

LEGISLATIVE HEARING ON H.R. 67, H.R. 1435,  
H.R. 1444, AND H.R. 1490

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS

FIRST SESSION

APRIL 17, 2007

**Serial No. 110-11**

Printed for the use of the Committee on Veterans' Affairs



U.S. GOVERNMENT PRINTING OFFICE

35-697

WASHINGTON : 2007

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**LEGISLATIVE HEARING ON H.R. 67, H.R. 1435,  
H.R. 1444, AND H.R. 1490**

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**TUESDAY, APRIL 17, 2007**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 12:36 p.m., in Room 334, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Rodriguez, Hare, Lamborn, and Bilirakis.

**OPENING STATEMENT OF CHAIRMAN HALL**

Mr. HALL. Thank you all for coming today. We are expecting our Ranking Member to be here any minute.

But because there are a number of other Committee and Subcommittee meetings that are overlapping with this one, I want to try to get started so we can get the Members who are testifying through and out of here if they need to leave and get to all of our panels.

I am pleased that you could be here today for this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs.

Today we are going to discuss four bills, House Resolution 67, House Resolution 1435, House Resolution 1444, and House Resolution 1490, bills which will, if passed into law, impact the VA claims delivery system.

And I just want to acknowledge, in addition to our Members who are here, Mr. Lamborn, who just arrived, welcome. Mr. Bilirakis I saw a minute ago, Mr. Rodriguez, Mr. Hare.

I also want to thank our staff, Jian Zapata, Shannon Taylor, Kimberly Ross, Thaddeus Hoffmeister, Kristal DeKleer, and Carol Murray and on our Minority staff, John Clark, Jeff Phillips, Arthur Wu, and I think I got everybody.

But just because the last time I did not and they probably do not get thanked enough or acknowledged enough, so thank you all for the work that you do.

Will you join me in the Pledge of Allegiance.  
[Pledge of Allegiance.]

Mr. HALL. And if we could have a moment of silence for our service men and women and also for the victims and families of the shootings at Virginia Tech.

[Moment of silence.]

Mr. HALL. Thank you.

As most know, there are problems with the VA claims process and I want to say at the onset that few of the problems associated with the process are beyond the control of the VA and the product of our ongoing wars in Iraq and Afghanistan.

Having said that, I must acknowledge that there is a growing claims backlog that has gone from approximately 465,000 in 2004 to 525,270 in 2005 to 604,380 in 2006 to at its peak this year 647,857.

My last information was that that is down now to 590,000, but the number changes weekly and it is something that we would all like to see much lower. We are looking for help as we devise a way to get that claims process streamlined.

Not surprisingly, this backlog has resulted in increased waiting periods for claims to be processed. At last count, the VA took an average of 177 days to process an original claim and an average of 657 days to process an appeal.

Just last week, the Washington Post published an article entitled, "Delayed Benefits Frustrate Veterans." You may have seen it, but there is a copy of it here which I will be submitting for the record. It details instances of veterans who literally have died while waiting for their claims to be processed.

[The Washington Post article, dated April 8, 2007, entitled, "Hundreds of Thousands of Disability Claims Pending at VA; Current Wars Likely to Strain System Further," by Christopher Lee, appears on p. 74.]

Mr. HALL. To me, this is evidence of a broken system. Whether you are one of the few remaining World War I veterans or recently back from OIF/OEF, you should not have to suffer through extended waiting periods to receive the benefits you earned by serving our country.

I view today's hearing as an initial step in improving the VA claims process.

In the first panel, we will hear from Members testifying about their individual bills. Next we will hear from VSOs and practitioners in the field about how these bills might work in practice, and then finally we will receive from the VA their views on the legislation before us today.

I look forward to having a constructive conversation with all our witnesses. I do not know about any other Members legislation, but as far as I am concerned, mine is a work in progress and I suspect that there will be changes suggested and probably changes adopted to any legislation that does come out of this Subcommittee.

Before the first panel starts, I want to talk a few moments about House Resolution 1444, a bill that I introduced, which is under discussion at today's hearing.

In simple terms, House Resolution 1444 requires the VA to provide a monthly stipend to certain veterans who have to wait longer than 180 days for a decision from the VA on a remanded claim.

To be more precise, if a veteran's benefits appeal is remanded by the U.S. Court of Appeals for Veterans Claims or the Board of Veterans' Appeals and a decision is not made within 180 days of the remand, the VA will pay the veteran a monthly stipend until a decision is made. This stipend will be \$500 per month for each person filing a claim.

If a final decision is favorable, the amount paid will be considered part of the back payment due the veteran. If the decision is unfavorable, the interim benefits shall not be considered an overpayment of benefits.

Of course I understand that there may be disagreements with this bill. However, I believe the principles behind it, by creating benchmarks for the VA, are sound and will go a long way in improving claims processing.

I believe that as the veterans' population continues to age, and disabled veterans return home from Iraq and Afghanistan, we must look for solutions that go beyond merely adding more claims representatives.

I look forward to hearing what others have to say about House Resolution 1444 and the other three bills before this Subcommittee.

[Mr. Hall also submitted a Congressional Research Service Report for Congress, entitled "Veterans Affairs: The Appeal Process for Veterans' Claims," Updated April 9, 2007, by Douglas Reid Weimer, Legislative Attorney, American Law Division, which appears on p. 76.]

[The statement of Chairman Hall appears on p. 42.]

I will now yield to Mr. Lamborn, our Ranking Member, for an opening statement.

#### **OPENING STATEMENT OF HON. DOUG LAMBORN**

Mr. LAMBORN. Thank you, Mr. Chairman, for recognizing me and for holding this hearing.

I am here today to learn about the legislation before us and I look forward to hearing from our witnesses and my colleagues on the Subcommittee.

Our first bill, House Resolution 67, the "Veterans Outreach Improvement Act of 2007," has my full support. One of the most persistent challenges we face is communicating to veterans and their families the existence of benefits they may have earned.

This bill funds outreach by State and local governments which have proven capable incubators for effective public policy. Perhaps some of their innovations could be useful at the Federal level. This legislation also sends VA a signal that Congress expects strong and effective outreach to our veterans.

Our second bill, House Resolution 1435, the Department of "Veterans Affairs Claims Reduction Act of 2007," could make a big difference in reducing claims backlog. This bill would fund a pilot program to allow properly trained County Veteran Service Officers to develop claims.

This inter-governmental partnering could speed up the adjudication process, improve accuracy, and enhance the linkages between governmental layers as they serve veterans. I believe this is good policy. In fact, Mr. Chairman, I would support including in this pilot State and Municipal Veteran Service Officers.

To ensure that veterans get quality results, I also suggest that service officers are certified by VA. This approach has already been tried with considerable success. A 2002 pilot program between the New York State Division of Veterans Affairs and the Buffalo, New York VA Regional Office showed that this concept could reduce claim development time and improve accuracy. The concept is sound.

Mr. Chairman, I look forward to hearing more about House Resolution 1444 and 1490. I am concerned that these bills could create unfortunate and unintentional consequences, and fail to solve the fundamental problems they are intended to address.

House Resolution 1444 would provide veterans \$500 per month if their compensation and pension claim was remanded by the U.S. Court of Appeals for Veteran Claims or by the Board for Veterans Appeals and it has been over 180 days since the date of the remand. There is no recoup mechanism for this money if it is determined the veteran does not qualify to receive it.

House Resolution 1490 would give veterans the median amount of compensation for a claim based on a brief statement of evidence until their claim has been adjudicated. The bill also directs the Secretary to audit a percentage of these claims for accuracy and fraud.

Mr. Chairman, I understand that the intent of these bills is to reduce the backlog. It seems to me that both bills are what could be called "frustration legislation" written out of sheer and justified frustration with a faulty system.

I suggest that it is better to instead concentrate on fixing VBA's systematic problems within the claims processing system. I believe it is within our power working with the VA to do that without making payments to people who may not have earned them and potentially creating an incentive for misrepresentation.

Mr. Chairman, part of the problem is one of access for veterans to VA expertise. Some veterans are simply unaware that they may have grounds for a claim. That is why I am happy to announce that today I have introduced House Resolution 1863.

This bill would require VA to conduct a pilot project that would provide mobile claims processing stations that would travel within a given VA Regional Office's area of responsibility, providing veterans with outreach, help on their claims, and also collecting feedback for use in systemic improvements.

And today I also introduced House Resolution 1864. This is another piece of legislation that could have a significant impact on the claims backlog. It authorizes a pilot program for an automated rules-based system that could improve decision making on simpler claims issues and thus freeing up highly trained claims developers and adjudicators to work the more difficult issues.

The bill authorizes \$5 million per year for 4 years for the project. It would permit VA to contract for development and implement the system in not less than two Regional Offices.

A rating produced in this manner, because the bill does not call for changing the current rating system, but would make decisions within that system more efficient, would thus contribute significantly to reducing the backlog.

And that, Mr. Chairman, I think is what we're all truly after, and I yield back.

[The statement of Congressman Lamborn appears on p. 42.]

Mr. HALL. Thank you, Mr. Lamborn.

I look forward to learning more about H.R. 1863 and H.R. 1864 and I think you are right on the money when you said that this is what all of our efforts are aimed at.

So after our colleagues on the first panel have finished giving their testimony, Members will be recognized for 5 minutes to make opening remarks or to ask questions for 5 minutes.

And now we will ask our first panel for their testimony, and thank you for coming this morning. You each have a busy schedule, so we will try to get you processed as quickly as we can through our process.

Mr. McIntyre from North Carolina, we will start with you, please.

**STATEMENTS OF HON. MIKE McINTYRE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA; HON. JOE BACA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. JOE DONNELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA; AND HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

**STATEMENT OF HON. MIKE McINTYRE**

Mr. McINTYRE. Thank you, sir. Thank you, Mr. Chairman and to the Ranking Member and to all the Members of the Committee. I am honored and privileged to have this opportunity to testify before you today about the "Veterans Outreach Improvement Act," House Resolution 67.

This bill has been endorsed by and was written with the assistance of the National Association of County Veteran Service Officers and enjoys widespread support nationwide in our report to Congress.

The "Veterans Outreach Improvement Act" would address three important areas which I will summarize for you. First, coordination; second, local grants; and, third, resources.

The bill would require the Secretary of the VA to establish a plan to coordinate outreach activities within the Department and would authorize \$25 million annually for 3 years that would be used to provide grants to State and local governments for outreach purposes.

By empowering our local Veterans Service Offices on the local level throughout the Nation, we would get more bang for our buck literally to locate veterans and assist them in receiving the benefits they deserve.

First, the coordination aspect. The "Veterans Outreach Improvement Act" would require the Secretary to establish and annually review a plan to coordinate outreach activities within the Department. Currently various organizations have trouble accessing veterans' records even if the organization is accredited by the VA.

Second, with regard to the outreach grants, many veterans, spouses, and widows of veterans are unaware of the benefits that

they are entitled to through the VA. We spend so much time debating here in Congress ways to help our veterans.

I know I have 66,000 veterans in southeastern North Carolina sandwiched in between the areas roughly from Fort Bragg to Camp Lejeune. Yet, many of our veterans, especially in rural areas like I live in, do not even realize the full panoply of benefits that they are entitled to.

According to a Knight Ridder report, as many as two million poor veterans or their widows may not be receiving of the \$22 billion annually in pensions to which they are already entitled. Other estimates suggest that only 30 percent of veterans receive the benefits for which they are eligible. So this is the back part of the tragedy.

Number one, we have got to make sure we are doing right by our veterans, which I am sure we would all agree on. But, number two, are we educating and reaching out to make sure they understand and can access what those benefits are?

Unfortunately, too many of our military personnel came back from overseas, they get lost in the shuffle when they leave the Department of Defense healthcare system and enter into the VA system. There are currently increased efforts underway to improve the seamless transition, but many veterans unfortunately have already fallen through the cracks and this would reach out to both the new veterans as well as those who may have already, of course, served our country and have fallen through the cracks.

This bill, House Resolution 67, would establish a program for the VA Secretary to provide grants to States for outreach activities, establish cooperative relationships, and assist in the development of veterans' benefits claims.

States may award portions to local governments. If no local veteran service program is available in a certain community, then States may use funds from grants to operate in place of a local agency or to establish a local program.

And then, third, in addition to coordination and outreach, resources are critically important. This bill, House Resolution 67, authorizes \$25 million annually for the next three fiscal years. This is one dollar per veteran.

This bill's funding allocation could be used by State or local governments for several key purposes such as establishing education and training for State and local government employees for accreditation to provide these outreach services. Another would be improving existing offices by being able to hire additional staff. And, third, allowing the Veteran Service Offices to purchase advertising space or, I know in rural areas such as I live in, establishing transportation programs for veterans to be able to travel and get the healthcare they deserve.

In conclusion, I know that we all agree that our commitment to our veterans should be top priority. To allow at least a dollar per veteran, the 25 million we are talking about, to reach out to let them know potentially, as I mentioned earlier, of the 22 billion dollars in pensions that they might be entitled to, I think is a dollar well spent for each of our veterans and the very least we could do to help them.

Our veterans deserve the benefits they have earned. It is our obligation to make sure they know what those benefits are and have

the assistance in developing their claims. That is why I encourage the Subcommittee to give this bill its full consideration.

I look forward to working with each of you and with our Nation's veterans and veteran's organizations. And in particular, I want to thank Ann Knowles, who is the National President of the County Veteran Service Organizations from Sampson County in our district, the 7th District of North Carolina, who will also be here testifying today.

Thank you, and God bless you, Mr. Chairman.

[The statement of Congressman McIntyre appears on p. 44.]

Mr. HALL. Thank you, Congressman, and God bless you too. And thank you for that eloquent description of your laudable proposal. And we will ask Congressman Baca to go next.

#### STATEMENT OF HON. JOE BACA

Mr. BACA. Thank you very much, Mr. Chairman and Ranking Member Lamborn and Members of the Subcommittee, for holding this important hearing today.

Earlier this year, I have introduced House Resolution 1434 to help reduce the veterans' claim backlog which is an issue that I have been concerned about for many years. These are benefits that veterans have earned. And I speak as a veteran who has served in both the 101st and 82nd Airborne.

As you already know, there are almost one million backlog, and I state, one million backlog claims pending at the Veterans Administration. That is appalling to me when we look at veterans and we look at one million backlog already at the administration.

The average claim takes about 6 months to process and appeal takes 2 years, bear that in mind, of a veteran who has served our country who has returned. Many of these claims are for older veterans who live month to month, need urgent medical attention.

An article on the backlog ran in last week's Washington Post describing World War II veteran Seymour, Seymour Lewis, who lost hearing in the line of duty in 1944. Seymour Lewis waited 5 years, waited 5 years for the VA to give him an answer for his disability claim. That is 5 years that he waited. His claim was still pending when he died, when he died last year at the age of 80.

This tragedy is not isolated incident. It is happening across the country and it is going to get worse, it is only going to get worse. The current backlog does not include the veterans who will be returning soon from Iraq and Afghanistan.

GAO expects over 600,000 new claims will be filed from these two wars in the next 5 years alone. Bear that in mind when you think about what we have and the responsibility that we have to our veterans.

It is clear that we need to act now to fix this problem before the system breaks down. I am proud of House Resolution 1435 because I truly believe it would help reduce the backlog and make the difference in the lives of veterans, make the difference in the lives of veterans that deserve the benefits that they have earned.

House Resolution 1435 is based on legislation I carried last year in Congress to reduce the backlog. However, this is a completely

new bill that incorporates new ideas while addressing some of the past concerns.

House Resolution 1435 is a fiscally responsible bill that has built-in accountability and provides viable service to our veterans. This bill will establish a 3-year pilot project in five States that would allow the County Veteran Service to help develop backlog claims and we may even take in the consideration of our Minority Ranking Member that suggested State municipals.

The five States, California, Florida, Ohio, and South Carolina, and Texas, were picked based on the extent of the County Veteran Service network, the veteran population in these States because we wanted a good sample of both large and small States in different regions of the county.

Under the pilot program, the VA will identify the backlog claim that need further development, refer these claims to the veterans' nearest County Veteran Service Officers. The VA will also identify what information is needed to evaluate the claims so that the CVSOs can collect the proper information for the veterans.

The CVSO will then work with the veterans and any other established power of attorney to fully develop the claims and that is working with other entities, too, as well. Once the claim is fully developed, it will be returned to the VA ready for evaluation and that is all of us working to help veterans. And that is the important thing, all of us working jointly together.

At the end of the pilot program, the Secretary will submit the report to Congress showing how many claims each State started and ended with as well as how many were successfully processed so that we can see if the program actually worked.

I am still waiting on a cost estimate from the Congressional Budget Office. However, I believe that this is a cost-effective bill because the program is using existing county employees to help reduce the VA claims backlog, that is using existing county employees.

House Resolution 35 also addresses some of the past concerns. For instance, this bill will bring Veteran Service Organizations such as the VFW and DAV into the process and clearly direct the CVSOs to work with any veterans' group with the establishment of power of attorney in development of claims. We want the CVSOs and veterans and the power of attorneys to work as a team, as I stated before, to work as a team.

Second, we made this into a pilot program so that we can try the ideas first and see if they really work to reduce the backlog.

Third, House Resolution 35 supports the VA's mission to increase the number of claims evaluators. And I know that that is very important to a lot of us because I visited Walter Reed not too long ago and it is important that we have true evaluators and people that can actually write the claims.

The pilot program provides the Department with VA accreditation to help provide the claims while the Department focuses on increasing staff that can evaluate the claims once they are submitted. To me, House Resolution 35 seems to be a common-sense approach that will reduce the backlog and utilize qualified government employees who already work on our veterans in 37 States across the country.

Once again, I would like to thank Chairman Hall and Ranking Member Lamborn and members of the Subcommittee for giving me the opportunity to speak on this legislation. Thank you very much, and I know that my time has run out.

[The statement of Congressman Baca appears on p. 45.]

Mr. HALL. Thank you, Congressman. You used it well.  
Congressman Donnelly.

#### **STATEMENT OF HON. JOE DONNELLY**

Mr. DONNELLY. Thank you, Chairman Hall and Ranking Member Lamborn and other members of the Committee. Thank you for calling this hearing today and for the opportunity to speak on House Resolution 1490 introduced by Congressman Upton and myself and the need for new approaches to address the claims backlog and to also help America's vets cope with what is frequently a months-long process to get the benefits they deserve.

The problem is well documented. We have a benefit system in place that is struggling to keep up with the growing load of disability claims cases. Right now a veteran filing a new claim can expect an almost 6-month wait until they find out whether that claim is approved. If they appeal, they can expect their case to drag on for nearly two more years.

Unfortunately, this is a problem that is likely to get worse before better. As you know, in Iraq and Afghanistan, the ratio of soldiers wounded to killed is sixteen to one, the highest of any war in our Nation's history. With so many new and future veterans serving in Iraq and Afghanistan, we have a wave of new claims we must prepare for in addition to the 180,000 Iraq and Afghanistan veterans who have already applied for disability benefits.

Estimates are that over the next 5 years, OEF and OIF veterans could file 638,000 new claims for benefits. I believe the VA is trying to do the very best it can under the current system. Claims workers are dedicated individuals working hard to see that our vets are able to get the proper service and benefits deserving their service and sacrifice.

I look forward to working with my fellow colleagues on the Veterans' Affairs Committee to make sure that VBA has the resources and staff in place to provide for accurate and timely claims adjudication.

I also look forward to working with the VA and the Department of Defense to provide for a seamless transition from active duty to veteran status. However, I believe we must also explore more innovative approaches to address the fundamental shortcomings of the current claims process.

New veterans often leave the service to an uncertain future. Sometimes just weeks from the battlefield they must find a job, a place to live, and find medical care. Many older veterans are on fixed incomes. For many disabled veterans, their benefits and disability compensation are a critical part of their ability to meet the needs of their families and make ends meet.

It is our veterans who pay the price both emotional and financial for the long time that it takes to process a claim. I know there are a number of factors to explain in part why claims approval times are long and why the backlog has increased.

However, we must do something to get veterans some assistance on the front end while they wait for the VA to make a determination. Just explaining the delay does not help our veterans to pay the bills and put food on the table. We need to expedite benefits to help veterans get by while their claims are considered.

Currently approximately 88 percent of veterans' claims are ultimately approved by the VA. This would suggest that the vast majority of claims filed by veterans are done so accurately and truthfully by men and women who are seeking compensation and benefits for very real conditions. They have already sacrificed for their country.

I believe our veterans have earned the benefit of the doubt when it comes to their claims on disability benefits. Congressman Upton and I introduced House Resolution 1490 to provide veterans that benefit of the doubt when it comes to their claims.

This bill would approve new disability claims up front through an expedited process and direct the VA to audit a percentage of those claims to ensure accuracy and to deter and detect fraud. Those claims that have already been denied or are currently in the appeal process would not be included in this new process.

Essentially a vet who can provide proof of service and minimal supporting evidence for their claim would meet with a VA claims worker to identify the proper disability and benefit they are filing for. Unless the VA or claims worker determines there is sufficient evidence to the contrary, the VA would approve the veteran's claim at a median benefit for that type of disability and the veteran would immediately become eligible for benefits.

Benefits awarded through this benefit of the doubt approach could be changed by the VA once a more appropriate level of benefits is determined. However, until that happens, veterans would still be able to get a benefit for a claim which they are requesting.

House Resolution 1490 would direct the VA to ensure that an adequate number of claims workers are assigned to assist in carrying this out. The burden of proof will be shifted from the disabled veteran to the VA.

I have a little bit more written testimony, but I would like to sum up by this.

Our veterans have served and served heroically. When they come home, they and their families should not have to suffer because we are not able to process our claims more quickly. We are doing everything we can to process them more quickly, but that does not help to feed families and to take care of their needs.

We are asking that House Resolution 1490 be considered to help meet that goal and to help take care of our veterans and give them the benefit of the doubt they have earned through their service.

Thank you, Mr. Chairman, Ranking Member Lamborn, and Members of the Committee.

[The statement of Congressman Donnelly appears on p. 47.]

Mr. HALL. Thank you, Congressman Donnelly.

And we will now recognize Congressman Upton for his testimony.

**STATEMENT OF HON. FRED UPTON**

Mr. UPTON. Thank you, Mr. Chairman. And I have a full statement for the record, which I will submit, and I will not use the full 5 minutes granted to me.

I just want to thank Congressman Joe Donnelly. He has been a friend. And House Resolution 1490, which we jointly introduced, with Joe being the prime sponsor, indeed is bipartisan. And if you look at the list of cosponsors, you will see also that is bipartisan.

Let us face it. The current system is broken. In fact, it is more than broken, it is shameful. I frankly cannot imagine the nightmare that is shared by so many of our vets coming back from Iraq and Afghanistan. Many of them have a spouse. That spouse perhaps has worked one, two, maybe even three jobs. Chances are they have kids. He or she has a job maybe that they cannot return to. They have a mortgage and pending bills. And to think that they have to wait 6 months to have that claim processed on average or 2 years, as it has been indicated, for an appeal is just outrageous.

Last month, Newsweek documented exactly what our veterans are going through. And I have to say it sent shock waves across the country. More than 400,000 cases are backlogged. A Harvard study was cited in that story that I was able to get and read.

And as Joe indicated today, we have sixteen injured vets for every one that is killed. In Vietnam and Korea, it was two and a half, primarily because we have much better medical care than we had 20, 30 years ago.

But it is an interesting fact, 43 percent, 43 percent of the vets coming home from Iraq and Afghanistan file for disability. Ninety percent of those are ultimately approved. So what our bill does is two things.

One, it provides the median benefit for that disability level on day one. Now, the second thing that it does, it allows the Veterans Administration to go back and audit to make sure that there is not fraud and abuse, to make sure that there is not false claims by having a check and balance to make sure that not everybody files when in fact it may be not necessary or right.

We allow the Veterans Administration to pick whatever percentage they want. It can be a hundred percent. It can be 10 percent. It is whatever they deem correct to make sure that, in fact, the claims are appropriate and are correct.

I would conclude by saying this. America now knows the problems suffered by our vets when they come back with service-connected injuries. This Committee knows what those problems are. They have been aptly identified.

This Committee and this Congress has a responsibility to the families as well as to the service men and women that return that have a service-connected injury. The current system has got to change and you all have a task to try and bring it before the full House where we can support it on a bipartisan basis.

I support my colleague and neighbor, Mr. Donnelly, whose district adjoins mine, in this venture. I am delighted that he serves on the Veterans' Affairs Committee. And I look forward to working with all of you to shepherd the right changes so that our men and women are served correctly by the U.S. Government.

I yield back my time.

[The statement of Congressman Upton appears on p. 49.]

Mr. HALL. Thank you, Congressman.

I will just ask a brief question or two and then yield to the Ranking Member and we will try to get around the rest of the Subcommittee.

Regarding House Resolution 67, Congressman McIntyre, do you anticipate that the legislation might cause State legislatures to reduce their current funding authorizations for veterans' programs?

Mr. MCINTYRE. I did not hear part of your question. Do I anticipate that what?

Mr. HALL. That House Resolution 67—

Mr. MCINTYRE. Yes, sir.

Mr. HALL. —may cause State legislators or legislatures to reduce their funding authorizations?

Mr. MCINTYRE. Oh, no, not at all. If anything, this supplements and enhances what they have to offer because this is an additional way to say from the Federal level we are trying to help the county and State organizations do their outreach.

And at the rate of a dollar per veteran, as I mentioned earlier, I would not foresee any State legislature using that as an excuse not to reach out or to fund what they need to do by virtue of their own veterans. In fact, I think that would have backfire ramifications if any State legislature attempted to do that.

Mr. HALL. I would hope so, too, but I also know having just come back from my district, as we all have, that there is some financial problems at the State and local levels.

And I guess another way of putting it would be do you think it would be productive or would you consider the idea of including in the bill a requirement that the States in question not reduce their funding to veterans' programs?

Mr. MCINTYRE. We would be open to that type of amendment, yes, sir.

Mr. HALL. Thank you.

And regarding H.R. 1435, Congressman Baca, have you heard from the States and the CVSOs their position on this bill?

Mr. BACA. The National Association of County Veteran Organizations fully endorse and support this bill, and the U.S. Department of Veterans Affairs and the State understand that CVSOs are already helping veterans prepare their claims every day. And the added benefit of the pilot program will not only help tackle this backlog, but it will also allow the CVOs to do a better job by providing them with the information they need.

