a veteran who is deceased,
10 or a recipient of educational assistance under chapter 30,
11 31, 32, 33, 34, or 35 of this title if the indebtedness is
12 a result of one or more of the following:

13 “(A) An error made by or failure to report re-
14 quired information to the Department by the vet-
15 eran, estate, spouse, child, or recipient of edu-
16 cational assistance, as the case may be.

17 “(B) Fraud perpetrated by the veteran, estate,
18 spouse, child, or recipient of educational assistance,
19 as the case may be.

20 “(C) A misrepresentation made by the veteran,
21 estate, spouse, child, or recipient of educational as-
22 sistance, as the case may be.

23 “(D) In the case of a recipient of educational
24 assistance under such chapters, a reduction in or

1 termination of pursuit of a program of education by
2 the recipient.

3 “(E) A failure described in section
4 3319(i)(2)(A) of this title.

5 “(3)(A) The Secretary may not deduct under para-
6 graph (1) from any payment made under chapter 11 or
7 15 of this title more than the lessor of—

8 “(i) 25 percent of such payment; or

9 “(ii) such other percent of such payment as the
10 Secretary and the person whose future payments are
11 to be reduced under paragraph (1) agree would not
12 cause a hardship to the person of the payment.

13 “(B) A person whose future payments are to be re-
14 duced under paragraph (1) may request, via the adminis-
15 trative process prescribed under subsection (c), the Sec-
16 retary make a determination under subparagraph (A)(ii)
17 of this paragraph.

18 “(4) In the case of an indebtedness that was incurred
19 as a result of an error or failure described in paragraph
20 (2)(A), the Secretary may not deduct under paragraph (1)
21 any amount relating to such indebtedness after the date
22 that is five years after the date on which the debt was
23 incurred.

1 “(5) The Secretary may not deduct under paragraph
2 (1) any amount relating to an indebtedness while the ex-
3 istence or amount of such indebtedness is being—

4 “(A) disputed under subsection (c); or

5 “(B) appealed.

6 “(6) The Secretary may not deduct under paragraph
7 (1) any amount if the Secretary determines that the cost
8 that would be incurred by the Department to recover such
9 amount would exceed the amount to be recovered.

10 “(7) Paragraphs (2) through (6) shall not apply to
11 payments under chapter 19 of this title.”.

12 (2) DUE PROCESS.—

13 (A) MINIMUM PERIOD FOR NOTICE.—Sub-
14 section (b) of such section is amended—

15 (i) by amending paragraph (1) to read
16 as follows:

17 “(1) has made reasonable efforts to notify such
18 person of such person’s right—

19 “(A) to dispute through prescribed admin-
20 istrative processes the existence or amount of
21 such indebtedness;

22 “(B) to request a waiver of such indebted-
23 ness under section 5302 of this title; and

1 “(C) to request the Secretary make a de-
2 termination under subsection (a)(3)(A)(ii);”;
3 and

4 (ii) by striking paragraph (3) and in-
5 serting the following new paragraphs:

6 “(3) has notified such person about the pro-
7 posed deductions by mailing a notice of intent letter,
8 which—

9 “(A) is mailed to the person—

10 “(i) in the case of a debt incurred by
11 a person by virtue of the person’s partici-
12 pation in a program of educational assist-
13 ance administered by the Secretary, not
14 later than 45 days before making any of
15 such deductions; and

16 “(ii) in the case of a debt incurred by
17 a person by virtue of the person’s partici-
18 pation in any other benefit program ad-
19 ministered by the Secretary, not later than
20 90 days before making any of such deduc-
21 tions; and

22 “(B) includes detailed information about
23 the indebtedness, including, in the case of an
24 overpayment, an itemized list of each overpay-

1 ment and the specific reason for the overpay-
2 ment.”.

3 (B) ADJUDICATION OF DISPUTES.—

4 (i) IN GENERAL.—Such section is
5 amended—

6 (I) by redesignating subsections
7 (c) and (d) as subsections (d) and (e);
8 and

9 (II) by inserting after subsection
10 (b) the following new subsection (c):

11 “(c)(1) The Secretary shall prescribe an administra-
12 tive process for—

13 “(A) the dispute of the existence or amount of
14 an indebtedness subject to subsection (a); and

15 “(B) making requests under paragraph (3)(B)
16 of such subsection.