Mr. HALL. Thank you, Congressman.

And last I want to ask Mr. Donnelly and Mr. Upton, have you seen anything in your research in the process of putting this legislation together which would predict a number for fraudulent claims and what steps are either taken in the bill or do you foresee taking to make sure that does not happen?

Mr. UPTON. I just want to say the way we wrote it, you know, they have got a better hand. I do not know what that percentage ought to be and we left it purely at their discretion. So they could review 5 percent of the cases. If they think that there ought to be more than that, you know, 25.

We wrote the legislation so that the folks actually watching these claims, who knows, you know, whatever the situation, and we leave that fully in their hands to decide what that percentage ought to be.

And I think, frankly, as not an expert on veterans' care issues, I think until you have a better idea, and perhaps you do, that we ought to start with the VA deciding what that percentage ought to be.

Mr. DONNELLY. And, Mr. Chairman, at the present time, approximately 88 percent of the veterans' claims are ultimately approved. So that is nine out of ten. And I guess I have faith in the integrity of our veterans that after serving our country, they will conduct themselves—

Mr. HALL. I do too. I am just playing devil's advocate for a minute.

Mr. DONNELLY. Oh, absolutely, sir.

Mr. HALL. And I support the intention of the legislation. Human nature being what it is, once it is—

Mr. DONNELLY. Right.

Mr. HALL. —advertised that a claim will be, you know, that a median amount, if this legislation were to become law, would be paid, one can imagine that perhaps there would be more claims filed. But I am just curious whether—

Mr. DONNELLY. And that is why we included the auditing process—

Mr. HALL. Right.

Mr. DONNELLY. —and the VA's ability to that.

Mr. HALL. Which I support.

Okay. Thank you, and I yield to our Ranking Member.

Mr. LAMBORN. Thank you, Mr. Chairman.

Congressman Baca, in connection with House Resolution 1435, would you support adding State Veteran Service Officers or other qualified government entities such as Municipal Service Officers to the pilot program described in your legislation?

Mr. BACA. I think that is something that we have got to consider because it is a team effort to make sure that we do take care of our veterans. And that is the bottom line is that we need to make sure that the benefits that they are entitled to, that they receive those. If there are other entities that we can work together to assure that they receive the service in a timely fashion, we have got to do that.

Mr. LAMBORN. Okay. Thank you.

And, Congressman Donnelly, in connection with House Resolution 1490, you stated in your testimony that benefits awarded through this benefit of the doubt approach could be changed by the VA once a more appropriate level of benefits is determined.

Can you explain what you mean by determined? And the reason I ask that is because after a monetary award is given, I am wondering is the claim then sent through the regular claims process and, if so, I cannot help drawing the conclusion but that we might have a need for more VA adjudicators because we are adding one step to the whole process? Could you explain mechanically how that would work?

Mr. UPTON. Yeah. We asked the legislative counsel to draft this based on the Harvard study that was out and I think that perhaps relates to the—you know, right now the VA is being swamped and perhaps if legislation like this moves through the process that they would not have the backlog, certainly the claims process would be expedited in a major way.

And the way that the folks at legislative counsel suggest by providing I think what you are asking is the median level of benefit, that is so that in essence it can start off for that wounded soldier returning and ultimately it is decided through the process whether it perhaps should be above the median level or below.

But we allow the VA to make that determination. I think that stays with the legislation that we have and it was through the council looking at the Harvard study that actually came up with the language.

Does that answer your question?

Mr. LAMBORN. Yeah. Thank you. That certainly helps.

And for either one of you, once again on 1490, my last question, you say that there would be some level of fraud, hopefully minimal, but do you have any idea on what the dollar amount connected with that would be?

Mr. UPTON. I do not know what it is. And for me, you know, I once worked at the Office of Management and Budget and I once chaired the Oversight Investigation Subcommittee at Energy and Commerce. There is fraud and abuse that is out there, in every Federal program period. And we need to make sure that the tools are present to go after it and to let people know that when they defraud the government, try and rip it off, in fact there is a good chance that they will get caught and that there will be redress made.

And the reason why I feel that it is very important to have the provision to allow the VA to audit those cases is because we know some people will try to cheat. And by having this safety valve there, I think it diminishes that and protects the taxpayers' rights at the same time, that the veterans that clearly are deserving do not have to wait 6 months before they get a benefit or 2 years if it is in appeal.

Mr. LAMBORN. Thank you.

Mr. HALL. Thank you, Mr. Lamborn.

Congressman Rodriguez.

Mr. RODRIGUEZ. Thank you, Mr. Chairman.

On House Resolution 67 and House Resolution 1435, let me first of all congratulate both of you on those efforts. And I will mention a little bit on the others because I know that in that particular area we are having difficulty in terms of the need for the outreach that is required and needed.

And I remember joining with the Vietnam Veterans of America, with a letter to Secretary Principi on the VA's stance. That we should not educate our veterans or not reach out to our veterans to let them know about the services that were available.

Let me ask you, Congressman McIntyre, regarding my understanding of the budget estimate on House Resolution 67, that it is about \$25 million?

Mr. MCINTYRE. Twenty-five million annually over the next three fiscal years.

Mr. RODRIGUEZ. Okay. And, Congressman Baca, on yours, do you know what the estimated cost is?

Mr. BACA. At this point, we do not know what the estimated cost is going to be because, remember, we are incorporating the bill with what is currently in existence right now. So it would actually be a cost effectiveness because this would be taking in the county employees that would already be there. And if we took into consideration the State and municipality, these are already employees that would already be in place.

It is just allowing someone to provide a service to our veterans to handle the backlog of casework that needs to be done so we would be able to expedite the process because the applications sometimes where there is a question that is not answered that needs to be answered, we would have someone that would be able to provide that information, get it back to the VA, process that application in time to ensure that that individual then received his or her benefit.

So we need that person to provide that information. It would be a team effort versus if it just waits for the VA because right now the VA lacks the amount of staff that they need and hopefully that they can create the additional staff.

But, meanwhile, we would use another entity to make sure that we would be able to provide the kind of information and make sure that that veteran receives the benefit that he or she needs by doing this. So it would use existing staff that is already currently there by the county government.

Mr. RODRIGUEZ. Thank you.

And I notice the language there authorized such sums as necessary to conduct the pilot programs, although I think the VA has indicated that that might cost up to \$69 million. I guess they are high-balling it or I am not sure exactly what that is based on. I guess on how big that particular project is in your proposal.

On House Resolution 1444 and 1490, I also feel the same way you do. I am just frustrated and the benefit of the doubt in this case ought to go to the veteran. The veteran, I think, should have received it and they passed away and never got it, you know.

Let me ask you. Do we know if the VA, because I do not know and I guess we will have a chance to ask them later on, if they do get the benefits, if it is retroactive from the time they made the application or not?

Mr. DONNELLY. I do not know the answer to that, Congressman Rodriguez.

Mr. RODRIGUEZ. Okay.

Mr. UPTON. But I would just note, though, you have got cases documented, suicidal, I mean all those different things. I've talked to a number of wounded veterans and they are just beside themselves that they have to figure out how to maintain themselves without the benefit, you know, maybe they are still in care, they are not able to go back to their job, I mean all those different things, and not really know if their claim may or may not be approved.

So this relieves that from the very onset, in essence, on average 6 months before they normally would see a check.

Mr. DONNELLY. And what this does, Congressman, is when you are looking at your two or three children and you are trying to figure out how you are going to be able to meet the needs after you have been disabled, this helps to solve that problem a little bit. And it is a position that the veteran should not be placed in, is placed in this position through no fault of his or her own. And so it is an attempt to try to make the situation right.

Mr. RODRIGUEZ. Let me thank you for your proposal and if VA does not come up with any other that sounds more reasonable than what we have now, it sounds like a good idea to do. So thank you very much.

Thank you, sir.

Mr. UPTON. We would love to put you down as a cosponsor.

Mr. RODRIGUEZ. Okay. Thank you very much.

Mr. HALL. Thank you, Congressman.

The Chair will now recognize Congressman Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Mr. HALL. Hit your microphone button there, please.

Mr. BILIRAKIS. Congressman Baca, my staff has discussed your legislation with some of the County Service Officers in my district. Based on these conversations, it's our understanding that the County Service Officers—you alluded to this somewhat—the officers in Florida go through a certification process and are already developing veterans' claims.

How many States have County Service officers who are processing claims at this particular time?

Mr. BACA. There are 37 States that currently operate right now. And what we are doing is asking for five States to use it as the pilot project right now to determine the effects of how we would be able to handle the claims during that period of time. And then we would also look at the possibility of amending the legislation if, in fact, it took in State and municipalities, too, as well in that claims process.

But there are 37 States, so we are looking at just looking at veterans that need to process the application because there is a backlog that needs to be handled. There is over a million and some backlog right now.

As I stated before, we have not even dealt with those that are going to be returning back from Iraq and Afghanistan, too, as well, and a life that is lost on someone that should have received their benefit because that claim was not processed in a timely fashion.

Mr. BILIRAKIS. Yeah. They had questions. Thank you very much. The service officers want to know what the pilot program will do as opposed to what they are already doing. Can you elaborate on that a little bit? I know you touched on it.

Mr. BACA. Well, the pilot program in those States will determine the accuracy of determining how we will handle the claims. We will get back in a timely fashion and report back to Congress how many claims we are able to handle, we are able to process those claims, because currently right now under the current process that we do have is some of the information that is inaccurate.

The CVSOs will be able to get accurate information, gather that data, gather that information, submit it back, and say we were able to process it in a timely fashion because right now it would take anywhere between 6 months to 2 years to process that claim. So we would reduce that.

So the study would indicate that in the claims, we reduce the amount of claims that it takes to handle a claim, so that study will determine a claim that was processed to say we handled it in less than 6 months to 2 years in a service that was accurate and benefit to the individual. So this way, we do not have to read in the paper like we did in the Washington Post saying that someone died because we failed to answer their response. We would then be able to get accurate information to say we responded to that claim within a period of time by utilizing another entity whether it was the county, the State, or municipality in getting the information because sometimes all it does is just take one information that is not there and by the time you get to the VA, it is impossible to get that information.

Now you have got a county entity that is local in your area that can get the information directly about what is missing in the application and then you file that to the VA. Then they process that application. Now we have something on record.

Mr. BILIRAKIS. Okay. Thank you very much. Appreciate it.

Thank you, Mr. Chairman.

Mr. HALL. Thank you, Congressman.

Congressman Hare.

Mr. HARE. Thank you very much, Mr. Chairman, and thank you for holding this hearing today.

Let me thank all of my colleagues for the legislation that you have introduced. I share with my colleague, Mr. Upton, I saw the Newsweek article, too, and we started this process, you know, behind and we are falling farther behind. I do not think we have any time anymore. And I just want to commend all of you for introducing legislation. And if am not on it, I will get on it really quickly. I can tell you that.

I just want to say a couple of things. I do not know why it seems the burden has to be on our veterans to prove that there is a problem with 88 percent, almost nine out of ten. I think we have an obligation to err on the side of our veterans. I know people will take advantage, as you said. I know there a few that might. But the vast majority of people are not going to do it.

I just did a Marine Corps League State meeting in my district and that was the first question asked by these folks, why in heaven's name is it taking so long, to even get the claim and then to get the claim on the appeal process, sometimes upward, I think someone said 3 years, which is—2 years, which is unconscionable to me that we are doing this to our veterans. So I just want to commend you all for it.

And let me just say to my colleagues on House Resolution 67, that the funding of this, just to put this all in perspective, we can fund this, if my math is correct, at \$11 million an hour that we are spending on the current war, we could fund each year at 2 hours and fifteen minutes of what we are spending. And I clearly think

that that is not a bad deal in terms of where we can put our priorities.

I wanted to ask you, if I might, Mr. McIntyre, you talked about in your bill, and I have a rural district, too, with a lot of veterans, and I am interested if you maybe would expand a little bit on what your bill will do to help transportation for veterans of rural communities because a lot of them simply do not have access to getting the kind of help that they need.

Mr. MCINTYRE. Well, that is part of the flexibility in coordinating with State and local Veteran Service Offices and organizations where the need is greatest and they could use that to target their funding in terms of outreach.

And I know that between the military bases I have of Fort Bragg and Camp Lejeune that even though those two bases which are on either side of my district, we have vast rural areas and swamp land and tobacco fields and pine trees, and it is very difficult for many of our veterans to get the transportation they need.

And that is one of the first foci by the Area Council on Aging when they are dealing generally with senior citizens, but the veterans too often have gotten left in the gap. And that is why if they are given the flexibility to realize that the most critical part of outreach in that situation may be the transportation, then that is where they would be able to target their money.

So that is why it is important to have that flexibility with the local agencies on the ground being able to best determine how to use that.

Mr. HARE. Yes.

Mr. BACA. Mr. Hare, if I may just add something. In my trip that I took to Walter Reed not too long ago when we went down there, and I think that is why it is so important when we look at accurate assessment and evaluation before our veterans are discharged, I mean, that is why we actually have a lot of the backlog because it is poor documentation.

And because of the poor documentation and assessment and evaluation that a lot of the information is inaccurate so, therefore, a lot of the claims that are filed right now, a lot of the appeal, the process, everything that needs to be done has to go through some entity whether it is the VA, whether it is through our Congressional Office, or whether it is through the entities such as the CVSOs, VFWs, all of these other organizations, and begin to help a lot of our veterans.

That is why it is important that when we look at any one of our veterans is it is appropriate assessment and evaluation during that period of time. If it is done, then the process would be a lot easier in terms of handling that veteran's claim because we would have accurate information. Then it is just a matter of processing it would be a lot easier because we are not doing a good job in the assessment and evaluation in the discharge of that veteran.

Mr. HARE. Well, let me just say to all four of you I thank you for having the courage to introduce this legislation. Hopefully we get this to the floor and get this process started moving and be proactive for veterans instead of reactive. I think that is kind of the mindset we have been in and the mold we have been in.

And, Representative Donnelly, thank you very much for your piece of legislation. I think it has a great deal of push behind it and I would be very honored to help any way I can with you on it.

Mr. DONNELLY. Thank you, Congressman. We certainly appreciate that. And Congressman Upton and I are going to be working the floor for cosponsors and we'd be proud to have your name on it.

Mr. HARE. Not a problem. Thank you very much.

I yield back.

Mr. HALL. Thank you, Mr. Hare.

I, too, want to thank all four of you for your work and I neglected to mention, Congressman McIntyre, in terms of the outreach component.

One of the things I heard about this over the last 2 weeks when we were at home in our districts, and my district where we have the 105th Airlift Wing, we have a Marine and National Guard detachment and we have West Point and the veterans community who lives there, and 77,000 veterans approximately being served by Castle Point and Montrose VA facilities as well as a number of outpatient clinics, I heard repeated complaints from veterans about the eleven cents a mile that they are reimbursed to drive to a facility to be treated. In some cases, they are driving a considerable distance, you know, a hundred miles or more round trip.

And the IRS last year, I think they allowed 48 cents a mile for tax purposes. It is clear to anybody buying gasoline nowadays that you have got to have an awfully good, efficient car. If you can get there on eleven cents a mile, I want to know what you are driving.

But maybe that is something else that—

Mr. BACA. That is why, Mr. Chair, we probably need my legislation to make sure they do not have to drive all over the place and then incorporate the Ranking Member's idea, too, as well so this way they can get there. The gas prices are so high.

Mr. HALL. You are right about that, Congressman.

We will incorporate as many of these ideas as we can. I thank you all for your hard work and for coming here today to talk about the legislation.

Mr. BACA. Thank you, Mr. Chairman.

Mr. MCINTYRE. Thank you, Mr. Chairman.

Mr. HALL. Our first panel is excused.

And our second panel, F. Douglas LeValley, the former President of the National Association of County Veteran Service Officers; Carl Blake, National Legislative Director of the Paralyzed Veterans of America; Gerald T. Manar—is that the correct pronunciation?

Mr. MANAR. Yes, sir.

Mr. HALL. Thank you.

Deputy Director of the Veterans of Foreign Wars; Craig M. Kabatchnick—did I get that right?

Mr. KABATCHNICK. You got that right.

Mr. HALL. Thank you.

Clinical Legal Instructor for North Carolina Central University School of Law; and Robert Chisholm, President of the National Organization of Veterans Advocates.

Thank you all for joining us.

And I would like to ask Mr. LeValley to begin our proceedings. Thank you.

**STATEMENTS OF F. DOUGLAS LEVALLEY, PAST PRESIDENT, NATIONAL ASSOCIATION OF COUNTY VETERAN SERVICE OFFICERS; CARL BLAKE, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; GERALD T. MANAR, DEPUTY DIRECTOR, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; CRAIG M. KABATCHNICK, ADJUNCT LAW PROFESSOR, AND SUPERVISING ATTORNEY AND DIRECTOR FOR THE VETERANS LAW PROJECT, NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW; ROBERT VINCENT CHISHOLM, PAST PRESIDENT, NATIONAL ORGANIZATION OF VETERANS ADVOCATES**

**STATEMENT OF F. DOUGLAS LEVALLEY**

Mr. LEVALLEY. Okay. Thank you, sir.

Chairman Hall, Members of the Subcommittee, it is truly my honor to be able to present this testimony before you.

As Past President of the National Association of County Veteran Service Officers, I am commenting on our views on House Resolution 67, House Resolution 1435, House Resolution 1444, and House Resolution 1490.

The National Association of County Veteran Service Officers is an organization made up of local government employees. Our Members are tasked with assisting veterans in developing and processing their claims.

Between 75 and 90 percent of the claims presented to the Veterans Administration each year originate in a County Veteran's Office. Our association focuses on outreach, standardized training, claims development, and advocacy.

On House Resolution 67, the VA has a responsibility to reach out and make veterans and their dependents aware of their entitlements. One of the ways is for the County Veteran Service Officer to spread the word, to go into the communities with the message that veterans and their dependents have benefits due them.

While many counties do fund the County Veteran Service Office, the vast majority do not provide funding for outreach or other informational services.

The VA's own report from late 2004 recommended that the Agency improve its outreach efforts with public service announcements and other pilot programs.

It is obvious there is great need for outreach in the veterans' community and the local CVSO is an advocate closest to the veteran and a widow and with minimal funding could reach the maximum number of eligible veterans and widows.

Therefore, NACVSO is supporting House Resolution 67 introduced by Congressman McIntyre of North Carolina that would allow Secretary Nicholson to provide Federal, State, and local grants and assistance to State and County Veteran Service Officers to enhance outreach to veterans and their dependents.

We are already present in most communities and stand ready to assist the Department of Veterans Affairs with this monumental task.

On House Resolution 1435, the Monday morning report for 7 April 2007, showed 674,000 cases pending in WIPP. The week ending 9 July 1999, showed 378,000. In eight years, the backlog in WIPP has increased by more than 269,000 or about nine percent per year. This trend must be reversed and the time is now.

The Veterans Benefits Administration did not create this sizeable backlog by themselves; they had considerable help. They cannot be expected to solve the problem alone. It will take this Congress, the VA, the Veteran Service Organizations, and the State and County Veteran Service Officers to join together to conquer this problem.

Our Members, County Veteran Service Officers, are present in 37 of the 50 States and located in over 700 local communities. This readily available work force represents approximately 2,400 full-time employees who are available to partner with the Department of Veterans Affairs. Over 700 of these CVSOs are accredited with the Department of Veterans Affairs with many holding accreditations with multiple organizations.

House Resolution 1435 sponsored by Congressman Baca of California provides a way for the Department of Veterans Affairs to enlist the aid of these CVSOs in a pilot program beginning in five States.

CVSOs through the claimant's power of attorney would fully develop as many as possible claims passed from the local VA Regional Office, thereby assisting in reducing the claims backlog by returning fully developed, ready to rate claims.

The availability of approximately 2,400 trained full-time CVSOs available to work at the local level developing claims will free up VA personnel for other tasks. NACVSO supports the pilot program of House Resolution 1435 and believe that its success will cause the Secretary of Veterans Affairs to expand the program in other States.

House Resolution 1444, the backlog of remanded claims continues to be a problem for the veteran and House Resolution 1444 sponsored by Congressman Hall will address that problem and we support the discussion of the benefit.

House Resolution 1490, NACVSO supports discussion of House Resolution 1490 sponsored by Congressman Donnelly that provides for a presumption of service connected under some certain claims.

This concludes my comments, and I will be happy to answer any questions that the Committee may have.

[The statement of Mr. LeValley appears on p. 50.]

Mr. HALL. Thank you, Mr. LeValley.

The Chair will recognize Carl Blake, please.

#### **STATEMENT OF CARL BLAKE**

Mr. BLAKE. Chairman Hall, Ranking Member Lamborn, and Members of the Subcommittee, on behalf of Paralyzed Veterans of America, I would like to thank you for the opportunity to testify today.

Since you already have a copy of my written statement, I will limit my remarks to House Resolution 1490 and House Resolution 1444.

PVA does not support the idea of the presumption of service connectedness for submitting claims proposed by House Resolution

1490. It will require the VA to adjudicate a new benefit, the interim award, rather than focusing their resources on properly completing the initial claim.

If the service connection is reasonably allowable, regulations provide for a prestabilization rating under 38 CFR, section 4.28 at a 50- or 100-percent rate for recently returned veterans. One year later, the veteran is examined and further evaluated. Unfortunately, this regulation is rarely used.

Even if a veteran thought that they may be asked to pay the money back to the VA in three or 4 years, some veterans may still file an unsubstantiated claim. The long and frustrating process of filing claims for compensation does not discourage some veterans from filing fraudulent claims. We believe that if Congress lowers this threshold as this bill would do, the results would be an overwhelming number of claims filed for compensation.

I would also like to address two other ideas that are contained within the bill. The first is that the bill makes a distinction between veterans who would have served in conflict and veterans who would not have, thereby creating a class of service-connected veterans.

The bill outlines that a veteran has to prove some service in a conflict and I would argue that there are at least as many if not more veterans who incur a service-connected disability who never served in a conflict of any kind. So there you are making a distinction between classes of veterans.

I would also suggest that this bill does not actually do anything to reduce the backlog of claims. Once a median level of benefit is awarded, the claim is just set aside. It is not actually then finalized and put off the table and said it is done. It is just set aside to be finally and properly adjudicated at a later date. I would argue that that does not provide an example of reducing the backlog of claims. That just perhaps inflates it further.

PVA also opposes House Resolution 1444 because we believe this legislation would simply add to the workload. The bill states that if the final decision is not to award benefits, the amounts paid as interim benefits shall not be considered to be overpayment for any purpose.

This policy would encourage veterans to once again file frivolous claims. Furthermore, this would create a potential enormous cost to the VA if it is forced to pay for claims that ultimately will be denied.

I would argue that resources can be better used by improving the system rather than offering free money to everyone filing a claim regardless of its legitimacy. The problems in VBA are systemic, they are cultural. There are numbers of problems. And I do not see this as being the fix.

In the end, we believe that many of the problems in the Veterans Benefits Administration are centered on proper training and accountability. Without uniform training across all of VBA on the standards established in regulations, problems will continue to arise and the claims backlog will continue to grow.

Furthermore, it is absolutely essential that VBA personnel at all levels be held accountable not only for their own actions but for the actions of their subordinates. Although we continue to advocate for

adequate resources and additional staff, these steps will not go far enough if training and accountability are not a major component.

Similarly, we recognize that Veteran Service Organizations, our own personal staff, have a commensurate obligation to properly train and supervise.

PVA certainly looks forward to working with the Subcommittee and all of Congress to find workable solutions to what has become a national problem for current veterans and new veterans returning from Iraq and Afghanistan. However, we must ensure that a short-term fix does not become a longer term problem in VBA.

Thank you again for allowing me to testify, and I would be happy to answer any questions that you might have.

[The statement of Mr. Blake appears on p. 52.]

Mr. HALL. Thank you very much, Mr. Blake.

Mr. Manar.

#### **STATEMENT OF GERALD T. MANAR**

Mr. MANAR. Good afternoon. Mr. Chairman, Ranking Member, and Members of the Subcommittee, on behalf of the 2.4 million Members of the Veterans of Foreign Wars of the United States and our auxiliaries, I would like to thank you for the opportunity to present our views on today's legislation.

Mr. Chairman, I ask that my written testimony be entered into the record.

These bills have a common resounding theme, that those who authored and sponsored this legislation care deeply for veterans, understanding that the current systems are not serving them well, and want to do something to make it right for those who have served our Nation in both peace and war.

We share your concerns and frustrations. While we support House Resolution 67, we cannot support House Resolution 1435, 1444, and 1490 because it is our belief that each of these bills contains serious flaws which would, if enacted, harm veterans and the VA compensation program which has served them and our Nation exceedingly well over most of the past 75 years.

House Resolution 1435 directs the Secretary to conduct an experiment that would shift most of the claims development burden from VA to County Veteran Service Officers in five States. Problems with this bill extend through almost every section and subsection, and it is outlined in our written testimony.

However, there are two things about this bill we would like to emphasize. This bill elevates County Veteran Service Officers to a superior status by conferring on them the legal right to develop any claim they receive from VA or directly from a claimant regardless of whether the claimant has selected them as their power of attorney. This puts every other service organization at a disadvantage to CVSOs and not subtly tells veterans that representation by the American Legion, the Disabled American Veterans, the Paralyzed Veterans of America, the Veterans of Foreign Wars and others is not as good as that provided by CVSOs.

From 1986 to 1996, I ran the Claims Adjudication Division in the VA's Los Angeles Regional Office. I managed over 150 employees whose responsibility it was to process the nearly 100,000 claims we received annually from the 1.3 million veterans and their depend-

ents in the Los Angeles area. We routinely provided training to the California CVSOs.

I can state without reservation that the best of those CVSOs were very good indeed. However, I can also state that those accredited service officers of the DAV the American Legion, the PVA, and the VFW who worked in the LA Regional Office were just as good and often better in their understanding of what VA needed in order to process a claim.

Further, transferring claims to the CVSOs for development would in our opinion extend the time it takes to complete development, cause the VA extraordinary problems in tracking its workload, reduce the control VA has over effecting timely development, and offer VA managers an excuse for failing to timely process claims.

House Resolution 1444 directs the Secretary to make interim payments to those who have had remands pending longer than 6 months. In fiscal year 2006, the Board of Veterans Appeals remanded 32 percent of its workload to the VA's Appeals Management Center for additional development. While it is true that additional development sometimes produces the evidence necessary to grant the benefit sought on appeal, in reality VA grants service connection or additional benefits in only 17 percent of the cases it processes through the Appeals Management Center.

This means that under this bill, 83 percent of the people who would receive a \$500 monthly payment for an average of 18 months are those whose claims are going to be legally and finally denied anyway.

Further, the availability of a \$500 monthly benefit will cause everyone who appeals to the Board of Veterans Appeals to seek a remand rather than a decision. This is usually accomplished simply by suggesting that the claimant's disability has worsened or a medical opinion is required. If this bill is enacted, appeals will skyrocket and the VA backlogs will grow even larger.

We believe this money would be much better utilized by creating a second Appeals Management Center away from Washington to help process these remands more timely and reduce the backlog.

Finally, House Resolution 1490 would provide a presumption of service connection for certain claims. We believe that this legislation is based on a false premise that VA approves 87 percent of the claims submitted by veterans.

Unlike Social Security disability insurance which requires a single up or down decision, VA must decide every claimed condition. The average original application now lists eight or nine conditions and it is not unusual for veterans to claim service connection for 15 or 20.

In 2005, 49 percent of the 160,352 veterans found by VA to be entitled to service connection for something were awarded a combined evaluation of zero, ten, or twenty percent. What this means is that 49 percent of veterans who received favorable decisions from VA received \$225 or less each month.

Yet, this legislation, if enacted, would grant service connection for virtually any condition claimed by a veteran and grant him or her a median level of compensation. And the only quality check would be a random sampling to deter fraud.

Further, it would not be surprising that 80 to 90 percent of the 200,000 men and women discharged from active duty each year would apply for compensation. And with no significant criteria governing the grant of service connection, most would receive a median level of compensation.

Mr. Chairman, the VFW does not support these three bills. While well intended, each would aggravate the backlog of claims pending at VA.

It is our belief that the compensation program administered by VA is basically sound. It is our belief that budgets passed on time with adequate funding, accountability of VA managers and congressional oversight will resolve the problems at VA.

Congress needs to recognize that this backlog problem took years to create and it will take years to resolve.

Thank you for this opportunity to testify. I will be happy to respond to any questions you may have.

[The statement of Mr. Manar appears on p. 54.]

Mr. HALL. Thank you, Mr. Manar.

The Chair will now recognize Mr. Kabatchnick.

#### **STATEMENT OF CRAIG M. KABATCHNICK**

Mr. KABATCHNICK. Good afternoon, Chairman Hall, distinguished panel Members, honored guests. I am Craig Kabatchnick. I'm the supervising attorney, law professor at the Veterans Law Project, the Prototype Clinic operating at North Carolina Central University School of Law in Durham, North Carolina.

I am really honored to have this opportunity to offer input today to the Subcommittee members on the proposed legislation being considered.

As to House Resolution 1435, while the VA says that the backlog is due to the increased complexity of claims, it is my opinion that the primary cause of the backlog of cases at the VA Regional Office level is due to hiring of inexperienced employees without the requisite medical and legal backgrounds, heavy caseloads, inefficient structure and operations at the VA, including the hiring and training of personnel, especially at the rating board level, as well as a heavy reliance on quantity at the expense of quality.

As it stands today, the bill 1435 will not be effective to reduce the backlog it seeks to address. The bill states that there are 2,400 County Veteran Service Officers nationwide in 37 of 50 States. Dividing up the backlog places an average of 300 to 400 cases on each County Veteran Service Officer who may not be equipped or willing to handle a fraction of that load.

Furthermore, the bill's reliance on County Veteran Service Officers would be ineffective in resolving the burden of backlog where County Veteran Service Officers are generally not trained in legal or medical issues. Sometimes they are not even veterans.

We recommend the bill be modified as follows: One, increase funding to provide adequate resources and train personnel for the Department of Veterans Affairs at the Regional Office level, particularly at the rating board level.

Two, place officials with VA legal experience or otherwise in ranking positions in each of the 54 Regional Offices almost like In-

spector Generals who could sense the gridlock and allocate resource appropriately.

Regarding House Resolution 67, we agree all levels of government and VSOs share responsibility to reach out to military families and make them aware of their entitlements. However, there is the inherent risk funds would be diverted from existing outreach programs.

States already funding outreach programs will be tempted to discontinue funding them because of the new source of Federal funding. Most important we do not need to do outreach which simply sends people to a system that is currently in gridlock.

As to House Resolution 1490, we fully support this proposed legislation. We favor the presumption of service connection for certain claims because it shifts the burden of proof away from the veteran and onto the government.

Currently it takes three to 5 years at a minimum to adjudicate a claim from filing of initial claim to a final decision by the Board of Veterans Appeals, up to 9 years if there is an appeal to the Court of Appeals for Veterans Claims.

The Department is often hostile and adversarial to veterans' claims and routinely ignores evidence favorable to the veteran including statements from physicians who have treated the veteran over a long period of time, instead giving greater weight to the statements of their own in-house doctors who have only performed a cursory examination of the veterans or who have done just a brief review of the medical records.

Placing the burden of proof on the government rather than the veteran is fair and equitable because of the disparity in resources between the veteran who is usually under-represented and the Department of Veterans Affairs, a situation analogous to David and Goliath.

We also fully support House Resolution 1444. The provision for interim benefits payment, it is fully needed and appropriate. It will force the Department of Veterans Affairs to expedite action when there is a remand from either the Board of Veterans Appeals or the Court of Appeals for Veterans Claims.

We like the proposed provision that interim benefits are considered to be an advanced payment of benefits owed for any period before the date of a favorable final decision. However, we feel that the period of time, 180 days proposed for the VA to make a decision on the matter prior to paying is too long and it is going to lead to further delay. We feel that 30 days is more appropriate. We also support the provision for automatic forgiveness.

I really appreciate the opportunity to appear before you today, and I would be happy to respond to any questions. Thank you.

[The statement of Mr. Kabatchnick appears on p. 58.]

Mr. HALL. Thank you, Mr. Kabatchnick.

The Chair will now recognize Mr. Chisholm.

#### **STATEMENT OF ROBERT VINCENT CHISHOLM**

Mr. CHISHOLM. Thank you, Mr. Chairman and Members of the Subcommittee.

I just wanted to make one correction for the record. I'm the past President of NOVA, I am not the current President of NOVA.

I would like to focus my attention on House Resolution 1444, sort of giving an outline of why this bill is necessary. This is clearly an idea whose time has come, the need for a remedy for delay.

As Mr. Kabatchnick just told you, and it is true, that if you file a claim, it takes anywhere from three to 5 years to get a final board decision. That is the last step in the administrative process before one goes to court.

The following statistics show the number of cases actually remanded by the board annually. Forty-two percent were remanded in 2003, 56 percent in 2004, 38 percent in 2005, and 32 percent.

When a veteran receives a final decision from the board, they have the right to appeal to the United States Court of Appeals for Veterans Claims. Since 1988 when the court was created, an average of 60 to 65 percent of those veterans get remands back to the board because of some error committed by the agency. And that takes another two to 3 years to run the claim through the court system.

In 1994, Congress passed the "Veterans Benefit Improvement Act." In section 302 of that Act, entitled veterans who received remands from court to the board or from board to the Regional Office to expeditious treatment.

Unfortunately, expeditious treatment has been effectively rendered meaningless because there is no enforcement mechanism for this expeditious treatment. What most veterans receive is delay at two critical junctures, first when the case is remanded from the court to the board and second when the board remands the case back either to the Appeals Management Center or the RO. And it is really in the latter situation on remands from the board to the AMC or to the Regional Office where there is a lot of delay.

Under this system as it currently exists, the only people who have deadlines are the veterans. The Secretary has no deadline to do anything in this system. This bill, 1444, would put the onus on the Secretary for the first time to do within a required timeframe or would have to start paying the veteran interim benefits. And NOVA fully supports that.

We raise two concerns. The first concern is that for some disabilities, like tinnitus, the maximum rating under the VA schedule is 10 percent, which equals presently \$115 per month. If a veteran files a claim for disability benefits for a condition where the maximum rating is under the \$500 per month, this could have some unintended negative consequences. And I think you should look at that specific issue.

The other issue is what if multiple conditions are filed by the veteran and, let us say, service connection for posttraumatic stress disorder and someone has cancer that they are alleging is caused by their service, is it \$500 per claim or is it \$500 per veteran? I think that is an issue that the Committee should also explore.

Finally, someone suggested that the practical effect of this bill would be for the VA just to deny the claims outright as the 180-day time limit approaches. To prevent this from happening, Congress should define final decision as finally decided as the point in time when the veteran has exhausted appeals.

As for House Resolution 1490, the presumption of service connectedness, this bill, if enacted, would represent a fundamental

change in the way VA does business and we fully support the ideas behind this bill because the delays being caused by the VA right now are terrible for these veterans returning from the wars.

I see my time is running out. And the last thing I would like to just say is on House Resolution 67. Outreach is critical to veterans. I receive calls all the time from veterans that are asking for my representation. They say, Mr. Chisholm, why can't my claim go back to the date of discharge from service.

A veteran called me recently, a Vietnam discharged veteran, whose claim was only effective when he first filed in 2002, his claim for psychiatric disability, notwithstanding the fact that he was discharged from the service for psychiatric disability. He said why can't my claim go all the way.

We need to reach out to these veterans like this, inform them of the benefits that are available for them. And NOVA fully supports House Resolution 67.

Thank you for letting me testify here today, and if you have any questions, I would be glad to answer them.

[The statement of Mr. Chisholm appears on p. 63.]

Mr. HALL. Thank you, Mr. Chisholm.

I do have a question for you and Mr. Kabatchnick based on one or both of your remarks here, which has to do with, under the House Resolution 1445, the legislation of which I am the sponsor, with the 180-day period after remanding a claim, do you think that time should be shortened? I mean, if this were to become law.

Mr. KABATCHNICK. Are you asking me?

Mr. HALL. Yes.

Mr. KABATCHNICK. Thank you, Chairman Hall.

It is my feeling that the time needs to be shortened. I have had experience working at the VA both in their general counsel's office and now I have been on the other side representing veterans.

And the time that it takes to remand a case is way too long, and I think that 180 days is too much time to give the VA for a remand that needs to be shortened. I said 30 days, but any time would be time well spent for the veteran.

Mr. HALL. Thank you.

And, Mr. Chisholm, you made a comment on H.R. 1444. One of your comments was relating to a disability rating such as tinnitus which would bring in, if it is approved, \$115 per month presently.

So would you recommend then that the language be changed so that rather than a median for those disabilities that are applied which carry a lower compensation that we give in the case of tinnitus, for instance, the maximum per month or should we give, you know—

Mr. CHISHOLM. I think that would be fair, yes, under that circumstance, so the most that veteran could get for that specific claim. That would be a concern.

And I would also like to address the question about the 180 days, if I could, as well.

Mr. HALL. Please.

Mr. CHISHOLM. The practical reality is when the court remands a case to the board, the first thing the board is required to do on the remanded case from court is give the veteran 90 days to submit further evidence at that point. So that time line is already built

into the system. So in my opinion, the 180 days gives the veteran the time to submit additional evidence and time for the VA to adjudicate it. So I would recommend keeping the 180-day time, at least for cases remanded from court to the board.

And the other issue is when cases are remanded from board to the Regional Office, there are specific instructions given to the Regional Office to get further evidence and request Social Security records, request medical records, and that can be time consuming for the VA to get those records back in. And so the 180-day time-frame seems to me to be a reasonable amount for that reason.

Mr. HALL. Thank you.

And, Mr. Blake, would you please expand upon your written testimony, on page six, regarding a prestabilization rating? Have you seen that used and how do you think we can encourage the VA to use that prestabilization rating more often?

Mr. BLAKE. Well, I will be the first to admit that I am not the subject matter expert. I kind of took a lot of this information from dealing with our general counsel's office and our benefit staff.

I probably could not offer any more on that suggestion than to say that from the perspective of our people in the field, it is something that rarely if ever gets used and, yet, it is in regulations. I think it is a case of there are lot of things that are in the VA regulations with regards to the claims process that get overlooked or just never get used.

I would be happy to take that question as a written question for the record and probably provide a lot more feedback on it.

Mr. HALL. That would be great. And if any of our other panelists, Mr. Manar, do you have a comment on that?

Mr. MANAR. I have not read his statement. However, if you are referring to a prestabilization range for servicemembers who are being discharged from service or new veterans who have just been discharged from service, VA regulations allow under 4.28 of regulations, Title 38, that VA may award either a 50 percent or a 100 percent evaluation for up to a year if the review of the veteran's injuries or disabilities indicate that they are not stabilized yet. They have not settled down so that you can assign a more permanent evaluation to them.

Some offices use this paragraph fairly liberally. Others do not. I think it is a question of training and education of VA rating specialists to ensure that they are aware of it and encouraged to utilize it.

Mr. HALL. Thank you.

Mr. LeValley, you looked like you wanted to say something.

Mr. LEVALLEY. Oh, no. I was just listening intently there.

Mr. HALL. Okay. Great.

My time is expired. I would like to recognize my Ranking Member, Congressman Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

Several short questions. Mr. Blake, do you believe that the percent of cases that are either fraudulent or just unjustified for whatever reason would go up if there is a presumed eligibility for what would be a lifetime benefit?

Mr. BLAKE. I would think that is a reasonable expectation. I mean, just as kind of an anecdote, when we reviewed this legisla-

tion, a number of people in the office came to me and said it would be a great opportunity for me to file a claim who had never filed a claim.

You know, and to go to the question about shifting the burden of proof, I think these bills are a case of we are encouraging fraudulent claims further and, yet, now we are going to shift the burden onto the VA to prove that this greater number of veterans who would likely file a fraudulent claim have to now decide if they were doing it for the wrong reason.

And I think that you would find that the burden of proof for fraud is extremely high. So the VA would have a very difficult time ever proving that any of these cases are fraudulent and, yet, I think this is the perfect way to promote that.

Mr. LAMBORN. Okay. Thank you.

Mr. Manar, doesn't the current system allow for a retroactive payment to be made back to the time that the claim is filed which, although not completely, alleviating the hardship of the long waiting periods, but at least doesn't that make up for some of the hardship?

Mr. MANAR. Absolutely. If a claim is filed within a year of discharge, the initial evaluations will almost always go back to the day after discharge from service. There are occasions when a disability does not appear in service, but it is a presumptive condition and appears within the presumption period, usually a year after service, where the effective date might be less than the full retroactive period because benefits would be awarded from the date that the disability was first diagnosed or first appeared which would be sometime after discharge. But generally speaking it is always back to either the date of claim or if it is filed within the first year, the day after discharge from service.

Mr. LAMBORN. Okay. Thank you.

Mr. BLAKE. Mr. Lamborn, I would also remind the Subcommittee that just, I believe, two years ago, Congress enacted legislation recognizing that there is a significant financial burden placed on particularly the new OIF and OEF veterans and for the severely disabled enacted legislation that provides an additional monetary benefit, at least for the most severely injured, to offset their hardships that they experience.

Now, that does not necessarily address the problems of veterans with lesser disability. I think we all recognize the problem, but the solutions are not as simple as what appears to be here in black and white.

Mr. LAMBORN. Thank you.

And my last question, Mr. LeValley—

Mr. LEVALLEY. Yes, sir.

Mr. LAMBORN. —in your experience, could properly trained State and municipal government Veteran Service Officers also fully develop claims if they had full access to the veteran's records?

Mr. LEVALLEY. Well, I believe so, sir. That is their job is to assist veterans in filing claims. I have been doing this for 18 years. Most of us develop the claim to the best of our ability in the short period of time we have. We sit across the desk from a veteran every day.

I may see six veterans today. I may see a dozen and a half tomorrow assisting them in their claims. We gather the medical evi-

dence to the best of our ability from the local doctors and hospitals. It is submitted to the VA. And our intent with this legislation, and we have been talking about the backlog and development of these claims for several years, as the VA is reviewing the claim, if they find something in there that maybe we did not provide or they see something else that they need, it would be quicker for us to be able to go get this evidence by going through the power of attorney to us, to the veteran to us and let us get with the veteran and go to that doctor or to that hospital to get that evidence to get it to the VA instead of sending out another release to the veteran to sign, to send back to the VA, to send to the doctor or the hospital and get the information back.

We can provide that information quicker. State and County Veteran Service Officers, there are some municipal service—as long as they are trained, accredited, and meet the requirements of the VA to do this, yes, I do not see why they could not do that.

Mr. LAMBORN. Okay. Thank you.

And, Mr. Chairman, I yield back.

Mr. HALL. Thank you, Mr. Lamborn.

It is interesting because we are all here looking for the same result and, as we have heard, opinions differ about how to get there, but that is why we are having hearings.

The Chair will now recognize Congressman Hare.

Mr. HARE. Thank you, Mr. Chairman.

Mr. HALL. Your microphone is not working either.

Mr. HARE. How about that?

Mr. HALL. No. We will do some work on the sound system before the next hearing.

Mr. HARE. How about this one?

Mr. HALL. No.

Mr. HARE. How about this? Thank you, Mr. Chairman.

Let me just say first of all before I ask a question, I want to ask it of the whole panel, I really commend all of you and the organizations for what you do to help our veterans out.

Let me just grab my note though. I believe I am paraphrasing Mr. Manar when he said that this problem took years to develop and is going to take years to solve.

I would suggest that I do not know that we have years for a lot of folks. As you probably heard before, we have a lot of veterans that are dying before they get the help that they were entitled. And that is very troublesome to me.

And I know we all, as the Chairman said, want to solve this problem as quickly as we can. And just from a matter of fairness to our veterans, and maybe this is for just everybody here, and it is too bad we only have 5 minutes to talk about this, shouldn't the burden really be on the VA?

I mean, the presumption when we say that this is going to lead to more fraudulent claims is saying that we perhaps do not trust our veterans to do the right thing when, in essence, I know that every Federal program there are people that will try to take advantage of something, but when you look at the sacrifices these men and women have made, it would seem to me that legislation that we enact, we want to get these claims processed as quickly as we can and get those folks the help that they so desperately need.

Shouldn't the burden of proof be on the VA and are we maybe looking at this that the passage of these bills may lead to more fraudulent claims being filed? And while that may happen, I do not know that it will or would not, you know, if we do not do this, what are we going to do to alleviate this backlog that has taken years to develop because for many of our veterans, with all due respect, they do not have years left to solve it?

I would be interested in your perspective why shouldn't we expect the Department of Veterans Affairs to play a larger role in this and the veterans are having enough problems as it is?

And I am not one that subscribes to the fact, with all due respect, Mr. Blake, that this legislation will cause more people to try to pick up a quick buck. I trust our veterans to do what is right. Now, granted, not everybody on this planet is honest, I understand. But, you know, I think we want more people if they have claims to not be discouraged and to file them.

So I would be interested to get from the panel your perspective on shouldn't we err on the side of the veterans and not so much be worried about what the VA thinks or does not think?

Mr. MANAR. Sir, since you started off by mentioning some of my testimony, I would like to address some of these issues.

First of all, the idea that the veterans are waiting years and years and years for decisions from the VA is flatly erroneous. The initial decision on average on an original claim we are told is about 6 months. They have a decision. They may be unsatisfied with certain parts of the decision and so they appeal, but they have a decision.

In fact, the routine case that gets all the way to the Board of Veterans Appeals may have four, five, six, or ten decisions along the way from a qualified rating specialist looking at them before it gets to the Board of Veterans Appeals.

Mr. HARE. Well, reclaiming my time for just a second, does that appeal then if they are denied—I mean, as I said earlier, I was at a Marine Corps League and I heard a lot of the people there saying this takes two to 3 years to get through this process. And I mean, that sounds to me like it is more than just a few months.

Mr. MANAR. It does take a long time to get through the process if you are appealing decisions. Many veterans who receive decisions from the VA who walk away at that point, feel either fully satisfied or accepting at least of what the VA decisions are.

Many others appeal, as we know, and the appeal process can take quite a long time. Unlike the civilian appellate process, veterans can submit and continue submitting evidence throughout the entire process. New examinations are requested either by the claimant or the appellant or by the VA. Medical opinions are solicited. There are lots of additional development that takes place through the entire process.

This is what extends the delays in all of this. Why is a case remanded? Because either the VA did not dot all the "I's" and cross all the "T's" of development or the veterans alleges there is an additional piece of evidence out there.

The system that Congress created bends over backward in favor of veterans. But a lot of people do not understand just how complex and complicated it is because of this very nature. The appeals proc-

ess does not finally end until either the 120-day period after a board decision passes and the veteran can no longer appeal to the Court of Appeals for Veterans Claims.

The burden, shifting the burden to the government. Right now the standard of proof that a veterans has to provide in order to win his case to get service connection or increased evaluation is not a preponderance of the evidence. It is a balance of the evidence. The evidence has to be in relative equipoise. The tie goes to the runner as a judge said in a decision early in the history of the Court of Appeals for Veterans Claims. So the burden already is a lot lessened on veterans than it would be if they were suing in a court of law.

There are other things here, but I should let my fellow panelists take some of the time.

Mr. HALL. There is no more time. But thank you all. We are going to actually allow Congressman Rodriguez to have 5 minutes before we let you go.

Congressman Rodriguez.

Mr. RODRIGUEZ. Thank you very much. And is this on?

Mr. HALL. That does not work either. After we get the backlog reduced, we will get our microphones fixed.

Mr. RODRIGUEZ. Thank you very much.

I just went through my district, and had some meetings with veterans in Fort Stockton, and San Antonio and everywhere I go, I not only sense, but I hear the frustration.

Mr. Manar, I heard you say that the system was, and correct me I do not want to misquote you, but I thought you said that the system was basically sound; is that correct?

Mr. MANAR. I said the underlying system is sound. If I may have a moment. I worked for the Veterans Administration, the Department of Veterans Affairs from 1974 to 2004. When I started in 1974, I believe that there were 19 or 20,000 employees in what is now the Veterans Benefits Administration handling claims in the Regional Office.

I am not sure of the exact number today, but I believe it is around 14,000. We are looking at five or six thousand fewer employees when the workload, to the best of my knowledge, has never been higher.

Mr. RODRIGUEZ. So we have come down on the number. And what about the claims in terms of the fact that we might not have the qualified staff and then we continue to send to people that are not doing a good job or not doing the job? Do you just feel that we just increase the number of staff that that will correct itself?

Mr. MANAR. When I said that is has taken years for VA to get into this position, it is going to take years to get out, what the rest of my testimony was except for time limitations would have been is that the Congress and the various administrations for the last 20 years, Republican and Democrat, it does not matter, have effectively held down the budget for the VA.

Mr. RODRIGUEZ. Yes. And I agree.

Mr. MANAR. And as a consequence, the staffing in the Regional Offices fell over many years. Now, it has been growing in the last 6 years. We certainly have to give the Congresses before us, before

this one and the current Administration kudos for increasing the VA budget effectively each year.

But more than that, it is not enough because we are playing catch-up. What the VA needs to do is to get additional staffing in place to—

Mr. RODRIGUEZ. And I agree totally with what you said, but I spent 8 years on this Committee and I left, I came back. Things are worse.

Mr. MANAR. Yes, they are.

Mr. RODRIGUEZ. And, at this point in time, just like they are, we are fed up. And so somehow we have to jumpstart the thing. And if it requires some of those efforts at educating, and nothing was more frustrating than to hear people out there telling and sending out letters from the previous Secretary Principi where the Vietnam veterans had to sue, and not to educate veterans about the benefits and services that are out there. I mean, I do not know who in his right mind does that kind of stuff.

And so the only thing I see is that we have to jumpstart this thing and unless we pressure, you know, I do not see any other way; otherwise, it will be 8 years, and I will not be here that long for sure, and we will be still talking about the same thing.

Mr. MANAR. I do not believe that we will be talking about the same things in four, five, or 6 years. Right now there are a lot of people being trained, that have been hired in the last couple of years that are being trained. It takes years to effectively train these rating specialists and claims examiners. But a lot of people are in the pipeline and they are beginning to be effective in their positions.

What the VA needs to do on its own is to do its very best to retain the more senior staff that it has. They have done some of this by bringing some back as rehired annuitants, but they need to keep the people they have however they can do it and focus on this.

Any quick fix in our view, any quick fix that Congress proposes here will either create additional backlogs, bottlenecks in other places, or essentially break this program which until very recently has been—

Mr. RODRIGUEZ. You do not see that as a jumpstart in terms of assistance, because I see that right now the system has the backlog, they need a jumpstart, and they need all the help they can get from outside groups, including maybe the possibility of getting all the veterans' organizations from the VFW through the American Legions to possibly participate in those programs in terms of providing that information and that access to some of our veterans out there, especially those areas that are rural and I have probably one of the districts that is the most rural and one of the biggest in the country, that a lot of my veterans do not have access to.

And I notice that I ran out of time. Thank you.

Mr. BLAKE. Mr. Rodriguez, if I may real quick, I would just say that I do not see the last two bills in particular as jumpstarting the fix for the problem of VBA. It certainly addresses the frustrations and concerns of the veterans and trying to meet their needs. But it does not in any way begin to address the actual problems that exist within the systemic structure, the culture of VBA itself. We are just providing a benefit to veterans to appease veterans

without actually fixing the problem. So we just continue to let this problem, the problem itself with VBA go on and on and on with this band-aid that is now on a sucking chest wound holding this problem back until at such time we decide to create another quick fix.

Mr. HALL. Thank you, Congressman.

And thank you to our panel.

I would just say before you go that we may be seeing only a small part of the picture at home. I know that I just recently had a veteran in my district come to our office with a diagnosis that was originally done in 2002 for, he is a Vietnam vet, prostate cancer diagnosed in 2002.

He fortunately had, he and his wife had, the financial resources to undergo chemo and radiation and whatever treatment was necessary, but it was not until last month that—fortunately I am blessed with a caseworker who got on the stick and he had already been doing all these things and trying, you know, not an unintelligent man, and he and his wife had been trying to work the system.

I do not know all the details of the story except that within a few weeks of our office getting involved, we got him \$19,000 of back compensation and quadrupled his monthly living subsidy. So maybe that is just a rare example.