17 “(2) The Secretary shall ensure that each dispute
18 under paragraph (1)(A) is adjudicated not later than 120
19 days after the dispute is filed.

20 “(3) The Secretary may not submit to any debt col-
21 lector (as defined in section 803 of the Fair Debt Collec-
22 tion Practices Act (15 U.S.C. 1692a)) any debt pending
23 adjudication under the process prescribed under para-
24 graph (1).

1 “(4) Nothing in this subsection shall be construed to
2 prohibit a person from seeking relief from a court of com-
3 petent jurisdiction.”.

4 (ii) LIMITATIONS ON INTEREST AND
5 FEES CHARGED DURING PERIOD OF DIS-
6 PUTE.—Section 5315 of such title is
7 amended—

8 (I) in subsection (b)(1), in the
9 first sentence by striking “or (B)”
10 and inserting “(B) for any period dur-
11 ing which the existence or amount of
12 the indebtedness is being disputed
13 under section 5314(c) of this title, or
14 (C)”;

15 (II) in subsection (c)—

16 (aa) by inserting “(1)” be-
17 fore “The administrative”; and

18 (bb) by adding at the end
19 the following new paragraph:

20 “(2) No administrative costs may be charged under
21 this section with respect to an indebtedness described in
22 subsection (a) while the existence or amount of the indebt-
23 edness is being disputed under section 5314(c) of this
24 title.”.

1 (3) EFFECTIVE DATE.—This subsection and the
 2 amendments made by this subsection shall take ef-
 3 fect on the date of the enactment of this Act and
 4 shall apply with respect to deductions made under
 5 section 5314 of such title on or after such date.

6 (4) RULE OF CONSTRUCTION.—This subsection
 7 and the amendments made by this subsection shall
 8 be construed to apply to an error in a payment to
 9 a person from the Department of Veterans Affairs
 10 the person is entitled to by virtue of the person’s
 11 participation in a benefits program administered by
 12 the Secretary of Veterans Affairs following the per-
 13 son’s notice to the Department of a change in the
 14 person’s eligibility regarding such benefit or partici-
 15 pation.

16 (b) LIMITATION ON AUTHORITY TO SUE TO COL-
 17 LECT CERTAIN DEBTS.—

18 (1) IN GENERAL.—Section 5316(a) of such title
 19 is amended—

20 (A) in paragraph (1), by striking “(2) and
 21 (3)” and inserting “(2), (3), and (4)”;

22 (B) by redesignating paragraph (3) as
 23 paragraph (4); and

24 (C) by inserting after paragraph (2) the
 25 following new paragraph (3):

1 “(3) In the case of an indebtedness that was incurred
2 as a result or an error or failure described in section
3 5314(a)(2)(A) of this title, no suit may be filed under this
4 section to recover the indebtedness after the date that is
5 five years after the date on which the debt was incurred.”.

6 (2) EFFECTIVE DATE.—This subsection and the
7 amendments made by this subsection shall take ef-
8 fect on the date of the enactment of this Act and
9 shall apply with respect to suits filed under section
10 5316 of such title on or after such date.

11 (c) LIMITATION ON COOPERATION WITH OTHER
12 FEDERAL AGENCIES TO COLLECT.—Section 5316 of such
13 title is amended by adding at the end the following new
14 subsection:

15 “(d) The Secretary may not provide any information
16 or assistance to any other element of the Federal Govern-
17 ment to recover, whether by bringing suit in a court of
18 competent jurisdiction, by deducting amounts from future
19 payments, or by other method, any indebtedness of any
20 person who has been determined to be indebted to the
21 United States by virtue of such person’s participation in
22 a benefits program administered by the Secretary if the
23 Secretary does not have the authority to recover such in-
24 debtedness under this title.”.

25 (d) REPAIR OF CREDIT.—

1 (1) IN GENERAL.—Chapter 53 of such title is
2 amended by adding at the end the following new sec-
3 tion:

4 **“§ 5320. Correction of erroneous information sub-**
5 **mitted to consumer reporting agencies**

6 “(a) CORRECTING ERRORS BY THE DEPARTMENT.—
7 In any case in which the Secretary finds that the Depart-
8 ment has submitted erroneous information to a consumer
9 reporting agency about the indebtedness of any person
10 who has been determined by the Secretary to be indebted
11 to the United States by virtue of such person’s participa-
12 tion in a benefits program administered by the Secretary,
13 the Secretary shall—

14 “(1) instruct the consumer reporting agency to
15 remove such erroneous information from the con-
16 sumer report of such person or take such other ac-
17 tion as may be required to ensure that such erro-
18 neous information is not included in the report of
19 such person; and

20 “(2) transmit to the consumer reporting agency
21 such information as the consumer reporting agency
22 may require to take such appropriate actions.

23 “(b) CORRECTING ERRORS BY DEBT COLLECTORS.—
24 In any case in which the Secretary finds that a debt col-
25 lector acting on behalf of the Department has submitted

1 erroneous information to a consumer reporting agency
 2 about the indebtedness of any person who has been deter-
 3 mined by the Secretary to be indebted to the United States
 4 by virtue of such person’s participation in a benefits pro-
 5 gram administered by the Secretary, the Secretary shall
 6 instruct the debt collector to request the consumer report-
 7 ing agency remove such erroneous information from the
 8 consumer report of such person or take such other action
 9 as may be required to ensure such erroneous information
 10 is not included in the report of such person.”

11 “(c) NOTICE.—Not later than 60 days after the date
 12 on which the Secretary issues an instruction under sub-
 13 section (a)(1) or (b) with respect to a person, the Sec-
 14 retary shall notify the person that the Secretary issued
 15 such instruction.

16 “(d) DEFINITIONS.—In this section:

17 “(1) The terms ‘consumer report’ and ‘con-
 18 sumer reporting agency’ have the meanings given
 19 such terms in section 603 of the Fair Credit Report-
 20 ing Act (15 U.S.C. 1681a).

21 “(2) The term ‘debt collector’ has the meaning
 22 given such term in section 803 of the Fair Debt Col-
 23 lection Practices Act (15 U.S.C. 1692a).”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
 25 tions at the beginning of chapter 53 of such title is

1 amended by adding at the end the following new
2 item:

“5320. Correction of erroneous information submitted to consumer reporting agencies.”.

3 (e) AUDITS.—

4 (1) ONE-TIME AUDIT.—Not later than 180 days
5 after the date of the enactment of this Act, the Sec-
6 retary of Veterans Affairs shall complete an audit to
7 determine the following:

8 (A) The frequency by which the Depart-
9 ment of Veterans Affairs makes an error that
10 results in a payment to a person by virtue of
11 such person’s participation in a benefits pro-
12 gram administered by the Secretary that such
13 person is not entitled to or in an amount that
14 exceeds the amount to which the person is enti-
15 tled.

16 (B) Whether and to what degree vacant
17 positions in the Veterans Benefits Administra-
18 tion affect such errors.

19 (2) ANNUAL AUDITS.—Section 5314 of such
20 title, as amended by subsection (a), is further
21 amended by adding at the end the following new
22 subsection:

23 “(f) Not less frequently than once each year, the Sec-
24 retary shall complete an audit of not less than 10 percent

1 of all debts to the United States incurred by virtue of a
2 person's participation in a benefits program administered
3 by the Secretary to identify errors.”.

4 (f) PLAN.—Not later than 180 days after the date
5 of the enactment of this Act, the Secretary shall submit
6 to the Committee on Veterans' Affairs of the Senate and
7 the Committee on Veterans' Affairs of the House of Rep-
8 resentatives a plan and description of resource require-
9 ments necessary to align information technology systems
10 to ensure that errors described in subsection (d)(1) are
11 not the result of communication or absence of communica-
12 tion between information technology systems.

13 (g) COORDINATION WITH OTHER FEDERAL AGEN-
14 CIES.—

15 (1) INTERAGENCY WORKING GROUP.—The Sec-
16 retary of Veterans Affairs may establish an inter-
17 agency working to assess how executive agencies
18 should submit timely information to the Secretary of
19 Veterans Affairs in order to reduce overpayments to
20 veterans in the event of a life event, such as a
21 change in work status, incarceration, or change in
22 marital status.

23 (2) QUARTERLY REPORTING BY SECRETARY OF
24 DEFENSE TO SECRETARY OF VETERANS AFFAIRS.—
25 Each quarter, the Secretary of Defense shall trans-

1 mit to the Secretary of Veterans Affairs information
2 on compensation received by members of the reserve
3 components of the Armed Forces who received dur-
4 ing such quarter for instruction, training, or other
5 duties under section 206 of title 37, United States
6 Code.

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