But I am hearing, as are a number of other Members, I am hearing from people who contend that it is more widespread and that that sort of delay, however we do it, I mean, maybe some of this legislation is well intentioned and misguided, but I think that there is a strong feeling on the Subcommittee and I think the full Committee as well that we want to try to do something so it is not going to be years to get out of this six-digit backlog.

And I also think we are just beginning to see the leading edge of the OIF/OEF returnees and they have not yet en masse left DoD and entered the purview of the VA. And when that happens, I think we better be ready for it.

So thank you again, all of you, and we really appreciate your testimony and your work and service on behalf of our veterans. Thank you for your testimony.

And we will call our third panel, Mr. Ronald R. Aument, Deputy Under Secretary for Benefits of the Department of Veterans Affairs, and Deputy General Counsel, John H. Thompson, from the Department of Veterans Affairs. Thank you both for joining us.

Mr. Aument, do I have the correct pronunciation of your name?

Mr. AUMENT. Yes.

Mr. HALL. Okay. Well, in that case, you are first.

Mr. AUMENT. Is this on?

Mr. HALL. Would you like to start us off, please.

**STATEMENT OF RONALD R. AUMENT, DEPUTY UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY JOHN H. THOMPSON, DEPUTY COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS**

Mr. AUMENT. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member Lamborn, and Members of the Subcommittee, thank you for the opportunity to testify on the four bills under consideration today.

I am pleased to be accompanied today by Mr. Jack Thompson, Deputy General Counsel for VA.

House Resolution 67, the "Veterans Outreach Improvement Act of 2007," would authorize VA to make grants to State veterans' agencies for the purposes of carrying out and improving VA benefits, outreach, and assistance.

Although VA supports the goal of improving outreach, we believe that in light of legislative changes made by the Congress last year and recent VA initiated changes in outreach coordination, Congress should allow VA to implement and assess these changes before taking additional measures.

We also believe that while this legislation is well intended, the requirement to condition grants to State veterans' agencies in locations with large or growing veterans' populations would not provide VA sufficient flexibility to reach other deserving veterans' populations such as in rural or smaller communities where we are less well represented.

We understand the impatience and frustrations of the Congress with our inability to make more rapid improvements in claims processing timeliness. However, we do not believe that the other three bills, House Resolution 1435, House Resolution 1444, and House Resolution 1490, accomplish their intended purposes of improving decision timeliness. In fact, these bills could result in unintended consequences that would have the opposite effect on our system.

While we attempted to cost each of these bills in good faith, we had difficulty in developing valid and reliable cost estimates because of the uncertainty of some of the provisions.

House Resolution 1435, the "Department of Veterans Affairs Claims Backlog Reduction Act of 2007," would require VA to conduct a 3-year pilot program in California, Florida, Ohio, South Carolina, and Texas. Claims identified by VA as needing further development would be referred to a County Veteran Service Officer for further development and transmitted back to VA in ready to rate condition.

As you are aware, veteran service representatives at the county, State, and national levels today perform a vital role in assisting veterans in preparing and submitting their claims. In fact, developing evidence to the point that claims are ready to be rated by VA is already one of the main responsibilities of these claims representatives. However, we believe this bill goes too far in turning county representatives into paid agents of VA.

We are also concerned that the pilot program may adversely affect VBA's workload. Currently nearly 20 percent of VBA's adjudication workload is from the five States chosen in the bill to participate in the pilot program. If unforeseen problems arise during the course of the pilot programs, claims processing could be significantly disrupted.

We are also concerned that the bill may conflict with representation agreements entered into between claimants and their duly ap-

pointed claims representatives including attorneys, agents, or Veteran Service Organization representatives.

House Resolution 1444 would require VA to pay an interim benefit of \$500 per month if a claim for benefits has been remanded by the U.S. Court of Appeals for Veterans Claims or the Board of Veterans Appeals if VA does not decide the matter within 180 days of the date of the remand.

House Resolution 1444's requirement that VA pay interim benefits and allow claimants to keep them regardless of whether they are ultimately found to be entitled to the amounts already paid would create a strong financial inducement to making the development time last as long as possible.

We believe this bill would also create an incentive to submit claims of dubious merit, obtain a remand and extend the claim development process by piecemeal submission of evidence and multiple requests for extension of deadlines to maximize the amount of interim benefits payable. It is unlikely to improve the adjudication timeliness because it does not alleviate the causes of adjudication delay.

House Resolution 1490 would require VA to presume that a claimant presenting a claim for benefits with respect to service-connected disability or death has presented a valid claim of service connectedness provided that the claimant supports the claim with proof of service in a conflict and a description of the nature of the disability, including the connection to a veteran's service.

House Resolution 1490 would also require VA immediately upon processing the claim to award benefits at a median level for the type of disability described in the claim until appropriate level of benefits is determined. VA would audit a percentage of claims to uncover and deter fraud.

While VA supports getting benefits into the hands of deserving claimants as soon as possible, we are concerned that the presumption of service connection creates an incentive to file invalid claims, especially when benefits would be paid without appropriate development.

If the intent is for VA to presume any current disability of service connection based upon a veteran's statement without any supporting documentation or verification, then the system would be ripe for fraud or abuse. The potential for increased benefit cost is enormous.

In addition, this bill would have major consequences for the veterans' healthcare system. Any veterans whose disability compensation claim is presumed valid and who is awarded a median rating under this provision would be eligible for VA healthcare. Subject to the existence of an employment handicap, veterans awarded compensation under the provisions of this bill may also become eligible for vocational rehabilitation and employment benefits.

This concludes my statement, Mr. Chairman. I would be happy to entertain any questions from you or the other Members of the Subcommittee.

[The statement of Mr. Aument appears on p. 66.]

Mr. HALL. Thank you, sir.

I guess my question would be if you were sitting on this side of the table what your suggestion would be. I understand the con-

cerns that you have, that the VA has, and I presume, Mr. Thompson, you share them.

But, you know, we are looking at whether we need to just hire X number more processors or what is the answer here to bringing this number down, because I think there is a consensus in the House and on this Committee and the public that these numbers are unacceptable?

I talk to people, not just veterans and their families, but citizens of my district who have been hearing about this and reading about it in the paper and they have become aware of the degree of delay that seems to be systemic right now. They feel that it is not fair and that it is not what our veterans deserve. So if not this, what?

Mr. AUMENT. Well, I believe the central and key strategy that we are looking at, Mr. Chairman, is developing sufficient rating capacity to manage the workload that we have today and what we predict for tomorrow.

The Congress has been, I believe, very supportive and generous in that regard. As of January 2007 compared to the January of the year before, we had added 580 additional staff. And between March and the end of June, we plan on adding 400 more staff to our claims processing staff.

We believe that is the central answer to being able to provide timely determinations on VA disability claims. Of course it does require that they be well trained and we do not do that in a matter of weeks or months. It takes roughly two to three years to train a claims processor to a journeyman level.

But we have invested substantial resources in developing those training programs and we believe that is the central answer to the question.

Mr. HALL. Thank you for that answer.

And I wanted to ask you for your comment on PVA's testimony. In their written testimony they talk about the prestabilization rating, 38 CFR, 4.28. Can you explain or define this term and tell us about how often it is used by the VA?

Mr. AUMENT. Yes, I can, sir.

The prestabilization rating is meant, as I believe was pretty well described here, to apply to those veterans who come to us seeking compensation, who have disabilities that have not yet fully stabilized or not yet fully healed.

Today we use that in practice quite often as we are working with the severely injured servicemembers when we are doing the case management work for those that are coming through Walter Reed and the other military treatment facilities to be able to make sure that we have a rating in place for them as of the day that they are discharged from the military services.

In that instance, we are able to provide some sort of rating that addresses their primary, most noticeable disabilities while we go through further development for those additional disabilities that they may be claiming subsequent to their release from military service.

In my view, it is an authority we have under-utilized. If we are looking backward over the past year, we see that we probably applied that principal fewer than 500 times. We have been looking

carefully at that and we plan to do some training to try and encourage greater use of that authority throughout the field.

Mr. HALL. Thank you.

I recognize Ranking Member Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

And, Mr. Aument, although I share your sense that some of this legislation has some flaws, I also want to say I share the frustration of my colleagues on the panel here that this backlog is too large and it is even building. The numbers I just have seen today show that it is now up to 647,00 and that has grown since the last report.

And I know you addressed this with the Chairman's question of a moment ago, but what else can you tell us specifically that you are doing including dates and time lines and goals?

You say that we are hiring more people. That is good. But beyond that, what are we doing and then what specifics do you have in place. What matrix are there so that we can see that this is working?

Mr. AUMENT. Some of those steps that we have taken, Congressman Lamborn, include increasing the amount of overtime money that we have for fiscal 2007. We shifted resources to add \$4 million overtime funding and we have been giving Regional Offices a green light as to how they use that work.

We have brought on some rehired annuitants as was suggested here at the table in the previous panel. We have hired between 50 and 100 rehired annuitants and we have open offers out in the field to bring those individuals back in to help augment our rating capacity.

We have put in place some steps to try and encourage stations to exercise and encourage veterans to waive certain types of due process, reporting requirements, when we believe it is unlikely they will produce additional evidence.

We have even encouraged some of our claims developers to use telephone waiver procedures, to ask veterans who have no additional information to offer us if we could proceed to finalize the claim.

We have been working very carefully with the Veterans Health Administration to increase the use of templated compensation and pension exam processes.

We found that, if we ask them to use the templates that we have worked very hard over the last 2 years to develop, we are going to receive higher quality medical exams, requiring us to go back for repeat medical exams less frequently.

We have been working with the Reserve components and the National Guard to put in place more effective agreements to give us more rapid access to the medical records, particularly of National Guard and Reservists. We have a better track record of getting that type of information directly from the active military services, but we know we have to work much harder with the Guard and Reserve components.

We have also put in place certain types of resource centers that serve as safety nets, if you will, for some of our more challenged stations that are experiencing extreme workload problems where we cannot staff up quickly enough to help in that location.

We have two Regional Offices that we call Development Resource Centers to assist some stations with particular backlogs and in developing claims. We have in place nine resource centers throughout the system to help in rating backlog work.

We have also been trying to work together closely with the Department's CIO now that some of the responsibility for IT development has shifted, you know, to the Department's CIO, trying to put together some placeholders on investments and future IT investments that are going to result in enhanced productivity and shortened cycle times for veterans' claims.

Mr. LAMBORN. Okay. Thank you.

And those are some good things and I am glad to hear that. But to be even more specific on your goal to reduce the 180-day current average to 125 days, how long is it going to take us to get there?

Mr. AUMENT. Well, you are probably aware that our 2008 budget includes our projection of bringing down the average processing time to 145 days. We have not budgeted beyond 2008, but I would say it is going to be at least another year beyond 2008 before we could be approaching that strategic goal of 125 days.

Mr. LAMBORN. Thank you.

Mr. HALL. Thank you, Mr. Lamborn.

Mr. Hare.

Mr. HARE. Just a quick question or two.

You were saying it takes two to 3 years to train the claims people to get them up to speed. So in that interim you have more and more people filing for disability and their workload gets more backed up as you go.

In a perfect world, to solve this problem or to get it up to speed in terms of the claims people which you said, in your testimony, I believe, you thought that would be the key thing to fix this.

How many people does the VA need? How many claims people do we need to get this done and since it takes that long to get them up to speed and train them, what do we do in the interim, in that 2- or 3-year period because it seems to me with the two theaters that we have going now this is going to get a lot worse before it is ever going to get better? We are going to get a lot more people into the system.

So how many people do we really need if, on your Christmas list, you can say to Congress this is what we need and what do we do in the meantime during that 2- and 3-year period of time to be able to help?

I said to the panel before and I meant this in a very nice way, I did not mean to imply that, they do not trust our veterans, but it seems to me that after somebody gives every measure that they have, you know, I am a veteran myself, but, again, going back to the people in my district and the vets I talk to, they keep saying why is the proof on us, I mean, why do we have to go jump through all the hoops, I mean, we are the ones that gave everything we had for this country and now we are backlogged up here.

So I am just interested from your perspective on two things. How many people do we really need to solve this problem because the numbers are going to get bigger and what do we do in the interim?

Mr. AUMENT. I am happy to speak to that, Congressman.

I believe that the budget that we have requested for 2008, which includes around 450 additional claims processors over and above the staffing figure for fiscal 2007, when these individuals were fully trained, represents a work force sufficient for us to address both pending and projected workload.

Now, the dilemma is that we do not bring them on instantly and make them fully productive. And that is part of the reason why we are over-hiring right now. We are going to be supported resource-wise by the Department to over-hire this fiscal year to try and get jumpstarted so that, even though they will not be fully trained, we will not be bringing on a totally new staff in the next fiscal year. So I believe that that is probably a good figure once those people are fully productive.

As to the other issue of what are we doing in the interim, I do believe, as you suggested, we have got to be looking for challenging alternatives.

I think, though, that the issue of just paying the claims as they come in with a presumption that they are service connected is fraught with a lot of problems. I have heard a lot of discussion about fraud and I do not really believe that fraud is the key issue here at all.

I mean, it is my belief that most veterans who bring a claim to us file that claim in good faith and that there are a number of issues there without fraudulent intent, that the idea of actually establishing entitlement is a very difficult thing to accomplish in all instances.

We have heard the figures thrown out that we approve 88 percent of the claims we receive. That is looking at a very limited window of cases. Those numbers were extracted from some of the statistics we reported on the Global War on Terrorism, veterans whose claims we have processed since 2001.

As was suggested here, that does not mean that everything that they claimed was approved. That only means that at least something within each of those veteran's claims was awarded positively on behalf of the veteran.

And, again, today the average veteran coming through our benefits delivery at discharge program, new veterans coming into the system are claiming on average ten disabilities per claim. And the approval rate is nowhere near that.

So there are many of them that believe they have disabilities that are being claimed in good faith, not fraudulently, but service-connection will not be ultimately established.

Mr. HARE. I was just glad to hear your comment about your belief that most veterans, the vast numbers of veterans that file for disability, are filing with the best of intent and that they truly believe that they have a claim. So I am glad to hear you say that.

Thank you.

Mr. HALL. Thank you, gentlemen, for taking your time and being so patient. Thank you to everybody who came here. Thanks to the Members of the Committee, Mr. Lamborn, Mr. Hare, Mr. Rodriguez, and our wonderful staff, and this hearing is now adjourned.

[Whereupon, at 2:47 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### **Prepared Statement of the Honorable John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs**

As most know, there are problems with the VA claims process. And, I want to say at the onset that some of the problems associated with the process are beyond the control of the VA and the product of our on-going wars in Iraq and Afghanistan.

Having said that, I must acknowledge that there is a growing claims backlog that has gone from 465,623 in 2004 to 525,270 in 2005 to 604,380 in 2006 to 647,857 in 2007. Not surprisingly, this backlog has resulted in increased waiting periods for claims to be processed. At last count, the VA took an average of 177 days to process an original claim and an average of 657 days to process an appeal.

Just last week, the Washington Post printed an article entitled *Delayed Benefits Frustrate Veterans*, which I will be submitting for the record, detailing instances of veterans who literally have died while waiting for their claims to be processed.

To me, this is evidence of a broken system. Whether you are one of the few remaining WW I veterans or recently back from OIF/OEF, you should not have to suffer through extended waiting periods to receive the benefits you earned by serving our country.

I view today's hearing as an initial step in improving the VA claims process. In the first panel, we will hear from Members testifying about their individual bills. Next, we will hear from VSOs and practitioners in the field about how these bills might work in practice. Finally, we will receive the opinions from the VA about their views on the legislation before us today. I look forward to having a constructive conversation with all of our witnesses.

Before the first panel starts, I want to take a few moments to talk about H.R. 1444, a bill that I introduced and which is under consideration at today's hearing.

H.R. 1444, in its simplest terms, requires VA to provide a monthly stipend to certain veterans who have to wait longer than 180 days for a decision from the VA on a remanded claim.

To be more precise, if a veterans' benefits appeal is remanded by the U.S. Court of Appeals for Veterans Claims or the Board of Veterans Appeals and a decision is not made within 180 days of the remand, the VA will pay the veteran a monthly stipend until a decision is made. This stipend will be \$500 per month for each person under the claim.

If a final decision is favorable, the amount paid will be considered part of the back payment due the veteran. If a decision is unfavorable, the interim benefits shall not be considered an overpayment of benefits.

Of course, I understand that there may be disagreements with this bill; however, I believe that the principles behind it, creating benchmarks, are sound and will go a long way in improving claims processing.

I believe that as the veterans population continues to age and disabled veterans return home from Iraq and Afghanistan, we must look for solutions that go beyond merely adding more claims representatives.

I look forward to hearing what others have to say about H.R. 1444 and the other 3 bills before this Subcommittee.

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### **Prepared Statement of the Honorable Doug Lamborn, Ranking Republican Member, Subcommittee on Disability Assistance and Memorial Affairs**

Thank you Mr. Chairman for recognizing me, and for holding this hearing.

I am here today to learn about the legislation before us. I look forward to hearing from our witnesses and my colleagues in the Subcommittee.

Our first bill, H.R. 67, the Veterans Outreach Improvement Act of 2007 has my full support.

One of the most persistent challenges we face is communicating to veterans and their families the existence of benefits they may have earned.

This bill funds outreach by state and local governments, which have proven capable incubators for effective public policy. Perhaps some of their innovations could be useful at the Federal level.

This legislation also sends VA a signal that Congress expects strong and effective outreach to our veterans.

Our second bill, H.R. 1435, the Department of Veterans Affairs Claims Reduction Act of 2007, could make a big difference in reducing claims backlog.

This bill would fund a pilot program to allow properly trained county veteran service officers to develop claims. This intergovernmental partnering could speed up the adjudication process, improve accuracy *and* enhance the linkages between governmental layers as they serve veterans.

I believe this is good policy. In fact, Mr. Chairman, I would support including in this pilot state and municipal veteran service officers.

To ensure that veterans get quality results, I also suggest that service officers are certified by VA.

This approach has already been tried with considerable success. A 2002 pilot program between the New York State Division of Veterans Affairs and the Buffalo, New York, VA regional office showed that this concept could reduce claim development time and improve accuracy; the concept is sound.

Mr. Chairman, I look forward to hearing more about H.R. 1444 and 1490. I am concerned these bills would create unfortunate and unintentional consequences but fail to solve the fundamental problems they ostensibly address.

H.R. 1444 would provide veterans \$500 per month if their compensation and pension claim was remanded by the U.S. Court of Appeals for Veterans Claims or by the Board for Veterans Appeals and it has been over 180 since the date of the remand.

There is no recoup mechanism for this money if it is determined the veteran does not qualify to receive it.

H.R. 1490 would give veterans the median amount of compensation for a claim based on a brief statement of evidence until their claim has been adjudicated. The bill also directs the Secretary to audit a percentage of these claims for accuracy and fraud.

Mr. Chairman, I understand that the intent of these bills is to reduce the backlog. It seems to me that both bills are what could be called "frustration legislation," written out of sheer and justified frustration with a broken system.

I suggest it is better to concentrate instead on fixing VBA's systemic problems within the claims processing system. I believe it is within our power, working with VA, to do that without making payments to people who may not have earned them and potentially creating an incentive for fraud.

Mr. Chairman, part of the problem is one of access for veterans to VA expertise. Some veterans are simply unaware that they may have grounds for a claim.

That is why I am proud to announce that today I introduced H.R. 1863.

This bill would require VA to conduct a pilot project that would provide mobile claims processing stations that would travel within a given VA regional office's area of responsibility, providing veterans with outreach, help on their claims, and also collecting feedback for use in systemic improvements.

Today, I also introduced H.R. 1864.

This is another piece of legislation that could have a significant impact on the claims backlog. H.R. 0000 authorizes a pilot program for an automated rules-based system that could improve decisionmaking on simpler claims issues, freeing up highly trained claims developers and adjudicators to work tougher issues.

The bill authorizes \$5 million per year for 4 years for the project. It would permit VA to contract for development and implement the system in not less than two regional offices.

Such a system would address the three major flaws in the current system: timeliness, consistency, and accuracy. It would not call for changing the current rating system, but would make decisions with that system more efficient.

A rating produced in this manner will be less likely to be appealed and will thus contribute significantly to reducing the backlog.

And that, I think, is what all of us here are truly after.

Mr. Chairman, I yield back.

**Statement of the Honorable Mike McIntyre, a Representative in Congress  
from the State of North Carolina**

Chairman Hall, Ranking Member Lamborn, Members of the Subcommittee, I am honored and privileged to have the opportunity to testify before you today about the Veterans Outreach Improvement Act of 2007, H.R. 67. I have been a long-time supporter of our veterans who have selflessly served our Nation in the armed forces, and I have introduced this bill to provide the assistance that veterans, in my district and yours, need and deserve. This bill was written with the help of the National Association of Country Veterans Service Officers and enjoys that organization's support.

The Veterans Outreach Improvement Act would address three important outreach issues: coordination, local grants, and funding. The bill would require the Secretary of the Department of Veterans Affairs to establish a plan to coordinate outreach activities throughout the department. It would also authorize \$25 million annually for 3 years that would be used to provide grants to state and local governments for outreach purposes. By empowering veterans service offices on the local level, we will get more bang for our buck to locate veterans and assist them in receiving the benefits they deserve.

**Coordination**

The Veterans Outreach Improvement Act would require the Secretary of the VA to establish, and annually review, a plan to coordinate outreach activities within the Department; specifically among the Office of the Secretary, Office of Public Affairs, Veterans Health Administration, Veterans Benefit Administration, and National Cemetery Administration.

Currently, different accredited organizations have trouble accessing veterans' records. A veterans service office may be unable to access a veteran's records if that veteran granted Power of Attorney to another organization even if both organizations are accredited by the VA. These organizations have begun to establish their own Memorandums of Understanding in order to share access to records, but this solution is only a temporary patch for a more substantial problem.

Under this bill, the VA Secretary would create a more fluid system that would address the access problem. Increased access to records would benefit veterans directly. Veterans should not have to cross any additional red tape in order to receive the benefits they have earned.

**Outreach Grants**

Many veterans, spouses, and surviving spouses are unaware of benefits to which they are entitled through the VA. According to a Knight Ridder report, as many as two million poor veterans or their widows might not be receiving up to \$22 billion annually in pensions to which they are entitled. Other estimates suggest that only 30% of veterans receive the benefits for which they are eligible. Widows are at an even greater risk for not receiving potential benefits. Of the survivors of deceased soldiers who could qualify for pension benefits, only one out of seven actually receives a monthly check according to the VA's own reporting.

One issue that has received increased attention after the recent publicity of the problems at Walter Reed Army Medical Center is the need for seamless transition. Unfortunately, too many of our military personnel come back from overseas and get lost in the shuffle when they leave the Department of Defense health care system and enter the Veterans Administration's system. Our nation makes a commitment to care for these brave men and women even after they leave the armed services. While there are currently increased efforts to improve seamless transition, many veterans have already fallen through the cracks. It is important that our government reaches out to these veterans to inform them of the benefits they have earned through their service.

There is clearly a need for greater outreach to our Nation's veterans. This bill defines outreach as "the act or process of taking steps in a systematic manner to provide information, services, and benefits counseling to veterans, and the survivors of veterans, who may be eligible to receive benefits under the laws administered by the Secretary to ensure that those individuals are fully informed about, and assisted in applying for, any benefits and programs under such laws for which they may be eligible." America's veterans have earned these benefits, and it is our responsibility to inform them of what they have earned.

H.R. 67 would establish a program for the VA Secretary to provide grants to states for outreach activities, establishing cooperative relationships, and assisting in the development of veterans' benefits claims. States may award portions to local governments. If no local veterans service program is available in a certain community, states may use funds from grants to operate in place of a local agency or to

establish a local veterans service program. Funds from the grants will not be used to supplant existing state or local funds and will not constitute more than half of the cost of outreach activities for state or local governments.

In order to allocate these grants most efficiently, the Secretary would be required to direct assistance to areas with large and growing veteran populations. Service organizations in these areas will face greater difficulty in reaching out to veterans and helping them obtain the benefits which they deserve. Federal funding will be most effective in these areas.

### **Funding**

H.R. 67 authorizes \$25 million annually for Fiscal Years 2007, 2008, and 2009. That sum is one dollar for each veteran in the United States. Also, this bill would establish a separate account in the Department's budget for the outreach program. This funding would have to be re-authorized after 3 years and could be adjusted according to the success of the program.

The bill's funding allocation could be used by state or local governments for various purposes, such as establishing education and training for state and local government employees for accreditation to provide outreach services. Funding from the grants could also be used to improve existing offices by hiring additional staff or improving their technological capabilities. In addition, these funds could be used to purchase advertising space or establish transportation programs for veterans to travel to health care facilities.

### **Conclusion**

The United States makes a commitment to take care of each man and woman that serves our country in uniform. Our veterans deserve the benefits they have earned, and it is our obligation to make sure they know what those benefits are and have assistance in developing their claims. These benefits are important not only to our current veterans but to those who are entering the armed services today. Ensuring that these brave individuals will receive benefits after they leave the service will improve recruitment and retention which will enhance military readiness.

Providing resources at the local level will greatly improve outreach capability. County Veteran Service Officers are already doing great work in outreach and claims development. With more resources and better coordination within the VA, they can do even more to assist our veterans.

It is clear that we need to improve outreach to our veterans. That is why I encourage this Subcommittee to give the Veterans Outreach Improvement Act of 2007 its full consideration, and I look forward to working with each of you in furthering the cause of our Nation's veterans.

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### **Statement of the Honorable Joe Baca, a Representative in Congress from the State of California**

Thank you Chairman Hall, Ranking Member Lamborn and the Members of this distinguished Subcommittee for holding this important hearing and for giving me the opportunity to come speak on H.R. 1435. This is legislation that I introduced earlier this year to help address the veterans' claims backlog, which is an issue I have been concerned about for many years. While I have carried backlog-related bills in the past, H.R. 1435 is new for the 110<sup>th</sup> Congress and I am excited to talk to you about this bill today.

As you may already know, there are currently an estimated 600,000 to 800,000 backlogged claims pending at the Veterans' Administration. The average claim currently takes about 6 months to process and the average appeal takes almost 2 years!

What's also important to keep in mind is that the majority of these pending claims are for older veterans—many in their sixties and seventies, who depend on their veterans benefits to assist them in the latter years of their life. These men and women served our country honorably in conflicts like Korea and Vietnam and deserve to live the rest of their lives with dignity and respect! Instead, many of them are spending the last years of their life filling out redundant paperwork, calling the Department of Veterans Affairs, and waiting for the benefits they deserve. Many of these veterans need medical care for conditions like diabetes, post-traumatic stress disorder, and other serious medical conditions that can't wait 6–12 months for treatment.

An article in last week's Washington Post described World War II veteran Seymour D. Lewis, a former Army private who waited for the mailman at his front door every day for 5 years for a letter from the VA about his disability claim. He had lost the hearing in his right ear due to a grenade explosion in 1944 and it wasn't

until 2001 when he started to receive \$200 a month from the VA for his disability. He felt that he deserved more and appealed his claim. So Seymour Lewis filed an appeal and waited for his mailman to bring a response. Unfortunately, the response never came. His claim was still pending when he died last year at the age of 80.

This tragedy is not an isolated incident. It is happening all across the country. Its shameful and alarming and what's worse is that the current backlog figures do not include the hundreds and thousands of veterans that will be returning home from Iraq and Afghanistan over the next few years. According to a report by the government Accountability Office there will be 400,000 new claims by the end of 2009 alone.

All of these facts make it clear to me that we need to come up with new solutions *now*. We need a system to eliminate the current backlog and expand our existing Federal infrastructure to accommodate the 638,000 *new* claims that GAO expects to be filed in the next 5 years from the Iraq War alone.

I am extremely proud of H.R. 1435 because I believe it is a creative, common-sense idea that takes a positive step toward reducing the backlog. H.R. 1435 is based on legislation I carried in the 109<sup>th</sup> Congress, H.R. 616, the Veterans Claims Backlog Reduction Act of 2005. However, H.R. 1435 is a completely new bill that incorporates new ideas and addresses some past concerns and I truly believe it will make difference in the lives of our veterans.

H.R. 1435 is a leaner, meaner bill that has built-in accountability, incorporates fiscal discipline, and provides a much-needed service to our veterans and their families. This legislation would establish a 3-year pilot program at the Department of Veterans Affairs (VA) to reduce the backlog by partnering with County Veterans Service Officers in five states to develop pending claims.

The five states—California, Florida, Ohio, South Carolina and Texas—were picked based on the extent of their County Veterans Service Officer networks, the veteran population in those states, and because we wanted a good sample of both large and small states in different regions of the country.

Under the pilot program, the VA will be required to identify the pending claims in those five states that need further development in order to be considered “ready to be rated.” The VA will then refer those claims and any relevant information to the veteran’s nearest County Veterans Service Officer (CVSO). The CVSO will then contact the veteran or their family and work with them and any veteran service organization that has established a power of attorney to fully develop the claim. Once the claim is fully developed, it will be returned to the VA ready for approval.

At the end of the pilot, the Secretary will then submit a report to Congress that will give an accurate “before” and “after” snapshot of the claims backlog in those states. It will show how many claims each state started with, how many are left, and how many were successfully processed during the pilot. Congress, the VA, the states, and the American public will be able to see in black and white whether or not this program was effective.

If it is successful, the VA will have a proven program that can be expanded to other states. If it is unsuccessful, then at least we made an honest attempt to address an urgent problem without wasting the taxpayers’ money.

We are still waiting on a cost estimate for this pilot from the Congressional Budget Office, but because this pilot uses an existing network of county employees, the cost to the taxpayers will be relatively minimal. The only costs related to this program will be administrative. For instance, the VA will have to identify the pending claims, transfer them to the CVSOs and then compile a final report at the end of the pilot.

H.R. 1435 is vastly improved to H.R. 616 for many reasons. First, it addresses a concern that since County Veterans Service Officers aren’t available in every state, any nationwide program utilizing CVSOs would unfairly punish those veterans who reside in states that don’t. Most states—37 to be exact—utilize a network of CVSOs to provide the majority of its veterans’ services, in conjunction with various veterans groups. By creating a 3-year pilot in a diverse sample of states, we will be able to see if the CVSO system is truly effective and thereby provide the remaining 13 states with important information on which systems work and which don’t.

Second, H.R. 1435 improves upon H.R. 616 by bringing veterans service organizations into the process. We clearly provide language in the bill that acknowledges the role of veteran service organizations in the claims process and directs the CVSO to work with any VSO with an established power of attorney. Our veterans groups play a vital and irreplaceable role in the veterans claim process and we welcome any assistance and guidance that will enhance the pilot program and help the CVSO and VA to quickly and effectively develop the claims.

Third, H.R. 1435 gives us an opportunity to try a program to see if it really works. After all, the goal of this legislation is to create a reliable and effective means of reducing our veterans' claims backlog. To authorize any Federal program that doesn't actually accomplish this goal would not only be useless, but it would be doing our veterans a huge disservice. They have already sacrificed enormously for this country and have waited too long to receive the benefits they deserve. We need a system that works.

Finally, H.R. 1435 helps to address the argument that the backlog isn't just caused by a lack of developed claims. Some argue that the part of the problem has to do with a shortage of staff at the VA to evaluate the claims once they are submitted. By allowing the County Veterans Service Officers to take some of the claims development burden off the Department, the VA can then take the next 3 years to hire and train more staff to evaluate claims and fight this battle on both fronts.

Deputy VA Undersecretary Robert Aument testified before this Subcommittee a month ago and said that the VA plans to add 400 employees by the end of June. If the backlog problem is really being caused by a lack of staff who can evaluate these claims, then let's direct this new manpower toward that part of the process. In the meantime, why not harness the collective expertise of 2,400 VA-Accredited County Veterans Service Officers who already assist veterans in submitting their claims to work on the development side of the equation?

CVSOs are often so effective at their jobs that many states rely on them to provide the bulk of their veterans' claims services. For instance, in my home state of California, there are approximately 160 highly qualified CVSOs while the CA Department of Veterans Affairs (CDVA) only has 14 veterans claim representatives. In a recent report by the CA Department of Veterans Affairs, it was recommended that the best way to improve claims services for veterans in California was to increase state funding to CVSOs.

Once again, I would like to thank Chairman Hall, Ranking Member Lamborn and the Members of this Subcommittee for giving me the opportunity to speak on this legislation and hope that you will lend your support to it. H.R. 1435 is a good common-sense bill and I think it will be a good first step toward reducing our backlog and giving our veterans the benefits and services they so deserve.

I would like to thank our veterans who have served our country so courageously. I'm sure that I speak for every Member on this panel today when I say that we want to make sure our government is doing everything it can to provide our men and women in uniform with the best resources before, during, and after their service to this country.

I thank you for this opportunity and would be happy to respond to any questions you may have at this time.

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**Statement of the Honorable Joe Donnelly, a Representative in Congress  
from the State of Indiana**

Chairman Hall and Ranking Member Lamborn, thank you for calling this legislative hearing today, and I thank you for this opportunity to speak on the need for new approaches to both address the claims backlog and also help America's veterans cope with what is frequently a months-long process to get the benefits they deserve.

The problem is well documented. We have a benefits system in place that is struggling to keep up with a growing load of disability claims cases. Right now, a veteran filing a new claim can expect an almost 6 month wait until they find out whether their claim is approved by the VA. If they appeal the VA's determination, they can expect their case to drag on for nearly two more years.

Unfortunately, this is a problem that is likely to get worse before it gets better. As you know, in the Iraq and Afghanistan conflicts, the ratio of soldiers wounded to killed is 16 to 1, the highest of any war in our nation's history. With so many new and future veterans serving in Iraq and Afghanistan, we have a bow wave of new claims we must prepare for, in addition to the 180,000 Iraq and Afghanistan veterans who have already applied for disability benefits. Harvard University professor Linda Bilmes, who testified before this Subcommittee last month, estimates that over the next 5 years OEF and OIF veterans could file 638,000 new claims for benefits.

I genuinely believe that the VA is trying to do the best it can under the current system. VBA claims workers are dedicated individuals who are working hard to see that our veterans are able to get the proper service and benefits deserving their service and sacrifice to our Nation. I look forward to working with my fellow colleagues on the Veterans' Affairs Committee to make sure the VBA has the resources

and staff in place to provide for accurate and timely claims adjudication. I also look forward to working with the VA and the Department of Defense to provide for a seamless transition from active duty to veteran status.

However, I also believe we must explore more innovative approaches to address the fundamental shortcomings of the current claims process.

Mr. Chairman, as you know, new veterans often leave the service to an uncertain future. Sometimes, just weeks removed from the battlefield, they must find a job, a place to live and identify how they will get the medical care they need. Many older veterans are on fixed incomes. For many disabled veterans, their benefits and disability compensation are an important part of their ability to meet the needs of their families and make ends meet. It is our veterans who pay the price—both emotional and financial—for the long time it takes to process a claim.

I know there are a number of factors to explain in part why claims approval times are long and why the backlog has increased. However, I believe we must do something to get veterans some assistance on the front end while they wait for the VA to make a determination. Just explaining the delay doesn't help our veterans pay the bills. We need to expedite benefits to help veterans get by while their claims are considered.

Currently, approximately 88 percent of veterans' claims are ultimately approved by the VA. This would suggest that the vast majority of claims filed by veterans are done so accurately and truthfully by men and women who are seeking compensation and benefits for very real conditions. I believe that our veterans have earned the benefit of the doubt when it comes to their claims on disability benefits.

Congressman Fred Upton and I introduced H.R. 1490 to provide veterans the benefit of the doubt when it comes to their claims. Based on an idea Professor Bilmes first put forth earlier this year, this bill would approve new disability claims up front through an expedited process, and direct the VA to audit a percentage of these claims to ensure accuracy and to deter and detect fraud. Those claims that have already been denied or are currently in the appeal process would not be included in this new process.

Essentially, a veteran who can provide proof of service and minimal supporting evidence for their claim would meet with a VA claims worker to identify the proper disability and benefit they are filing for. Unless the VA or the claims worker determines there is sufficient evidence to the contrary, the VA would approve the veteran's claim at a median benefit for that type of disability and the veteran would immediately become eligible for benefits.

Benefits awarded through this "benefit of the doubt" approach could be changed by the VA once a more appropriate level of benefits is determined. However, until that happens, veterans would still be able to get a benefit for a claim for which they are requesting. H.R. 1490 would direct the VA to ensure that an adequate number of claims workers are assigned to assist in carrying this out.

The burden of proof would be shifted from the disabled veteran to the VA. As Professor Bilmes has pointed out, a similar approach of approve and audit is successfully used by the IRS for tax returns and by the SEC for filings. There are already models in place.

By giving our veterans the benefit of the doubt up front and providing some kind of disability benefits at the beginning, we would also provide an incentive for the government to implement methods to reduce the wait time on processing the claims if it is the government bearing the cost of delay instead of the veteran.

Further, by approving more new claims up front, more VBA personnel could be freed up to work on reducing the current backlog of claims and appeals.

It is going to take a considerable amount of time to hire and train the number of new claims workers who will be needed to deal with the continued high rate of new claims as a result of returning veterans from OEF and OIF. However, by implementing a benefit of the doubt approach up front with veterans, we would get benefits to veterans much faster than we currently do.

We are aware that this is an unorthodox approach. However, it is an idea that I feel strongly deserves more consideration by this Subcommittee.

Mr. Chairman, I view H.R. 1490 as a starting point to allow Congress the opportunity to consider different approaches to expediting benefits for disabled veterans by giving them the benefit of the doubt. I know it is not a perfect proposal, but I look forward to continuing to work with this Committee, the VA, and veterans service organizations to move this idea forward.

Thank you very much for this chance to address the Subcommittee on this very important subject, and I am pleased to answer any questions you may have.



**Statement of the Honorable Fred Upton, a Representative in Congress  
from the State of Michigan**

I thank the chairman and Ranking Member for convening today's hearing on this very important and pressing issue and for giving Joe and I an opportunity to testify on the need for innovative methods to solve the VA's disability claims backlog and deliver benefits to disabled veterans as quickly and efficiently as possible.

Recent headlines have brought an unprecedented amount of attention to the care given to our brave sons and daughters wounded as a result of actions related to the Global War on Terror. The situation at Walter Reed Army Medical Center has opened the door to scrutiny of many facets of service-member and veteran care in issues ranging from quality of care and accommodations in both DoD and VA medical facilities to the apparent lack of parity between DoD and VA disability ratings, to the unbelievably daunting backlog of pending VA disability claims. It is becoming increasingly evident that major reforms must take place in many areas in order for care to meet the standards that our veterans deserve.

Among the many issues that need to be remedied, the elephant in the room is the enormous backlog of disability claims, which is the subject of today's hearing. I was struck by a recent report compiled by Linda Bilmes, a faculty Member at Harvard University's John F. Kennedy School of government, that detailed an enormous and growing backlog that our troops are enduring when seeking disability benefits. The report paints a bleak picture of the future if the status quo is maintained.

The statistics are startling. As of December 9, 2006, the Veteran Benefits Administration had a backlog of almost 400,000 claims. As a result, the VBA takes an average of 177 days to process an original claim and 657 days to process an appeal. This delay deprives many veterans of Iraq and Afghanistan of much-needed income at a time in their lives when they are not only learning to cope with a disability, but also transitioning into civilian life.

This problem not only needs to be addressed with a deep, systemic look at how claims are processed, it needs to be dealt with as swiftly as possible. The backlog is expected to grow exponentially as waves of troops continue to return from operations in Iraq and Afghanistan. It is difficult to predict the exact demand and strain that the newest veterans will place on the system, but there is one statistic that is particularly alarming. The ratio of soldiers wounded for every soldier killed in OIF and OEF is almost 8 to 1, as compared to 2.8 to 1 in Vietnam and 2.6 to 1 in Korea. The 8 to 1 ratio is according to DoD statistics, which only take into account service-members wounded in battle. If VA statistics are used, in which a wounded service-member is defined as any soldier who is medically evacuated from theater, than that ratio rises to 16 to 1.

It is easy to recognize the conclusion of the Harvard research: the problem is only going to get worse, the backlog is only going to get larger, and the amount of time it takes for a veteran to receive disability benefits will become increasingly unacceptable.

The cause of the backlog does not lie in apathy or incompetence of VA workers. In fact, I believe that just the opposite is true. Many VA workers are veterans themselves, and I believe all of them to be true patriots who want to help vets in any way they can. I have heard more than one story about claims processors working through the weekend in order to resolve their caseloads. It is obvious that the VA's manpower is stretched to the limit, and I believe it is imperative that congress works to ensure that they have the resources and manpower in place to quickly and accurately process claims.

While adding staff and resources will go a long way to addressing the backlog, I believe that an innovative approach is needed to truly address the problems inherent in the current system.

Congressman Donnelly and I have introduced a bill, H.R. 1490, that approaches the problem from a unique angle. Based on an idea put forth in the Harvard report, HR 1490 will provide the veteran with the benefit of the doubt by directing the VA to approve new claims up front through an expedited process, and allowing the VA to reach back and audit a percentage of them to detect and deter fraud. According to VA statistics, close to 90% of these claims are approved under the current system.

Veterans would simply need to prove their service and provide minimal supporting evidence for their claim. They would provide that information to a VA claims worker to identify the proper disability and appropriate benefit. Unless the claims worker determines that the original information is not sufficient, the veteran is allotted the median level of benefit for that type of disability. Their claim will then be reviewed by the VA, and when it is resolved, the veteran will receive a permanent rating and the benefit amount appropriate to it. The initial "median-level"

benefit simply gives disabled veterans some money right out of the gate so they can better deal with their transition.

This bill essentially shifts the burden of proof from the veteran to the government. This method is not unlike the one used by the IRS and other government agencies with large caseloads.

Mr. Chairman, we must think outside the box when confronting a problem of this magnitude. We must do what is necessary on behalf of those who have sacrificed for our country.

I believe that HR 1490 is a good starting point in the legislative conversation revolving around the benefits backlog. I am aware that this proposal is not perfect, but I look forward to working with Joe and my other friends and colleagues on the Veterans Affairs Committee in moving this idea forward and finding a solution to ensure that our courageous servicemen and women seeking disability benefits receive prompt attention.

Thank you once again for allowing me the opportunity to testify on this very important issue. I am pleased to answer any questions you might have. April 17, 2007, F. Douglas LeValley, Past-President, National Association of County Veterans Service Officers

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### **Statement of F. Douglas LeValley, Past-President, National Association of County Veterans Service Officers**

#### **Introduction**

Chairman Hall, Members of the Subcommittee, it is truly my honor to be able to present this testimony before you. As Past-President of the National Association of County Veterans Service Officers, I am commenting on:

- National Association of County Veterans Service Officers (NACVSO) views on H.R. 67, Veterans Outreach Improvement Act of 2007.
- NACVSO views on H.R. 1435, Department of Veterans Affairs Claims Backlog Reduction Act of 2007. NACVSO views on H.R. 1444, To direct the Secretary of Veterans Affairs to make interim benefit payments under certain remanded claims, and for other purposes.
- NACVSO views on H.R. 1490, To provide for presumption of service-connectedness for certain claims for benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

The National Association of County Veterans Service Officers is an organization made up of local government employees. Our Members are tasked with assisting veterans in developing and processing their claims. Between 75 and 90% of the claims presented to the Veterans Administration each year originate in a county veterans office. Our Members sit across from those men and women who wish to file a claim each day. They are our friends and neighbors Members of our communities whom we see often daily. We exist to serve veterans and partner with the National Service Organizations and the Department of Veterans Affairs to serve veterans. Our Association focuses on outreach, standardized quality training, and claims development and advocacy. We are extension or arm of government, not unlike the VA itself in service to the nation's veterans and their dependents.

#### **H.R. 67, Veterans Outreach Improvement Act of 2007:**

The outreach that I will address is the hands on approach. Across our nation there are veterans that do not think they are a veteran because they did not lose a limb or get injured in anyway. They came home and started to work to support their families. They have never looked for any help from the government. When the veteran dies their families still do not know they are entitled to benefits just because their husband or father served his country. These are the people that need outreach. They are mostly lower income and have never reached out to the VA and therefore they don't think they are entitled to this help.

I look at rural and urban America and see the great need to make these veterans aware of the benefits that they deserve, that are earned entitlement not welfare. These veterans have never made use of the VAMC's, the GI Bill, Home Loan, Pension or Compensation Benefits. They just served their country and came home. It is so rewarding when you meet one of these veterans and tell them what they may be entitled to and see the hope on their face. It sometimes means the difference in eating or buying medicine. I am sure if a study was completed you would see a large number of rural veterans have never used the VA for any service and did not know they could. The VA has a responsibility to reach out and make everyone aware of their entitlement. One of the ways is for the County Veterans Service Officer to

spread the word. To go into the communities with the message those veterans and their dependents have benefits due them. While many counties do fund a County Veteran Service Officer, the vast majority do not provide funding for outreach and other informational services.

Outreach efforts must be expanded in order to reach those veterans, dependents and survivors that are unaware of their benefits and to bring them into the system. Nearly 2 million poor Veterans or their impoverished widows are likely missing out on as much as \$22 billion a year in pensions from the U.S. Government, but the Department of Veterans Affairs has had only limited success in finding them, according to the North Carolina Charlotte Observer.

Widows are hardest hit. According to the VA's own estimate, **only one in seven** of the survivors of the nation's deceased Soldiers, Sailors, Airmen and Marines who likely could qualify for the pension actually get the monthly checks. What's more, participation in the program is falling. **Veterans and widows are unaware that the program exists.** They simply don't know about it and the VA knows that many are missing out on the benefit "We obviously are here for any veteran or survivor who qualifies," said a VA Pension official. **"But so many of these people—we don't know who they are, where they are."** The VA's own report from late 2004 recommended that the agency "improve its outreach efforts" with public service announcements and other pilot programs. While it made limited efforts to reach veterans or their widows through existing channels, it is difficult to determine whether such efforts have been successful.

Of all those likely eligible, only 27 percent of veterans and 14 percent of widows receive the money. It is obvious that there is a great need for outreach to into the veteran's community and the local CVSO is the advocate closest to the veterans and widows and with minimal funding could reach the maximum number of eligible veterans and widows. Therefore, NACVSO is supporting H.R.67, introduced by Congressman Mike McIntyre of North Carolina, that would allow Secretary Nicholson to provide Federal—state—local grants and assistance to state and county veteran's service officers to enhance outreach to veterans and their dependents. We are already present in most communities and stand ready to assist the Department of Veterans affairs with this monumental task.

#### **H.R. 1435, Department of Veterans Affairs Claims Backlog Reduction Act of 2007:**

In June of 2002 the National Association of County Veterans Service Officers (NACVSO) offered testimony before the House Veterans Affairs Subcommittee on Benefits. The testimony was centered on the backlog or inventory of veteran's claims for their earned benefits. At that time the NACVSO testified, the inventory of veteran's claims was approximately 525,000 claims. Currently the inventory continues to grow and now stands more than 851,000 claims. This inventory causes a wait, in some cases, of more than one year. During the testimony of 2002, President George Hunt stated that many veterans have died while waiting for their claims to be adjudicated. He went on to state; "Dying while Waiting" is not acceptable for the men and women who placed themselves in harm's way for our great nation." Nearly 5 years later, the inventory problem is worse and it is still not acceptable for our veterans to die while waiting for their "earned" benefits.

As we prepare this testimony there are approximately 25 million honorably discharged veterans of the armed forces of the United States. These men and women served honorably and expect a grateful nation to keep the promises that were made to them upon their entry onto active duty. A large percentage of those veterans are over the age of 70. It is the responsibility of the U.S. Government to live up to its promises that were made and accepted in good faith. Those promises that include medical care and compensation for illnesses and wounds sustained in the defense of freedom. A mechanism must be developed so that we have the means and the ability to serve these most deserving of our citizens—those that have safeguarded our rights and freedoms that so many take for granted.

Our Members, County Veteran Service Officers (CVSO), are present in 37 of our 50 states and located in over 700 local communities. This readily available work force represents approximately 2,400 full time employees who are available to partner with Department of Veterans Affairs, Department of Defense and the Department of Labor to help speed the process of claims development and transition of our military personnel to civilian life. H.R. 1435, sponsored by Congressman Baca of California, provides a way for the Department of Veterans affairs to enlist the aid of these CVSO's in a pilot program, beginning in five states. CVSO's, through the claimants powers of attorney, would fully develop, as many as possible, claims passed from the local VA Regional Office. Thereby assisting in reducing the claims backlog by returning fully developed ready to rate claims. The availability of ap-

proximately 2,400 trained, full time CVSO's available to work at the local level developing claims will free up VA personnel for other task. NACVSO supports the pilot program of H.R. 1435 and believe that its success will cause the Secretary of Veterans affairs to expand the program into other states.

**H.R. 1444, To direct the Secretary of Veterans Affairs to make interim benefits payments under certain remanded claims, and for other purposes:**

The backlog of remanded claims continues to be a problem for the veteran and H.R. 1444, sponsored by Congressman Hall of New York provides relief for any veteran having a claim remanded for more than 180 days with out a decision. While some remands continue for over a year the financial burden upon the veteran becomes unbearable. NACVSO supports the payment of interim benefits of \$500.00 per month to each claimant as a temporary solution to the remand backlog until the Secretary of Veterans Affairs can provide suitable measures to process remands in a timely manor.

**H.R. 1490, To provide for a presumption of service-connection for certain claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes:**

NACVSO supports H.R. 1490, sponsored by Congressman Donnelly that provides for presumption of service-connection for claims filed by combat veterans.

Under this proposal processing of claims would become simpler and the addition of online application could reduce the present 177 day for an initial claim to a manageable period thus allowing combat veterans to be better served.

**CONCLUSION:**

This concludes my comments. I am ready to answer any questions the Committee may have. Thank you.

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**Statement of Carl Blake, National Legislative Director,  
Paralyzed Veterans of America**

Chairman Hall, Ranking Member Lamborn, members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to testify today on H.R. 67, the "Veterans Outreach Improvement Act of 2007," H.R. 1435, the "Department of Veterans Affairs Claims Backlog Reduction Act of 2007," H.R. 1444, a bill authorizing the Secretary of Veterans Affairs to make interim benefit payments under certain remanded claims, and H.R. 1490, a bill authorizing the Secretary of Veterans Affairs to provide for a presumption of service-connection for certain claims for benefits. PVA is extremely supportive of your effort to address the ever-growing problem of the backlog of claims for benefits.

**H.R. 67, the "Veterans Outreach Improvement Act of 2007"**

PVA supports the Committee's effort to inform more veterans about the benefits that are available to them and their families. With this financial assistance from the VA in the form of grants, states can review their outreach programs and enhance or update those efforts that have been neglected through the years.

Many states have used the Internet to list general information about their respective departments of veterans' affairs. However, tight budgets have kept states from constantly updating information and keeping it fresh. These sites could be enhanced to become a better resource for today's veteran. Many younger veterans understand this type of media better and are much more likely to use it, as opposed to standard print information. State websites could interact with the divisions of employment to list current employment opportunities for veterans. Veteran could also access information about benefits. Internet access in conjunction with CD's and DVD's offers states an inexpensive method to distribute a large amount of information to the veterans. VA grants could also be used to produce videos describing veterans programs and how to contact the local state office. Informational public service announcements could likewise be circulated to community cable providers.

Production of current brochures that summarize veterans' benefits provided by a state would also be a positive use of additional funding. This could include the locations and phone numbers for that state's service offices. The updated informational brochures could be made available at some Federal offices, state offices, including the employment office, and county offices. This would represent constructive use of a grant from the VA. Some states have reduced the budget for this type of outreach

as their departments of veterans' affairs are a lower priority than state mandatory programs.

The VA's Readjustment Counseling Service has operated community-based facilities, called Vets Centers, since 1979. Currently the VA maintains 209 Vets Centers in all 50 states, and the District of Columbia. These centers provide psychological counseling for war-related trauma, community outreach, case management and referral activities. In 2007 and 2008, the VA will open 23 more Vets Centers across the nation. PVA supports the expansion of this program with the hope that the program will be integrated into the support network for veterans, thereby enhancing outreach at the local level.

Successful outreach has also been achieved in several states that have sponsored a program called the "Supermarket of Veterans Benefits." This program started in Georgia more than 20 years ago and has been duplicated in Wisconsin and Missouri. The goal is to bring all resources that can help veterans together in one location for 1 day. The participants include all veterans' service organizations, state and county veterans service officers, state employment personnel, and VA benefits and health care personnel. The program is organized through the state's veteran's affairs office. The announcement of the event is sent to veterans' service organizations, Federal government offices, state and county government offices, including employment offices, National Guard and Reserve locations and newspapers. Georgia has used National Guard facilities for the event, which has been successful in attracting current and retired Guard and Reserve Members. The convenience for a veteran to receive information on the full range of available programs including healthcare, home loans, educational benefits, or other supports, has proven successful.

#### **H.R. 1435, the "Department of Veterans Affairs Claims Backlog Reduction Act of 2007"**

PVA supports the intention of the bill to help the VA further address the unprecedented backlog of claims for benefits. This pilot program would allow six states to use their county service officers to develop the claim for the veteran and submit it to the VA. The county veterans' service officer can currently gather the information, develop the claim, and present it to the VA for submission. This program will enhance their ability to play a vital role in helping the VA prepare a claim for rating. They are uniquely positioned to obtain evidence from local sources. However, the VA is better able to obtain such evidence as service medical records (SMRs) and Social Security records. VA employees are provided clear instructions on how to electronically obtain such records, and only with experience can one develop the skills necessary to become effective in developing that type of evidence. In some situations county service officers may need more training to properly complete a claim.

PVA currently has 66 veterans' service offices staffed by 135 personnel in the field. These are full time employees of the national organization. PVA invests 18 months of training to develop its service officers. The program involves successful completion of training manuals, tests that accompany the manuals, and working with a senior service officer. PVA conducts ongoing regional training as well as participation in VA training at the local level. This allows PVA service officers to be familiar with the training of VA personnel and also permits valuable interaction with VA claims processors and other staff to identify issues they are seeing from outside of the VA. This pilot program proposed by this legislation could be a component to help alleviate the backlog. However, success will be determined by continued training and commitment of the county service officers, similar to the time and energy that PVA puts into its own service officer program.

Additionally, Congress should focus its attention on fully implementing "Virtual VA." This would allow raters, adjudicators, and all service officers (for the cases with Power-Of-Attorney on file and for personnel trained and certified in privacy and security of records), to have electronic access to the electronic VA file, VA medical center records, and SMRs. This will help alleviate the paper chase that currently takes place.

#### **H.R. 1490 (Presumption of Service-Connection)**

PVA does not support the idea of presumption of service-connectedness for submitted claims. It would require the VA to adjudicate a new benefit, the "interim award", rather than focusing their resources on properly completing the initial claim. If the service connection is reasonably allowable, the regulations provide for a prestabilization rating (38 C.F.R. § 4.28) at a 50% or 100% rate for recently returned veterans. One year later the veteran is examined and evaluated. Unfortunately, this regulation is rarely used.

Even if the veteran thought that they may be asked to pay the money back to the VA in three or 4 years, some veterans may still file an unsubstantiated claim. The long and frustrating process of filing a claim for compensation does not discourage some veterans from filing fraudulent claims. We believe that if Congress lowers this initial threshold, the results will be an overwhelming number of claims filed for compensation.

#### **H.R. 1444 (Interim Payments Following Remand)**

Although this is an effort to address the tremendous backlog of claims, this legislation would simply add to the workload. The bill, states that if the final decision is not to award benefits, the amounts paid as interim benefits shall not be considered to be overpayment for any purpose. This policy would encourage veterans to file frivolous claims—inflated claims that would further slow the process down. Furthermore, this would create a potential enormous cost to the VA if it is forced to pay for claims that ultimately will be denied. Resources can be better used by improving the system rather than offering free money to everyone filing a claim, regardless of its legitimacy.

PVA believes that a major reason for the current delay is caused by the regional office not producing the proper documentation in the beginning. There is no incentive for the VA regional office to completely develop a claim prior to denial and certification to the Board of Veterans Appeal. It has been documented by a quality review team that 30% of the remanded appeals were caused by the regional office not complying with existing instructions regarding development of the evidence. Some claims are returned two or three times before being accepted. In developing the claim, VA regional offices do not follow the instructions for development of evidence as explained in the VA instruction manual for adjudication procedure.

In the end, we believe that many of the problems in the Veterans Benefits Administration are centered on proper training and accountability. Without uniform training across all of VBA on the standards established in regulations, problems will continue to arise and the claims backlog will continue to grow. Furthermore, it is absolutely essential that VBA personnel at all levels be held accountable for their own actions and the actions of their subordinates. Although we continue to advocate for adequate resources and additional staff, these steps will not go far enough if training and accountability are not a major component. Similarly, we recognize that veterans' service organizations have a commensurate obligation to properly train and supervise their personnel.

Mr. Chairman, PVA recognizes that the challenge that this Subcommittee faces in trying to properly address the claims backlog is enormous. We look forward to working with the Subcommittee and all of Congress to find workable solutions for what has become a national problem for current veterans and new veterans returning from Iraq and Afghanistan. However, we must ensure that short-term fixes do not lead to long-term problems.

Thank you for again for allowing us to testify. I would be happy to answer any questions that you might have.

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#### **Statement of Gerald T. Manar, Deputy Director, National Veterans Service, Veterans of Foreign Wars of the United States**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.4 million Members of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to present our views on the following legislation.

The first bill under discussion today is **H.R. 67, The Veterans Outreach Improvement Act of 2007**. This bill aims to improve outreach activities within the Department of Veterans Affairs (VA) by coordinating the efforts among the offices of the Secretary, Public Affairs, Veterans Health Administration, Veterans Benefits Administration and the National Cemetery Administration.

In order to increase effectiveness of VA outreach, it directs the Secretary to establish a grant program for state veteran agencies by providing \$25 million in funding annually for 3 years for state and local outreach services available to veterans. It targets assistance to those locations with large and growing veteran populations.

The VFW has always encouraged and supported increased awareness of benefits and services provided by VA to veterans. We believe that *all* veterans and their survivors should have access to up-to-date information about services and benefits for which they may be eligible, therefore we support H.R. 67. However, since success of this initiative will result in increased claims submissions to VA, we urge that

funding for VBA adjudication keep pace with increases in the number of claims filed as a result of greater outreach at the local level. We also encourage that substantial outreach at the local and state level be made on behalf of National Guard and Reserve Members and would like to see additional language which specifies oversight by Congress regarding use of funds granted to state and local governments who perform outreach services, to ensure that these funds are being spent properly. Finally, we urge Congress to fund this initiative with new money since it otherwise would result in a reduction of existing services or programs.

The VFW strongly opposes **H.R. 1435, The Department of Veterans Affairs Claims Reduction Act of 2007**, a bill that directs the Secretary to conduct a pilot program intended to reduce the backlog of claims for benefits pending with VA. We believe that there are serious flaws in the legislation's approach, as well as unclear legal parameters concerning representation of a claimant by County Veterans Service Officers (CVSOs).

In section 2, the bill states that there are 2,400 full time and numerous part-time employees in the nationwide system of CVSOs of which a majority of them are accredited (accreditation is necessary for access to information concerning veterans contained in VA record systems). However, section 3, subsection 2, defines a CVSO as "any person employed or funded by any county, parish, borough, or territory whose job it is to assist veterans and eligible dependents in the application for, administration of, or receipt of benefits under any Federal, State or county veterans benefit program." This would allow anyone, accredited or not, access to a veteran's highly sensitive and personal information without any safeguards or controls.

The bill also redefines "claim" in Section 3, subsections 3, 4 & 5 without regard or reference to long established laws, regulations or judicial decisions. This will certainly cause difficulties for VA regulation writers and significant confusion within the veteran and legal communities resulting in increased appeals and litigation. It also redefines "presumptive claim" to create a whole new category of presumptive disabilities.

This redefinition of terms shows the inherent flaw in the legislation. It is written without a clear understanding of existing law. For example, an *"injury or illness claim"* is defined as a *"claim for benefits that is documented as being service connected"*. What exactly does that mean? An original claim filed for service connection? Does it mean a claim for an increased evaluation of a condition already service connected? The terms "claim", "service connection", "presumption" and others found throughout this legislation are clearly defined in existing law and regulation. This bill fails to suggest a reason why changes are necessary.

This "rewriting of terms" will force VA to alter its claims-tracking program to conform to the new definitions and then determine which cases are not ready to rate. This legislation requires VA to screen its entire backlog to determine what additional evidence is still needed, then prepare a transmittal document describing the required development before sending it to a CVSO. This is exactly the same review process that VA currently does to decide what evidence is needed in order to prepare a development letter under the *Veterans Claims Assistance Act*. Instead of preparing that letter to the claimant, this bill would require the preparation of a transmittal or instruction letter to the CVSO who would, weeks later, attempt to contact the claimant by phone or letter seeking the same information. The workload for VA would increase, not be reduced. And the development of the claim would be significantly extended while the claim goes through additional hand-offs before the veteran is contacted.

We also question section 4, subsection 1, "referral of claims to CVSOs" and the validity of distributing claims to those officers who are "geographically closest to the claimant." What about the organization which holds the Power of Attorney? Who decides where the claim is referred and when the claim is shifted from VA to CVSOs? Who will track the workload? Further, since this bill would allow CVSOs to not only take new claims but also keep them until they are fully "ready to rate", VA won't even know that it has that pending work in the pipeline. This legislation would increase the workload tracking burden on VA and hide significant portions of the backlog from view which will, over time, give the appearance of workload reduction at VA when, in fact, the work has merely been shifted elsewhere. It offers VA managers a new excuse for poor timeliness.

Since VA doesn't tell the CVSOs what to develop in claims it has never reviewed, can anyone be certain that the claims they take will be ready to rate when VA receives them?

Section 4, subsection 5 states that CVSOs are supposed to fully develop claims. Does that include developing Service Medical Records, Military Personnel Records, VA exams or expert medical opinions? Do they submit requests to DOD to verify stressors in claims for service connection of PTSD?

The net effect is that VA will still have to screen claims exactly as it does now under the “Duty to Assist” law when it instructs the CVSOs what to do.

Finally, and not the least important, the money for this program will come out of VA’s budget, reducing the number of FTE available to develop and process claims, thereby *aggravating*, not solving the problem of the backlog. The VFW believes the only way to truly solve the current situation is to provide appropriate funding and the resources to enable VBA to hire more qualified employees who can reduce waiting times, improve error rates and set and meet goals. The current claims processing system can work, if Congress dedicates the proper level of resources, and if this body uses its oversight power to ensure that VA is living up to its obligations.

The VFW opposes **H.R. 1444, legislation to direct the Secretary of Veterans Affairs to make interim benefits payments under certain remanded claims.** The proposed legislation requires VA to pay an interim benefit of \$500 per month when a claim for veterans’ benefits is remanded by either the U.S. Court of Appeals for Veterans Claims or the Board of Veterans’ Appeals (BVA), and when a decision is not made within 180 days of the date of the remand.

The VFW recognizes that this bill is intended to offer interim relief to those veterans who have waited extraordinarily long periods for a final decision on their claims. However, when the Appeals Management Center of the VBA grants entitlement to service connection or increased benefits in only 17 percent of the remands it works, we wonder why Congress would choose to award an interim benefit of \$500 per month to 100 percent of those waiting over 180 days for a decision. Further, this bill would only serve to increase the backlog and prolong the time it takes to get a case rated properly because it will require additional time to adjust the award following completion of the remand.

We also believe that it will lead to a higher remand rate inherently corrupting and further complicating the current claims process. For the month of March 2007 alone, the total number of cases in remand status was 16,577. Generally, the average remanded case remains undecided—without a final decision by the BVA—for about 2 years. It should be noted that in the first 5 months of the current Fiscal Year (FY 2007) the Board rendered 18,500 decisions, of which 20% were granted, 42% were denied and 34% were remanded back to the Appeals Management Center or Regional Office.

The development and adjudication of a veterans’ claim under the VBA system is more than just awarding compensation for an injury or illness incurred while in service, it is designed to make an individual socially and economically whole. In the end we believe that resources would be better spent at the beginning of the claims process, by hiring and training more claims adjudicators thereby ensuring the veteran a fair and accurate assessment of their needs.

The VFW also opposes the final bill under consideration today. **H.R. 1490 would provide for a presumption of service-connectedness for certain claims for benefits under the laws administered by the Secretary of Veterans Affairs.**

We believe that this legislation is based on a false premise: that 87 percent of the claims submitted by veterans are approved by VA.<sup>1</sup> VA compensation is unlike any other program administered by any agency or department in the Federal government. Entitlement to Social Security Disability payments requires simply a determination as to whether the claimant is unable to work due to disability. It is a yes or no decision. Entitlement to workers compensation is slightly more complicated in that it must be determined that the disability making someone unemployable is related to or caused by his or her job.

A determination of entitlement to veterans’ disability compensation, on the other hand, requires first a decision that the disability either arose coincident with service or, if it preexisted service, was aggravated during service beyond natural progress. Decisions by the Court of Appeals for Veterans Claims allows the grant of service connection for non-service connected disabilities which have been aggravated by service connected disabilities. So the first decision is whether a disability is service connected. The next question is how disabling is it. By law, evaluations are assigned in gradations of 10 percent from zero to 100 percent. Finally, VA must decide the effective date from which benefits can be paid.

While it appears to be true that 87 percent of recently discharged veterans are granted service connection for one or more disabilities, what is categorically untrue is that 87 percent of veterans “claims” are approved. Original claims for compensation almost always allege that more than one disability is related to service. Currently the average number of disabilities claimed is 8 or 9 and it is not uncommon

<sup>1</sup> Soldiers Returning from Iraq and Afghanistan: The Long-term Costs of Providing Veterans Medical Care and Disability Benefits; Bilmes, Linda, Faculty Research Working Papers Series, January, 2007

for new veterans to claim 20 or more conditions. However, these claimed conditions are a mixture of actually diagnosed disabilities and symptoms, which may or may not be related to diagnosed disabilities. Many of these “disabilities” are symptoms, such as pain, which are related to a real disability. Further, many claimed conditions are either acute problems, like colds or sprained ankles, which resolved in service and are no longer symptomatic at the time the claim is filed or are disabilities which have not been diagnosed and, on examination, remain undiagnosed.

While 87 percent of veterans receive service connection for some claimed condition, the evaluations assigned may be zero percent disabling or 10 or 20 percent. In 2005, VA found 160,352 veterans entitled to service connection. However, fully 49 percent were awarded **combined** compensation awards of 20 percent or less.<sup>2</sup> We believe that this bill, if enacted into law, would bastardize a program designed to compensate veterans for service connected disabilities and encourage veterans to file increasing, spurious and sometimes fraudulent claims.

While the intent of this legislation is admirable we believe that it forces VA into an adversarial relationship with the veteran filing for a service-connected disability claim.

It asks the VA to validate all claims simply by “proof of service in a conflict” and awards those claimants at a *median level* until “such time as the appropriate level of benefits is determined.” There is no definition given for what the median level is based upon. What about claims that cover multiple injuries or illnesses?

The legislation fails to address the complexity of the VBA ratings system and in fact would seem to create a duplication of effort in adjudicating claims during a time when VA is experiencing record backlogs.

It also calls for an audit of a percentage of claims, to “uncover and deter fraudulent claims.” This could prove to be substantial, if in fact the award is based solely upon “proof of conflict.” Again, this would require additional workload for adjudicators to weed out the good from the bad. Wouldn’t resources be better utilized in adjudicating claims on the front end so that all veteran’s claims are processed correctly the first time?

The bill also takes under consideration only those veterans filing new claims or claims pending at the time the law takes effect. What about those veterans who have been denied and/or await a decision on an appeal? The VFW believes that there is a danger of creating a two-tiered system of veterans.

The last section reassigns employees who previously worked on claims processing to Vet Centers to assist veterans with readjustment counseling and mental health services or to other locations deemed necessary by the Secretary. Those individuals who processed claims may not necessarily be qualified to assist veterans with readjustment or mental health counseling. VA employees who are asked to undertake this task will have to be trained which takes time not to mention takes them away from adjudicating any new claims already in the system.

The authors of this bill are clearly concerned with the extended period of time that it takes VA to resolve compensation claims and the effect that delayed decision-making may have on new veterans transitioning, with disabilities, from active duty to civilian life. Congress may wish to consider enacting a temporary benefit stretching for up to 2 years after discharge to ease the transition for all new veterans. A transition program, rather than this bill, would be simpler to administer and would leave the VA compensation program intact to help replace lost earnings and address quality of life issues caused by service connected disabilities.

We attest that although the system is not perfect, when it is consistently funded on time and provided adequate staffing levels, with strong leadership by VA and oversight by Congress, it works. VFW believes that there is no more deserving population of beneficiaries of a strong VA system than the current generation of veterans, who are returning from Iraq, Afghanistan and elsewhere in the Global War on Terrorism.

Mr. Chairman and Members of the Subcommittee, this concludes the VFW’s testimony, I would be happy to answer any questions you may have. Thank you

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<sup>2</sup>Annual Benefits Report, Fiscal Year 2005; Veterans Benefits Administration; September 2006

**Statement of Craig M. Kabatchnick, Adjunct Law Professor, Supervising Attorney and Director of the Veterans Law Project, North Carolina Central School of Law**

Chairman Hall, Members of the House Subcommittee on Disability Assistance & Memorial Affairs, and honored guests:

On behalf of myself and those others involved in the Veterans Law Project, which I direct, I wish to express our great appreciation for the Subcommittee's holding today's important hearing on House Bills H.R. 67, H.R. 1435, H.R. 1444, and H.R. 1490. We truly value this opportunity to present our position on these proposed pieces of legislation that are intended to provide appropriate benefits to the millions of veterans who have served our great nation.

I want to thank Chairman Hall for introducing H.R.1444, his proposed legislation to "Direct the Secretary of Veterans Affairs to make interim benefit payments to veteran claimants under certain remanded claims"; Representative McIntyre for introducing H.R. 67, the proposed "Veterans Outreach Improvement Act of 2007"; Representatives Donnelly and Upton for introduction of H.R. 1490, their proposed legislation to "Provide for a presumption of service-connectedness for certain claims for benefits under the laws administered by the Secretary of Veterans Affairs"; and Representative Baca for introducing H.R. 1435, his proposed legislation to "Direct the Secretary of Veterans Affairs to conduct a pilot program to reduce the backlog of claims for benefits pending with the Department of Veterans Affairs". These legislative initiatives are great examples of keeping faith with the millions of veterans to whom the Nation has a sacred obligation.

The Veterans Law Project does not receive any grants, or contracts from the federal government.

**OVERVIEW OF THE VETERANS LAW PROJECT AT NORTH CAROLINA CENTRAL SCHOOL OF LAW**

The Veterans Law Project, which has not received any grant or contract from the Federal government, is a follow-up to a 1991 American Bar Association study. That study showed that veterans who had disability claims and whose income was less than \$50,000 were more likely to represent themselves in the Court of Veterans Appeals once they had received an adverse ruling by the Board of Veterans' Appeals (BVA). That study also made the point that about 80% of self-represented litigants reported that they could not afford an attorney. These results were especially ominous because although it was the original intent of the Congress to create a statutory scheme that would be non-adversarial, pro-claimant and veteran friendly, the reality is that a confusing, complex, bureaucracy has evolved to handle the adjudication of veterans' benefits. In fact, the adjudication of veterans' benefits claims has in many circumstances become such an antagonistic adversarial process that as a consequence, the need for representation by competent veterans' law practitioner's has become nearly unavoidable.

The unfortunate facts are that the adjudication of veterans' claims and its administrative appeal process can take three to 5 years in the best of circumstances, and 10 years or more in the worst. Congress now allows a veteran to retain and compensate an attorney or qualified agent to represent the veteran before the Department of Veterans Affairs, the BVA or the United States Court of Appeals for Veterans Claims. However, current law does not allow a veteran to compensate an attorney until the administrative appeal process is final and adverse through the issuance of a final BVA decision and denial of the veteran's claim. This means a veteran cannot pay his or her attorney until after the Board of Veterans' Appeals has issued a final adverse decision.

The Congress in November 1988 passed the Veterans' Judicial Review Act. This legislation allowed—for the first time in the Nation's history—judicial review of decisions involving veterans' benefits. This law allows a veteran to appeal to a court the denial of any veteran's benefits by the Department of Veterans Affairs. The veteran may represent him or herself, pro se before the court. From the creation of the United States Court of Appeals for Veterans Claims, the pro se filing rate, meaning the veterans who filed without an attorney, has been consistently 70%. This means that seven out of ten veterans go to court without a legal representative.

Going to court without competent legal representation is like going to war unarmed. It is an unfair fight. At court for the first time the government is openly adversarial. At court the Department of Veterans Affairs is represented by the VA's General Counsel. The VA General Counsel's job is to defend the Agency and its denial of benefits in Court. The General Counsel's Office employs trained legal professionals, whose job it is to persuade the Court that the decision of the Agency was correct and should be affirmed. The General Counsel's Office will aggressively work

toward that goal. A veteran, who is unrepresented before the court, is simply at a completely and totally unfair disadvantage. This is also true of the interactive processes between the VA and the veteran during the claims processing that goes on prior to the VBA activity-level has been reached.

The only way to even the playingfield, and to better assure that complete, fully developed claims cases are being presented to the VA, is to afford veteran claimants with competent legal assistance early on in the claims process. The Veterans Law Project at the North Carolina Central University School of Law provides a prototype for meeting the great need, in the manner in which those much needed legal assistance services should be made delivered.

The prototype Veterans Law Project that is now in operation in the state of North Carolina operates as a legal clinic in conjunction with the North Carolina Central University School of Law to provide legal assistance to veterans and their dependents with respect to VA claims of various types. The Veterans Law Project believes that by making legal assistance available early on in the claims process, it significantly reduces the VA's caseload by reducing the front-end effort needed to process a claim to reviewing and developing the evidence, considering legal and factual arguments and analysis, and rendering a decision. Also, by improving the completeness and quality of the veterans original claim submission, it will significantly reduce the number of remanded cases.

The Veterans Law Project does not seek to displace the VSOs (County-level or those Veteran's Service Organizations like the VFW) in providing representation to veterans. The veterans claims process system within the VA would be best served if veterans had the freedom to—and a readily available resource from which to—seek legal assistance at no cost to themselves.

As to the argument that veterans should be protected from unethical or inexperienced attorneys, the practice of law is now regulated in terms of ethics, fees and professional responsibilities. Currently, the VA has capped attorney fees in all post-BVA decision cases at 20% of recovered benefits. Veterans Law Project personnel who assist VA claimants at an earlier stage of the proceedings are prohibited from charging fees and are not entitled to any portion of recovered benefits.

The prototype Veterans Law Project operates as a legal clinic under the supervision and mentorship of a Director, who has experience in dealing with the VA. This Director is the Supervising Attorney and also an Adjunct Law Professor who teaches veterans law. In addition to the Supervising Attorney, law students from the North Carolina Central School of Law and the University of North Carolina, Chapel Hill perform many services in support of the Veterans Law Project.

The Veterans Law Project fills an existing need for legal assistance to help veterans get their initial claims developed in such way that they have an increased probability of favorable adjudication, and also to assure that, the claims are properly constituted if eventual judicial review at the United States Court of Appeals for Veterans Claims level, or at United States Court of Appeals for the Federal Circuit is needed.

Participating law students assist with the screening of files and sorting incoming claims and documents necessary for claims development, interview veterans as to the validity of their claims, assist veterans with the technical aspects of filing their claims, perform legal research, prepare supporting legal briefs, help a claimant file all applicable forms, assure that the initial development of a claim is completed within the time limits imposed by the VA, and perform whatever other tasks are required to successfully move the veterans' claims through the related adjudication process. The level of legal training necessary to render this assistance is reached by law students with a modest amount of legal training that is presented through weekly classes at the Law School. These participating students receive credit for clinical study under arrangements between the clinic and the University's School of Law.

In addition to helping veterans to develop their claims, the law students also assist in ordering further medical examinations, when needed, and in assuring that the VA performs its broadened duty to assist veterans in the development of their claim required both by the Veterans Claims Assistance Act of 2000, and case law.

Prior to filing an appeal with the Board of Veterans Appeals, which is staffed solely by VA attorneys, the students assist with the filing of a Notice of Disagreement with an adverse VA rating decision, after which a statement of the case is issued by the VA explaining the rationale for the VA rating decision. Thereupon an appeal to the Board of Veterans Appeals can be properly filed with the assistance of the law students under the guidance of the Veterans Law Project.

**HR 1436—PROPOSED LEGISLATION FOR A PILOT PROGRAM TO REDUCE THE BACKLOG OF CLAIMS FOR BENEFITS PENDING WITH THE DEPARTMENT OF VETERANS AFFAIRS**

The VA has seen over 200,000 veterans from Operation Enduring Freedom/Operation Iraqi Freedom, which is less than half of the total number of the veterans who have been separated from active duty. This number can only increase, especially with the numbers of those serving overseas increasing. Over the course of time a very large percentage of these veterans will, at some point, become claimants for service-connected disabilities associated with causes for which they are now only receiving medical care and or treatment. Claims for disability filed with the VA will only increase over the course of the next two decades—even if there is not another similar major military engagement during that period.

We who are involved with the Veterans Law Project feel that we must do everything we can to assure that these men and women are properly cared for and that their claims for service-connected disability compensation are quickly and fairly evaluated and processed. The cost of providing responsive claims evaluation and processing is part of the ongoing costs of the Global War on Terrorism. The costs associated with fulfillment of the national obligation to veterans for their service is any aspect of this mission of which the Committee and this Subcommittee is a part. The Veterans Law Project believes that ultimate passage of HR 1435 is consistent with that responsibility.

Reports indicate that around 60,000 recently separated service-members have been diagnosed with some form of mental problems by the VA, and almost 40,000 of these men and women have been diagnosed with PTSD. It's true: nobody goes to war and returns the same person. Veterans' claims for service-connected disability related to brain trauma, a relatively new basis for claims, mental health problems, and the forecast increase in PTSD diagnoses is an area of claims processing in which the VA is relatively inexperienced. The caseload in these areas will greatly increase over the next 10 years. While the VA is making substantial progress in these areas, improvements must be made; and additional capacity to handle claims of this specialized nature must be added.

The last time we looked into it, the VA had over 800,000 individual claims and appeals for compensation, pension, and education benefits. This is a massive backlog of claims, which has resulted in 6-month waits for initial ratings decisions on compensation claims. We at the Veteran's Law Project initiative feel that this is unacceptable.

About 600,000 of those claims are for disability compensation. Any delay in providing benefits to these wounded service-members makes it difficult for them to provide for themselves and their families. Further, because access to the VA health care system is curtailed for many veterans without compensable service connections, delays in compensation decisions deny these veterans the health care and treatments they need to lead productive lives.

Despite the best efforts and intents of VA managers, the backlog continues to grow, and with increasing numbers of returning veterans, it can only go up. As the number of cases on the backlog grows, the difficulty of managing the backlog and finding solutions to the systematic problems will only get worse.

The VA claims that much of the problem with the backlog has to do with the complexity of the cases. While we would acknowledge that the complexity of claims has increased, the Veterans Law Project views this as a problem of resources—both in terms of numbers and requisite skills. We feel that by enacting the "Pilot Program to Reduce the Backlog of Claims for Benefits Pending with the Department of Veterans Affairs" and embracing the Veterans Law Project concept in the states where the Pilot Program is implemented a significant, measurable, reduction in remanded claims cases will result. Veterans Service Officers from both County-level Veterans Service Offices and the Major Veterans Service Organizations, such as the Veterans of Foreign Wars (VFW), can acquire the assistance of third and 4-year law students, working within the Veteran's Law Project, who have already acquired "Paralegal" skills in assembling case files in conformance with applicable regulations and laws. With legal assistance made available to veterans early in the claims process, the VA's task would be reduced in reviewing and developing the evidence, analyzing legal and factual arguments, and rendering decisions.

While funding new VA positions and redeploying resources freed up under the Pilot Programs could certainly direct more manpower force onto the task of reducing backlogs, working in cooperation with the various service officers and the Veterans Law Project could help the VA to do even more.

The VA's staffing needs to be adequate to meet the demands placed upon its system. The only way that a meaningful dent in the backlog can be made to reduce the current delays is by employing more, and qualified, resources to the backlog

problem—a problem that will only be exacerbated by the large influx of Operation Iraqi Freedom and Operation Enduring Freedom veterans. The size of the backlog is proof positive that this is not being done and we at the Veterans Law Project look forward to being part of the solution.

For a veteran on his or her own, trying to navigate the highly bureaucratic VA claims process can be a nightmare, and a number of veterans just give up in their efforts to prosecute their claims for service-connected disability. Denying them their earned benefits, necessary compensation, and/or access to health care for their disabilities, is not how a nation should treat its heroes.

The Veterans Law Project and its offspring can augment the programs envisioned by the “Proposed Legislation for a Pilot Program to Reduce the Backlog of Claims for Benefits Pending with the Department of Veterans Affairs” by working with various service officers and using participating law students to assist with the screening of files, sorting incoming claims and documents necessary for claims development, interviewing veterans as to the validity of their claims, assisting veterans with the technical aspects of filing their claims, performing legal research, preparing supporting legal briefs, helping claimants file all applicable forms, assuring that the initial development of a claim is completed within the time limits imposed by the VA, and performing whatever other tasks are required to successfully move the veterans’ claims through the related adjudication process.

In addition to the law students helping veterans to develop their claims, they also can assist in ordering further medical examinations when needed, and insuring that the VA applies its broadened duty to assist a veteran in the development of their claim which is required by the Veterans Claims Assistance Act of 2000, and by case law.

#### **HR 67—VETERANS OUTREACH IMPROVEMENT ACT OF 2007**

While the Veterans Law Project believes that Federal, state and local governments; and VSOs; all have a heavy responsibility to reach out to eligible veterans and make them aware of the entitlements, programs, and benefits that Congress has made available for them, we feel that it is counter-productive for the Congress to make available to the various state veterans welfare agencies a program *that is optional in its implementation and will almost certainly cause state legislators to become inclined to reduce their current funding authorizations for veterans programs*, in light of the availability of additional Federal funding. We feel that the provision in the proposed Bill which provides that the funding provided to the states cannot be used “for the purpose of administering outreach supporting funds, and are limited to no more than 50 percent of the total cost of such State and local government activities, and shall be used to expand existing outreach programs and services, not to supplant existing State and local funding” will not deter an offsetting reduction in state funding in those states that have already implemented programs.

The Veterans Law Project believes that the envisioned appropriation to support the proposed legislation, as currently offered, would be better spent in aiding veteran outreach efforts of the various Non-governmental Organization (NGO) Veterans Service Organizations (VSO)—not as direct funding support but in the form of informational packets and centrally produced ad-spots or online media information releases to be used as their “message” toolkits.

The single most important factor in making a veterans outreach program successful, is the ability of the program to “touch” the veteran or the veteran’s family—no other entity has a more focused need to do so than the various VSO’s—as Membership recruiting is the impetus for their effort expenditure.

The outreach program features envisioned in this proposed legislation will be more efficiently and broadly applied and executed through use of the VSO recruiting infrastructure that already exists; it will cost taxpayers far less than the proposed alternative; and it only lacks the informational toolkit referred to earlier to effectively reach out to veterans and their families.

#### **HR 1490—PROPOSED LEGISLATION TO PROVIDE FOR A PRESUMPTION OF SERVICE-CONNECTEDNESS FOR CERTAIN CLAIMS FOR BENEFITS UNDER THE LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS**

The Veterans Law Project fully supports the proposed legislation that would “Provide for a Presumption of Service-Connectedness for Certain Claims for Benefits under the Laws Administered by the Secretary of Veterans Affairs”. It is a fact that in the world of veteran’s claims, determining eligibility is the most difficult part of the veteran’s challenge.

To file a claim, a veteran has to satisfy two main conditions—the injury or condition for which the claim is to be made has to have occurred while in the military

(service-connectedness); and a determination must be made that the injury is causing ongoing problems. It is the “Service Connectedness” that presents the real challenge for many veterans—proving something happened in the military is often very, very hard to do. Often, one piece of documentation usually can clear matters up very easily—the veteran’s DD214, which will have medals, rank, job codes and presents a fairly good history.

More often than not, obtaining the veteran’s DD-214 is impossible. In far too many instances—too many to count—none of a veteran’s papers exist anymore. In the absence of a DD-214, putting together a claim is very nearly impossible. The number of veterans’ records that were destroyed in the fire at the National Personnel Records Center in St. Louis is unknown, but clearly was very large—estimated at between 15–18 million records!

For Army personnel, it is estimated that 80% of the personnel records were destroyed for those who were discharged between November 1, 1912, and January 1, 1960. For Air Force Personnel, it is estimated that 75% of the personnel records were destroyed for those who were discharged between September 25, 1947, and January 1, 1964 (with names alphabetically after Hubbard, James E).

This records loss affects mainly those veterans of the Korean war and earlier conflicts, and early combat veterans in the Vietnam War. In many cases, even their backup records are gone as well, having been destroyed in the fire at the National Archives.

Today, as many of the Subcommittee Members know full-well, it is not uncommon that a veteran must enlist the aid of his or her representation in Congress in an effort to get their claim into the VA system, when there is no record of the veteran’s service except the statements of relative or friends, who are willing to give testimony that a frustrated claimant was actually a member of the armed forces.

All too often, veterans who were injured during a war or conflict don’t file claims for many years which makes proving their eligibility more difficult. The time between their service and the present makes it very problematic to establish a claim, though certain specific illnesses, such as Type II diabetes and certain cancers, are easier to prove.

Today, a few non-profit organizations exist which have dedicated their resources to assisting veterans in the filing of their claims. Thus, the Armed Forces Services Corp. (AFSC). AFSC lends assistance to veterans in proving service-connection. Their personnel are knowledgeable, and are pretty thorough in evaluating the necessary proof, and will assist the Member or the surviving family Member in filing the claims paperwork. The problem for most veterans is that “they simply don’t know *what* they don’t know”. Consequently, sources of assistance such as the Veteran’s Law Project and AFSC are of no assistance to the many veterans who can easily become befuddled by the VA’s bureaucracy.

Those of us associated with the Veterans Law Project feel that a liberal broadening of the practice of presumptive service-connectedness will offer great relief to a large number of veterans who are, today, finding it nearly impossible to prosecute their claims for service-connected disabilities and illnesses.

#### **HR 1444—PROPOSED LEGISLATION TO DIRECT THE SECRETARY OF VETERANS AFFAIRS TO MAKE INTERIM BENEFIT PAYMENTS UNDER CERTAIN REMANDED CLAIMS**

The Veterans Law Project fully supports the proposed legislation that would “Make Interim Benefit Payments under Certain Remanded Claims” under the Laws Administered by the Secretary of Veterans Affairs. The proposed legislation relates specifically to claims submitted by veterans for “Compensation for Service-Connected Disability or Death”; or for claims by the dependents of veterans for “Dependency and Indemnity Compensation for Service-Connected Deaths”.

While the Veterans Law Project supports the payment of interim benefits during the period in which a remanded claims case is being processed by the VA, we feel that the period of time proposed for the VA to make a decision on the matter prior to beginning of payments is too long, and simply provides yet another additional reason for delay in the payment of disability or death benefits to those veterans who are eligible. We strongly urge that this provision of the proposed Bill be changed to direct that interim payments be begun if no decision has been made by the VA after 30 days.

The VA can, and sometimes does, expedite requests for disability assistance—which is rare—usually, the only time they are willing to do so, is if extreme financial hardship or a chronic condition is involved. We feel that in cases of remands the same sense of urgency ought to be routinely followed.

In the case of disability or illness, there are already too many instances of the claimants dying before they ever receive any claims benefit payment—all too often

payments for which the veteran is in dire need. The receipt of \$500.00 per month may well represent the difference between a minimal quality of life and no life at all.

We feel that the proposed provision that “if (1) the final decision the award of benefits, the amounts paid as interim benefits shall be considered to be an advance payment of benefits owed for any period before the date of such final decision (except that if the total amount of interim benefits paid is greater than the amount of retroactive benefits, the amount of the difference shall not be considered to be an overpayment for any purpose)” and (2) if “the final decision is not to award benefits, the amounts paid as interim benefits shall not be considered to be an overpayment for any purpose” are absolutely essential, given the circumstances of many of our veterans.

Those associated with the Veterans Law Project have no issue to take regarding the appropriateness of the “Effective Date” provisions of the proposed legislation.

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**Statement of Robert Vincent Chisholm, Past President,  
National Organization of Veterans Advocates**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates (“NOVA”) on the following bills: (1) H.R. 67; (2) H.R. 1435; (3) H.R. 1444 and (4) H.R. 1490. NOVA is a not-for-profit § 501(c)(3) educational organization created for attorneys and non-attorney practitioners who represent veterans, surviving spouses, and dependents before the Court of Appeals for Veterans Claims (“CAVC”) and on remand before the Department of Veterans Affairs (“DVA”). NOVA has written many *amicus* briefs on behalf of claimants before the CAVC and the United States Court of Appeals for the Federal Circuit (“Federal Circuit”). The CAVC recognized NOVA's work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated in this testimony have been approved by NOVA's board of directors and represent the shared experiences of NOVA's members as well as my own sixteen-year experience representing claimants at all stages of the veteran's benefits system from the Regional Office to the Board of Veterans Appeals to the CAVC as well as before the Federal Circuit.

**H.R. 67 Veterans Outreach Improvement Act of 2007**

This bill if enacted would increase the funding provided for outreach activities and require increased cooperation and coordination amongst the various state agencies and their Federal counterparts. It has been my experience that the Department of Veterans Affairs has many excellent programs which truly can help our most vulnerable veterans. The veterans most in need of these services are the ones most likely to go unaware of their existence.

In addition, our returning soldiers are often ill-prepared for the transition to civilian life following their time in service. This can be an extremely stressful time, even without the bureaucratic hassles. Some veterans are reluctant to use VA services either because of pride or the feeling that they do not deserve these benefits. As a consequence, many eligible veterans do not know what VA programs are available to them. Finally, most veterans simply do not have the patience to wade through the avalanche of paperwork that confronts them when they do approach the VA.

Congress and the people of this country are truly in debt to this nation's veterans, and in response we have provided our Nation's veterans with some excellent benefits. But that debt remains unpaid when our veterans go unaware of the benefits they deserve. NOVA believes that H.R. 67 is critical for veterans and fully supports this bill.

**H.R. 1435 Department of Veterans Affairs Claims Backlog Reduction Act of 2007**

The goal of this bill is to help clear the backlog of approximately 500,000 cases pending at the regional offices around the country. NOVA believes this is a laudable goal and supports reasonable measures that will directly advance that goal.

The bill would in essence outsource the development of certain claims to the County Veterans Service Officers. The Secretary would be required to identify and classify claims in the backlog that need further development. Once the claims needing further development are identified by the Secretary, they would be referred to the County Service Officers for development.

It has been NOVA's experience that one of the most time consuming steps in the adjudication of claims is indeed the development of claims. There are two critical

parts to the development process. First, the Secretary is required to examine the evidence on each claim and then determine what evidence needs to be obtained or developed in order to rate a claim. Second, a letter is sent requesting that evidence and the file is calendared forward for follow-up by the Regional Office. It is at the first step in the process of development that the Secretary needs to devote more resources. Analyzing the evidence in the veteran's VA claims file to ascertain what needs to be developed consumes significantly more time than requesting the information. NOVA believes it would behoove Congress to consider adding more staff to the VA Regional Offices to review the claims in the backlog and identify the evidence that needs to be developed.

NOVA is also concerned about who would have responsibility for the VA claims folder once it is placed with the County Service Officers. For example, once the file is transferred to the County Service Officer, does the veteran call the VA or the County Service Officer for updates on the case? As this Committee is well aware over the last few years there have been a number of serious security breaches at the VA. This bill does not address how security will be maintained when cases are transferred to the County Service Officers. Finally, if a VA file is lost in the transfer process, this would result in even greater delay.

County Service Officers provide excellent service to thousands of veterans every day. We do not believe that they should do the VA's job for it, however. It is unclear how this law would make the current process more efficient, and it would take valuable time from County Service Officers whose expertise will be needed more each day as our soldiers returning from Iraq and Afghanistan separate from service and apply for benefits.

## **H.R. 1444 INTERIM PAYMENTS FOR CERTAIN REMANDED CLAIMS**

### **The Need for a Remedy for Delay**

#### ***1. Remanded Claims in General***

A claimant who files a new claim for benefits that is denied by the VA usually faces a three- to five-year horizon before he or she receives a decision from the Board of Veterans' Appeals. Unfortunately, what many of these veterans receive from the Board of Veterans' Appeals is a not a final decision on their claim but a remand to the regional office for more development. The following statistics<sup>1</sup> tell the story of the percentage of cases remanded by the Board each year:

- (1) Fiscal Year 2003: 42.6%;
- (2) Fiscal Year 2004: 56.8%;
- (3) Fiscal Year 2005: 38.6%
- (4) Fiscal Year 2006: 32.0%

When a veteran receives a final adverse decision from the Board of Veterans' Appeals, he or she has the right to appeal the case to the United States Court of Appeals for Veterans Claims ("CAVC"). Since the CAVC's creation in 1988, on average 60% to 65% of the cases that receive a merits determination from the Court are in turn remanded back to the Board. Over the last 2 years, the number of appeals to the CAVC has increased by about 30% each year which shows increased dissatisfaction with the decisions from the Board of Veterans' Appeals.<sup>2</sup> The time the case takes in Court can range from a low of 3 months to more than 2 years. The problem is that many claimants do not survive the adjudicatory process. Those claimants who do survive are subjected to interminable delays before the VA.

#### ***2. Remanded Claims and the Right To Expeditious Treatment***

In 1994, Congress enacted the Veterans Benefits Improvement Act, section 302 of the Act, Pub.L. No. 103-446, § 302, 108 Stat. 4645, 4658 (1994), which provided for expeditious treatment for veterans claims that were remanded from the Court of Appeals for Veterans Claims back to the Board of Veterans Appeals. In addition, the same Act required claims remanded from the Board to the Regional Offices to receive expeditious treatment. The statute specifically mandates that "[t]he Secretary of Veterans Affairs shall take such actions as may be necessary to provide for the expeditious treatment, by the Board of Veterans' Appeals and by the regional offices of the Veterans Benefits Administration, of any claim that has been remanded by the Board of Veterans' Appeals or by the United States Court of Veterans Appeals for additional development or other appropriate action." This act was codified in 2003 by P. L. 108-183, Title VII, § 707(a)(1), 117 Stat. 2672 at 38 U.S.C.

<sup>1</sup>This data was obtained from the "Report of the chairman of the board of Veterans' Appeals for Fiscal Year 2006."

<sup>2</sup>This data is from the annual reports of the CAVC's and is available at <http://www.vetapp.gov/documents/Annual-Reports.pdf>.

§ 5109B. It provides that “[t]he Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any claim that is remanded to a regional office of the Veterans Benefits Administration by the Board of Veterans’ Appeals.” In addition, P. L. 108–183, Title VII, § 707(a)(1), 117 Stat. 2672 codified the VBIA at 38 U.S.C. § 7112 which provides that the Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the Board of any claim that is remanded to the Secretary by the

Court of Appeals for Veterans Claims.

The intent behind the VBIA 1994 and the subsequent statutory codification is clear: Congress wants those claimants who have been unable to get a final decision from the Board to thereafter receive expeditious treatment whether on remand from the CAVC or on remand from the BVA to the Regional Offices. The problem is the VA has failed to execute the will of Congress.

### ***3. Delay—Not Expeditious Treatment—Is the Norm***

Typically, veterans face years of delay instead of receiving the expeditious treatment required by Congress. Delay occurs at two critical junctures:

1. When a case is remanded from the Court to the Board, and
2. When the Board remands a case back to the RO and the denial is sustained by the RO. In this latter situation, the matter is supposed to retain its earlier Board docket number but most cases are assigned new docket numbers. Docket numbers are important because the Board is required to decide cases in order of their docket numbers.

As noted above, the first significant time delay occurs when the cases are remanded from the CAVC to the Board of Veterans Appeals. When a case is remanded from the Court to the Board, the Board is required to allow the claimant and the representative of record 90 days to submit additional evidence. Once the claimant or the representative respond, the Board is required to render a new decision. In my experience, claimants are generally waiting between 6 months to a year for a new decision once the cases is remanded from the CAVC to the Board of Veterans’ Appeals.

The second situation, when the Board remands a case back to the Regional Office, causes far more grievous delay, especially where the RO grants a part of the claim, but then commits error by denying less than the full relief required by law. In that situation, Congress requires that the BVA expeditiously review the RO’s decision, but often it does not.

### **B. The Remedy—Interim Payments for Certain Remanded Claims**

As set forth above, the Secretary has not been able to make a decision within 180 days of a remand. In fact, in the VA adjudication system, the Secretary does not really have any deadlines within which he must make a decision.

H.R. 1444 seeks to ameliorate the harsh effects caused by the remand delay by requiring the Secretary to make interim payments. NOVA supports this goal. Nevertheless, the language of the bill raises the following issues:

1. For some disabilities like tinnitus, the maximum rating possible under the VA rating schedule is only 10% which presently equals \$115.00 per month. If a veteran files a claim for VA disability benefits for one of the conditions where the maximum rate payable under the VA rating schedule is less than \$500.00 per month, this could cause some unintended negative consequences.
2. What if a veteran files claims for multiple conditions and all are remanded. Is there just one \$500.00 payment per month for the veteran or is there \$500.00 for each claim?
3. Some have suggested that the practical effect of this bill would be for the VA just to deny the claims outright as the 180 day time limit approaches. To prevent this from happening, Congress should define “final decision” and “finally decided” as the point in time when the veteran has exhausted all administrative and court appeals.

### **H.R. 1490 PRESUMPTION OF SERVICE-CONNECTEDNESS FOR SUBMITTED CLAIMS.**

This bill if enacted would represent a profound change in the manner in which VA adjudication of claims occurs. A claim filed by a veteran would be presumptively valid unless the Secretary determines there is affirmative evidence to the contrary. Once a claim is granted, it might not be reviewed for years because only a percentage of the claims granted under this provision will actually be audited. In addition,

the bill would require the Secretary to redeploy VA personnel from processing and rating activities to assist veterans with their claims.

NOVA believes this bill is extraordinarily veteran friendly and seeks to provide a solution to the claims processing delays that occur at the VA. We fully support the generous intent of this bill. However its effect is unclear.

NOVA is concerned that one possible outcome is that the VA would simply change the boilerplate language in its decisions to say that “there is positive evidence to the contrary” of the veteran’s claim and the VA would deny just as many claims as it presently does. By way of example, under the current law, a veteran is supposed to receive the “benefit of the doubt” when the evidence for and against his claim is in equipoise. One would assume this doctrine would lead to many granted claims in situations where there is no evidence for or against a veteran’s claim, such as when his service records have been lost or destroyed by the VA. But this is not the case. The benefit of the doubt doctrine is effectively rendered meaningless due to the VA’s inclusion of the following line in many of its decisions: “The preponderance of the evidence is against the claim,” so “the benefit of the doubt doctrine is therefore not for application.” NOVA foresees a similar development as a result of this bill.

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**Statement of Ronald R. Aument, Deputy Under Secretary for Benefits,  
Veterans Benefits Administration, U.S. Department of Veterans Affairs**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on the four bills under consideration today.

**H.R. 67**

H.R. 67, the “Veterans Outreach Improvement Act of 2007,” would require the Secretary to establish, maintain, and review procedures for ensuring the effective coordination of outreach activities within the Department of Veterans Affairs (VA). It would also authorize VA to make grants to state veterans agencies for the purposes of carrying out, coordinating, and improving outreach and assistance in the development and submittal of benefit claims. In addition, states could use grant funds to educate and train state and local government employees who provide veterans outreach services in order for those employees to gain accreditation. H.R. 67 would also authorize VA to enter cooperative agreements and arrangements with state veterans agencies to carry out, coordinate, or improve outreach by VA and the states. Finally, this bill would require a separate appropriations account for VA’s outreach activities and would authorize the appropriation of \$25 million for each of the fiscal years 2007, 2008, and 2009 to carry out the outreach activities mandated and authorized by this bill.

Although VA supports the goal of improving outreach, we believe that, in light of the legislative changes made by Congress last year and recent VA-initiated changes in outreach coordination, Congress should allow VA to implement and assess these changes before taking additional measures.

First, VA believes the provision mandating procedures to ensure the effective coordination of VA outreach activities is unnecessary because VA is already taking steps to improve outreach coordination. For example, in August of 2005, Secretary Nicholson established the Office of National Outreach Programs (Office), which is charged with working with VA’s administrations and staff offices to coordinate and monitor major VA outreach efforts to ensure veterans and their families have timely access to information regarding VA benefits and services. The Office is also responsible for developing and implementing administrative and operational policies related to outreach.

The Office coordinates with VA’s senior leaders and the communications offices in the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA) to develop national, regional, and local outreach plans to inform specific veteran populations, their families, and service providers of VA benefits and services.

Additionally, on March 6, 2007, President Bush issued an Executive Order establishing the President’s Commission on Care for America’s Returning Wounded Warriors (Commission). One of the four missions of the Commission is to “analyze the effectiveness of existing outreach to service Members regarding such benefits and services, and service Members’ level of awareness of and ability to access these benefits and services, and [to] identify ways to reduce barriers to and gaps in these benefits and services[.]” We expect the Commission’s findings to be useful in helping us to identify and address gaps in our outreach activities.

We believe H.R. 67's requirement that VA annually review procedures for ensuring effective coordination of outreach is unnecessary because 38 U.S.C. §§ 6302 and 6308, which were added to title 38, United States Code, just last year, require VA to establish a biennial outreach plan and report to Congress on the implementation of the plan, including recommendations to improve outreach. The first outreach plan is due on October 1, 2007, and our first report is due to Congress no later than December 1, 2008. In addition, section 805 of Public Law 108-454 requires VA to conduct a survey and report to Congress on service members', veterans', family Members', and survivors' awareness of the benefits and services provided by VA; the findings of the survey will be submitted to Congress in 2010. In view of the plans and reports currently required by law, the imposition of additional requirements is unnecessary.

Second, H.R. 67's requirement to condition grants to state veterans agencies on provision of assistance to programs in locations with large or growing veteran populations would not provide VA sufficient flexibility to reach other deserving veteran populations, such as rural or smaller communities. Furthermore, we are not convinced that this program would be the most efficient use of the \$25 million per year the bill would authorize. If Congress decides to provide money to perform outreach to veterans, it should also give VA the flexibility to reach out to all veterans, not just those in large or growing veteran communities.

If funds are appropriated as authorized, enactment of H.R. 67 would cost \$75 million over fiscal years 2007-2009. We estimate administrative costs involving two additional full-time employees at the GS11/12/13 level and \$250,000 per year for travel, materials, training, and so forth., to administer the grants program.

#### H.R. 1435

H.R. 1435, the "Department of Veterans Affairs Claims Backlog Reduction Act of 2007," would require VA to conduct in California, Florida, Ohio, South Carolina, and Texas a 3-year pilot program whereby claims identified by VA as needing further development would be referred to a County Veterans Service Officer (CVSO) for further development and transmitted back to VA in ready-to-rate condition. This bill would also permit benefit claims to be submitted to CVSOs under the pilot program and require such claims to be treated as if received by VA. In authorizing a CVSO to develop a referred claim, the bill would require the CVSO to advocate for the claimant and "work through and in cooperation with" any veterans service organization appointed as the claimant's representative. Under the pilot program, CVSOs would have full access to veterans' information in VA's Benefits Delivery Network as well all appropriate electronic files concerning the claimant whose claim has been referred to development. Finally, this bill would require VA to report to Congress the effect the pilot program had on reducing the claims backlog and would authorize to be appropriated for each participating state such funds as may be necessary to carry out the pilot program.

Although reducing the backlog of pending claims is one of VA's highest priorities, VA opposes enactment of H.R. 1435 for several reasons.

First, under current law, accredited representatives of organizations recognized by VA, including CVSOs, may prepare and prosecute benefit claims. In fact, developing evidence to the point that claims are ready to be rated by VA is already one of the main responsibilities of these claim representatives. Therefore, in this respect, this bill would result in Federal funds going to just one category of representatives for performing responsibilities they already have.

Second, VA is concerned that the pilot program may potentially adversely affect VBA's adjudication workload. Currently, nearly 20 percent of VBA's adjudication workload is from the five states chosen in the bill to participate in the pilot program. If unforeseen problems arise during the course of the pilot program, claim processing could be disrupted.

Third, to the extent this provision is intended to facilitate claim filing, VA has already created a faster, safer, and more efficient means. Today, a claimant can file a claim for benefits electronically over the Internet. This service allows a claimant to file from any Internet-enabled computer, creating greater access and eliminating the need to personally appear at a VA office or mail a claim. However, claimants who choose not to use this service still have the option of filing a claim in person at a local regional office or mailing the claim directly to VA, thus eliminating the need to file it with a CVSO.

Fourth, CVSOs are funded by state or local tax revenues to benefit local veterans on behalf of the state or local taxpayers. This bill would authorize Congress to appropriate funds to support CVSOs involved in the pilot program. We believe that any additional funds for claim processing should be to support VA staff who are not

only accountable to VA, but who also serve all veterans, not just those living in areas that provide CVSO representation.

Fifth, VA is concerned that the bill may conflict with representation agreements entered into between claimants and their duly appointed claim representatives, including attorneys, agents, or Veterans Service Organization representatives. The bill appears to undercut the role of a claim representative appointed by the claimant because it would, in effect, create a dual system of representation by making the CVSO the claimant's advocate. Dual representation would create confusion and would be inefficient because representatives chosen by claimants and CVSOs developing claims under this bill would likely duplicate efforts. VA may be required to send additional notice letters, thereby reducing efficiency, and VA would nonetheless be required to fulfill its notice and claim development obligations under current law.

Finally, this bill's authorization of appropriations concerns us for two reasons. First, the bill is unclear how the costs of the pilot program are to be determined. For example, do the costs include the salaries and benefits provided to CVSOs? Do they include overhead such as rent and office supplies? If that is the case, then the bill would effectively shift a cost currently funded by state and local tax revenues to the Federal government. Additionally, we are not sure of whether state and local computer systems are able to support the information-technology security programs mandated for VA computers, the costs associated with bringing them into compliance, and who would be responsible for such costs.

More importantly, however, this bill mandates the pilot program be carried out in six states but only *authorizes* appropriations. If additional appropriations are not made to fund the pilot program, then, presumably, resources must be taken from VBA's General Operating Expense appropriation. If that were to occur, VBA would be forced to reallocate resources to pay for the pilot program. VBA would have to either take funds from allocations for states not participating in the pilot program and reallocate them to cover the cost of the pilot program in participating states or reduce funding to VBA activities in the participating states and reallocate them to CVSOs participating in the pilot program. The former alternative would be unfair to veterans not living in a participating state, and the latter would hurt the timeliness of adjudication of claims in the participating states because fewer VBA personnel would be available to rate claims.

VA estimates that it would cost \$69 million to conduct the 3-year pilot program created by H.R. 1435.

#### **H.R. 1444**

H.R. 1444 would require VA to pay an interim benefit in the amount of \$500 per month if a claim for benefits has been remanded by the U.S. Court of Appeals for Veterans Claims or the Board of Veterans' Appeals in "a case" involving a claim for disability compensation, pension, or dependency and indemnity compensation, and VA does not decide "the matter" within 180 days of the date of the remand. It would require VA to pay \$500 per month to "each claimant under the claim" until "the matter" is finally decided. When a claim for which interim benefits are being paid is finally decided, amounts paid as interim benefits are to be considered an advance payment of benefits owed for any period before the date of the final decision if the claim is granted. In no case are amounts paid as interim benefits to be considered an overpayment. H.R. 1444 would also require VA to report to Congress, not later than 6 months after the date of enactment, on measures VA intends to take to expedite the processing of remanded benefit claims.

VA opposes this bill for several reasons. First, it would create an incentive to submit claims of dubious merit, obtain a remand, and extend the claim-development process by piecemeal submission of information and evidence and multiple requests for extension of deadlines, for as long as possible in order to maximize the amount of interim benefits payable. A claimant's cooperation with VA can reduce the time it takes to resolve a remanded claim. Inversely, a claimant's lack of cooperation can delay the resolution of a claim. The law requires many procedural steps in developing and deciding claims and often provides substantial minimum periods in which claimants are required to respond to requests for information or evidence. There are also generous provisions for requesting extensions of deadlines. H.R. 1444's requirement that VA pay interim benefits and permission for claimants to keep them regardless of whether they are ultimately found to be entitled to the amounts already paid or entitled to benefits at all would create a strong financial inducement to making the development time last as long as possible.

By allowing claimants to retain interim benefits that would not have been paid but for this provision, this bill would in effect punish taxpayers for untimely deci-

sions. Further, it is unlikely to improve adjudication timeliness because it does nothing to alleviate the causes of adjudication delay. We believe the President's budget provides VA the necessary resources to achieve VA's production goals.

Finally, the interim benefit of \$500 is approximately the amount paid to a single veteran with a service-connected disability rated at 40 percent (currently \$501 per month). However, in fiscal year 2005, nearly 60 percent of all veterans receiving disability compensation had a combined rating of 30 percent or less. Given that two-thirds of remanded claims are eventually denied and that nearly 60 percent of claimants entitled to disability compensation receive between \$115 and \$348 per month, the interim benefit rate of \$500 per month is artificially high and would likely unjustly enrich many disability compensation claimants.

VA estimates that enactment of H.R. 1444 would result in a cost of \$46.2 million during the first year, \$112.9 million for 5 years, and \$180.1 million over ten years.

#### H.R. 1490

H.R. 1490 would require VA to presume that a claimant presenting a claim for benefits with respect to service-connected disability or death has presented a valid claim of "service-connectedness" provided that the claimant supports the claim with proof of service "in a conflict" and a description of the nature (including the connection to such service) of the disability or claim. VA would not have to presume the validity of the claim if VA determines there is positive evidence to the contrary. H.R. 1490 would also require VA, immediately upon processing the claim, to award benefits at a "median level" for the type of disability described in the claim until the appropriate level of benefits is determined. The bill would also require VA to audit a percentage of claims to uncover and deter fraud. These provisions would apply to claims "presented" on or after the date of enactment and to claims still pending or not fully adjudicated as of the date of enactment. Finally, the bill would require VA to redeploy claim-processing personnel who are no longer needed to evaluate service-connection claims to Vet Centers or other locations for the purpose of assisting veterans apply for benefits related to service-connected disabilities.

VA opposes H.R. 1490. Under current law, a claimant has the responsibility to present and support a claim for benefits. The basic elements necessary to establish a claim for service-connected disability compensation are: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. H.R. 1490 appears to require VA to presume that all elements of the claim have been established based on the assertions of the claimant; thus, the only thing for VA to determine is the appropriate level of benefits. It is not clear whether VA would be expected, or permitted, to conduct any development to determine whether there is positive evidence to overcome the presumption.

While VA supports getting benefits into the hands of deserving claimants as soon as possible, VA opposes H.R. 1490 for several reasons. First, VA is concerned that a presumption of service connection creates an incentive to file invalid claims, especially when benefits would be paid without appropriate claim development. If the intent is for VA to presume any current disability is service connected based on the veteran's statement without any supporting documentation or verification, then the system would be ripe for fraud and abuse. If VA audited as many as 25 percent of claims to determine whether the claimed disability is in fact service connected, an unscrupulous claimant would still have excellent odds of obtaining and retaining benefits based on an invalid claim.

Second, by making immediate payments upon processing of a claim, VA may in many cases pay benefits to claimants whose claims would not be granted if fully developed and, in many other cases, may pay benefits at a rate ultimately determined not to be warranted. Furthermore, this bill gives no guidance as to whether Congress intends for an overpayment to be assessed and recouped from a claimant if the true benefit rate proves to be less than the median level of payments made. Failure to assess and recoup overpayments would increase the incentive to file a marginal or invalid claim. On the other hand, frequent creation of overpayments and a resulting need to collect them would divert VA resources from other claim-adjudication activities.

Third, one of the predicates to the presumption of service connection under this bill would be proof of "service in a conflict." The meaning of this term, which is not defined in the bill or in title 38, United States Code, is uncertain. For example, it is unclear whether it is intended to refer to service in combat, service in wartime, or service in a theater of operations. The meaning of the term would affect the scope of the presumption of validity.

Fourth, this bill would have major, apparently unintended, consequences for the veterans health-care system. Any veteran whose disability compensation claim is presumed valid and who is awarded a median rating under this provision would be eligible for VA health care. In fact, VHA estimates that 3.2 million new Priority 8 veterans who are not currently eligible to enroll would become eligible for VA health care. Of further concern is the effect on such a veteran if he or she is later determined not to be entitled to disability compensation. Such a veteran would then have to be disenrolled from care. Apart from the potential disruption of care, it is unclear whether a veteran would be financially liable for medical care received while entitled to compensation based on the presumption if the veteran is later found not to be entitled to compensation. In addition, subject to the existence of an employment handicap, veterans awarded compensation under the provisions of this bill may become eligible for vocational rehabilitation and employment benefits.

Fifth, to the extent the bill is intended to simplify the adjudication process and free up resources, we question whether any reduction in claim-processing staff would be realized. Even if all elements of the claim are presumed to be met based on the veteran's statements, a likely significant increase in the total number of claims received and the burden of dealing with audited claims would likely consume any savings from not fully developing claims.

Furthermore, even if savings in claim processing were to occur, VA is concerned with the bill's apparent contemplation that claim-processing personnel be redeployed to Vet Centers. The Vet Center program has a specific and unique function to provide outreach and adjustment counseling to war veterans and to assist them in a successful social and psychological readjustment to civilian life. Furthermore, Vet Centers currently provide veterans with information about VA benefits and refer them to VA benefits counselors or veterans' service officers for assistance with benefit claims. We are concerned that placing claim-processing personnel in Vet Centers would not be consistent with the goals and functions of the Vet Centers.

Assuming that all original and reopened compensation claims projected in the FY 2008 President's Budget submission are granted under the presumption for service connection, obligations may increase by as much as \$173 billion over 10 years. This projection applies the average payment projections included in the budget model and does not include an expected increase in the number of claims received or an increase in the number of issues filed per claim. The mandatory costs do not include anticipated increases for the Vocational Rehabilitation and Employment account. With the increase in compensation beneficiaries, the number of veterans rated 20 percent or more would increase. These veterans would become eligible for Vocational Rehabilitation and Employment benefits resulting in increased mandatory spending. As mentioned earlier, this bill would apply only to veterans with "proof of service in a conflict referred to in such claim." If this term is further defined, it may result in a decrease in the overall mandatory costs.

This concludes my statement, Mr. Chairman. I would be happy to entertain any questions you or the other Members of the Subcommittee may have.

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**Statement of Kimo S. Hollingsworth, National Legislative Director,  
American Veterans (AMVETS)**

Mr. Chairman and Members of the Subcommittee, thank you for holding this hearing and providing American Veterans (AMVETS) the opportunity to testify regarding pending claims legislation.

As this Committee is aware, AMVETS hosted the "National Symposium for the Needs of Young Veterans" in Chicago, Illinois last year. More than 500 veterans, active duty and National Guard and reserve personnel, family Members, and others who care for veterans examined the growing needs of our returning veterans. Some of the issues relevant to today's hearing identified at the Symposium include the claims backlog and seamless transition. AMVETS believes these issues are inextricably linked.

The Department of Veterans Affairs (VA) claims backlog is a relatively old issue that is complicated and multi-faceted. Currently, the backlog is way over the 600,000 mark and it continues to grow at a rapid rate. Rather than making headway and overcoming the chronic backlog, VA has lost ground on the problem. By VA's estimates, over 263,000 Operation Enduring Freedom (OEF)/Operation Iraqi Freedom (OIF) veterans will seek VA services; most of them will want to file a claim. Secretary Nicholson has said that reducing the backlog is one of VA's highest management priorities.

The reasons for the claims backlog are many—veterans repeatedly filing claims, a lack of quality control, misplaced or lost documentation and a lack of staffing. Overall, AMVETS believes that a lack of quality control is central to this issue. VA must establish a long-term strategy focused on attaining quality and not merely achieving quotas in claims processing. Veterans Benefits Administration (VBA) can greatly reduce the backlog by hiring more staff, initiating quality training programs, and most importantly, instituting an accountability program.

Equally important, Congress must ensure that VA and the Department of Defense (DOD) are held accountable for ensuring a seamless transition. Congress directed VA and DOD to collaborate on health care issues 25 years ago when it passed Public Law 97-174. Congress should encourage the continued collaboration and sharing of health care issues to include the standardized use of electronic medical records. VA and DOD collaboration in the area of electronic medical records has a direct impact on the VA claims backlog issue.

AMVETS fully understands that the VA and DOD are two distinct and separate health care systems. While there has been progress in the sharing of electronic data between the two agencies, progress is still limited. The technology is clearly available for complete electronic medical records collaboration, and now is the time for this to become a system-wide reality.

Despite years of collaboration on a single separation physical and the development of the Benefits Delivery at Discharge exam (BDD), the Department of Defense (DOD) and VA still conduct separate separation physicals and separate compensation and pension exams. Furthermore, separation physicals are still not mandatory. Congress should require the DOD to conduct mandatory separation physicals and also require DOD to utilize the BDD that was jointly developed and agreed to by both agencies. The effective Benefits Delivery at Discharge joint physical was successfully demonstrated from 1995 through 1998 and still isn't universally adopted.

In addition, AMVETS would encourage the VA to expand the practice of putting adjudication officers in VA offices aboard active duty military bases. For example, VA has an office aboard Camp Lejeune, NC. The office is staffed with qualified contract medical personnel and full-time VA claims adjudicators. Separating servicemembers are provided compensation exams on base. Many claims are adjudicated and issued a temporary rating decision pending receipt of a DD-214. Once discharged, many new veterans are receiving compensation and disability benefits within 30 days of final release from active duty. Addressing the issue of filing a claim when a servicemember begins the separation process is a crucial first-step and a lasting, long-term solution to reducing the VA claims backlog.

As the number of OEF/OIF veterans continues to grow, so will the number of VA claims. I truly believe that we are now near a "culminating point" that will determine the future of VA claims for generations to come. Claims backlogs have spanned several Administrations and it is clear that the VA is either unwilling or unable to resolve this issue.

While veterans, the VSOs, the VA and the Congress all share responsibility for this debacle, what is very clear is that congressional intervention is now necessary. It is also very clear that the Department of Defense (DOD) has been absent in sharing responsibility for the backlog of VA claims. DOD must be forced to comply with congressional intent with regards to Seamless Transition. If Congress does not intervene, the system will fail.

The VSOs must also ensure that all veterans understand the claims process, the timeframes involved, and the evidentiary requirements the veteran must meet. The VA must implement technological changes into the claims process (move from paper filing to electronic filing). VA also needs more, and better trained, claims adjudicators. Finally, VA needs "buy-in" from DOD—veterans are still making hard copies of their medical records and having to hand delivered them to the VA. This is unacceptable!

Regarding the legislation pending before the House Committee on Veterans' Affairs, AMVETS is supportive of H.R. 1444, legislation to direct the Secretary of Veterans Affairs to make interim benefit payments under certain remanded claims, and H.R. 1490, legislation to provide for a presumption of service-connectedness for certain benefits claims. Both of these bills provide the Secretary of Veterans Affairs with authority to essentially start providing disability and compensation benefits for claims against the government, pending a favorable rating decision.

Provided the department issues reasonable implementation guidance, the bills could assist veterans receive benefits for claims that have a high degree of being awarded. While these legislative proposals may not directly aid in reducing the immediate backlog, the bills serve to provide veterans financial and possibly medical relief while waiting for a determination by the department.

Although AMVETS fully supports the intent of H.R. 67, the Veterans' Outreach Improvement Act, we are concerned that this legislation is moving VA toward implementing yet another "unfunded mandate" on the department. AMVETS believes that VA has a demonstrated history of effective outreach. This legislation authorizes a total of \$75 million over a 3-year period, for what appears to serve as a "pass-through" for Federal dollars to fund state and veterans county service programs. Overall, outreach activities attempt to provide prevention information, education, counseling, referrals and treatment options to targeted populations rather than wait for an individual to actively seek out services. While AMVETS is sensitive to the plight of veterans and their families and supports the intent of this legislation, we are concerned that it holds the potential to steer critical funding away from health care.

Regarding H.R. 1435, the Claims Backlog Reduction Act, AMVETS would like to share several observations. Provided VA will train and accredit allowing full access to files in the Benefits Delivery Network, this could be a positive step in assisting veterans and VSOs in developing claims. However, generally speaking, State and County Veterans Service Officers are required to accept and submit all claims they receive. AMVETS believes that this obligation to accept any and all claims will actually result in growing the backlog instead of helping.

Moreover, many state and local governments prevent State and County Veteran Service Officers from accepting a power of attorney to act as a custodian on behalf of the state or county. Most are certified or accredited through one of the several Veteran Service Organizations (VSO) and are generally allowed to act as the custodian based on this accreditation. Passing this legislation will ultimately require a State or County Veteran Service Officer the authority to accept a power of attorney with the legal representation/custodian being the state or county.

Last, AMVETS believes that a review of claims backlog legislation would be incomplete without a discussion of Congress' authorization of private attorneys to access VA and charge veterans for representation in veterans' disability claims. The Veterans Benefits Administration has indicated allowing attorneys to represent veterans will only complicate and lengthen the resolution of veterans' disability claims. Despite these findings, Congress ignored the recommendation of VA and the VSOs and passed legislation to allow private attorneys to represent veterans during the claim process.

AMVETS has 58 National Service Officers located across the country whose sole job is to aid veterans with their claim. We do provide—free of charge—a more thorough and complete representation for veterans and their families. We do not have any financial interests in a claim, and our National Service Officers know the Veterans Benefits Administration system. Recently, the Board of Veterans Appeals released its Fiscal Year 2006 Report. Out of the major VSOs, AMVETS has the lowest numbers of appeals submitted. Ultimately the report proves that organizations like AMVETS are filing well-developed and meaningful claims. Allowing attorneys to represent veterans will most likely complicate the process by legal maneuvering in lieu of good sound claim development. AMVETS asks that this Committee review its decision, and rescind this law.

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**Statement of Brian Lawrence, Assistant National Legislative Director,  
Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

On behalf of the 1.3 million Members of the Disabled American Veterans (DAV), I appreciate the opportunity to express our views on the following bills which were considered during the Subcommittee hearing on April 17, 2007.

**H.R. 67, the Veterans Outreach Improvement Act of 2007**

This legislation would direct the Department of Veterans Affairs (VA) to establish procedures for effective coordination of outreach activities between the various offices and administrations within VA, and to ensure that state and local outreach assistance is provided in locations that have large concentrations of veterans or are experiencing growth in veteran populations. It would also authorize the VA to make grants to state veteran agencies for state and local outreach services. The bill would authorize \$25 million to be appropriated annually through fiscal year 2009 for the outreach efforts and grants.

The DAV understands the importance of reaching out to veterans to inform them of benefits to which they may be entitled, and expends considerable resources in this regard. Both the DAV Veterans' Information Seminar program and the DAV Mobile

Service Office (MSO) program are designed to educate disabled veterans and their families on veterans' benefits and services. In both programs, highly trained Members of DAV National Service Officer Corps provide service deep within veterans' communities across the country to counsel and assist veterans in completing applications for benefits from the VA and other government agencies.

While outreach is important, we believe a higher budget priority for VA is to decrease the number of backlogged VA compensation claims. Therefore, the \$25 million that would be authorized by H.R. 67 for outreach would be better utilized if it was put toward a program that would help reduce the backlog. For instance, the Benefits Delivery at Discharge (BDD) is a program that assists servicemembers at participating military bases with development of VA disability compensation claims prior to release from active duty. The discharge physical is conducted under VA disability examination protocols either by VA medical staff, contract medical examiners or military personnel. BDD fosters a seamless transition from the military to the VA system and accelerates claims for compensation.

Many questions also arise as to how H.R. 67 would be established. For instance, it would apparently press certain local government officials into Federal service without any involvement or agreement by their employers.

In summary, the DAV does not oppose H.R. 67, but we would prefer to see its proposed funding directed toward the more urgent need for resources within the VA claims processing system.

#### **H.R. 1435, the Department of Veterans Affairs Claims Backlog Reduction Act of 2007**

This legislation would establish a 3-year pilot program in an effort to reduce the backlog of pending claims for VA benefits. More specifically, it would require the VA to refer certain claims needing further development to County Veterans Service Officers (CVSO) in California, Florida, Ohio, South Carolina, and Texas. CVSO staffs would act as claimant advocates in developing such claims, and would be granted access to client information contained in the VA Benefits Delivery Network.

The DAV is strongly opposed to this legislation. It is the Federal government's responsibility to provide benefits and services to Members of the Armed Forces. The VA is the agency that administers such benefits, and it does so effectively for health care, insurance and memorial affairs. But because the VA has efficiency problems within its claims processing system, its responsibility for assisting veterans with the development of their claims should not be shifted to local government officials. Veterans may currently enlist the help of a CVSO as a designated power of attorney (POA) for representation in a claim if they wish, but they are not required to do so. Requiring CVSO representation would be unfair to veterans who may choose to grant POA to a number of other veterans' service organizations that employ service officers that, in many instances, receive more extensive and superior training than is available to a CVSO. Additionally, because the need for further claims development often translates to the need for a more thorough VA medical examination, channeling the process through a CVSO would be an added, unnecessary step that would increase veterans' waiting times and add to the backlog. Further consideration should also be given to the security of veterans' highly sensitive and personal information, and the problems this bill might create in that regard.

The DAV has for the past several years brought attention to the problems that have been steadily building within the VA claims processing system. Along with identifying the sources of these problems, we have offered solutions to reduce the backlog and restore efficiency to the claims processing system. I would refer Members of the Subcommittee to our prior testimonies on this issue, including our recent statement on the fiscal year 2008 budget for VA, which provides the core steps that must be taken to address the claims backlog problem.

While we appreciate the Subcommittee's consideration of innovative methods to address the problems within VBA, the DAV does not believe this bill presents a sound idea and we encourage the Subcommittee to reject it.

#### **H.R. 1444**

This legislation would require the VA to pay an interim benefit of \$500 per month when a claim for veterans' benefits is remanded by either the U.S. Court of Appeals for Veterans Claims or the Board of Veterans' Appeals and the VA does not make a decision on the matter within 180 days of the date of the remand.

The DAV appreciates the Subcommittee's effort to provide financial relief to veterans whose claims have been on appeal for some time, but we do not support this legislation. If enacted, this bill could lead to abuse of the system by some who might deliberately delay the appeal process in order to obtain the maximum amount of in-

terim benefits. A number of procedural steps are in place to allow veterans adequate time to develop evidence to support claims appeals, and extensions of deadlines are also available for veterans to submit evidence. Such protections could be manipulated to maximize the amount of interim payments by dragging an appeal out as long as possible. Therefore the DAV opposes this well intended but flawed legislation.

#### **H.R. 1490**

This legislation would provide a presumption of service connection to veterans presenting a claim for VA disability compensation or death benefits. Immediately upon processing the claim, VA would award benefits at a median level for the type of disability until the appropriate level of benefits is determined. The bill would also require VA to audit a percentage of claims to uncover and deter fraud. It would direct VA to redeploy, for the purpose of assisting veterans applying for benefits, those employees involved with processing claims that are no longer needed to evaluate claims due to the above presumption.

The DAV does not support the idea of presumption of service-connectedness for submitted claims. The laws and regulations formulating the VA ratings system are complex and veterans would both knowingly and unknowingly file meritless claims for benefits. The resulting penalties and overpayments would create a hardship for those who were audited, and the massive increase in mandatory funding that would certainly follow enactment of this legislation would place undue hardship on taxpayers because a large percentage of benefits paid would be unwarranted.

The DAV appreciates the Subcommittee's consideration of innovative ways to address the longstanding problems within the VA claims processing system. However, we believe that addressing the issue will require measured steps to correct the problems at their core. VA needs adequate resources to hire an adequate number of full time employees. It requires resources to establish a comprehensive training program to bring new employees up to the standard of knowledge that will allow them to rate claims properly; and finally, VA needs to hold employees accountable for their work. Emphasis should be placed on quality as well as efficiency. Employees who fail to meet a specified level of accuracy should be required to take remedial training. Should accuracy problems remain after remedial training, the employee should be removed from a decisionmaking position and either terminated or relocated to a position that can be adequately fulfilled. VA should have the authority to make such changes so that our Nation's disabled veterans and their families can rely on a VBA that measures up to other administrations within the VA.

Mr. Chairman and members of the Subcommittee, the DAV appreciates the opportunity to submit our views for the record. We look forward to our continued work with the Subcommittee to serve our Nation's disabled veterans and their families.

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#### **Delayed Benefits Frustrate Veterans**

*Hundreds of Thousands of Disability Claims Pending at VA; Current Wars Likely to Strain System Further*

Washington Post Article,  
April 8, 2007

By Christopher Lee  
Washington Post Staff Writer  
Sunday, April 8, 2007; A04

In his last years, World War II veteran Seymour D. Lewis would stand at the door of his home in Savannah, Ga., waiting for a letter that never arrived.

The family of the former Army private, who lost the hearing in his right ear to a grenade explosion in basic training in 1944, spent years wrestling with the federal bureaucracy for his disability benefits, at one point waiting more than a year just to be told to fill out more forms.

In 2001, the Department of Veterans Affairs started sending Lewis a monthly check for \$200, an amount he appealed as too little and too late for the lasting physical sacrifice he made for his country, his family said. The appeal was still pending when Lewis died last year at age 80.

"Every time I would call, they would send me a new form to fill out, with exactly the same information that they already had," said his son Frank A. Lewis, 61, a Navy veteran. "They run you around. They keep you dangling. . . . My father was elderly. He would wait at the front door for the mailman, waiting for something from the VA. When he would get a letter, he would anxiously open it, and when

it said nothing, the depression he would go into was unreal. I have a feeling they were just waiting for my father to drop dead so they wouldn't have to pay any money. It's been one big nightmare."

Hundreds of thousands of veterans, many approaching the winter of their lives, await VA disability claim decisions that will provide or deny a key source of income. The monthly payments, which range from \$115 to \$2,471 for individuals, are available to veterans of any age whose disability is "a result of disease or injury incurred or aggravated during active military service," according to the Veterans Benefits Administration.

Nearly 400,000 disability claims were pending as of February, including 135,741 that exceeded VA's 160-day goal for processing them. The department takes 6 months, on average, to process a claim, and the waiting time for appeals averages nearly 2 years.

This already strained system may grow more overburdened in years ahead as many of the troops deployed to Iraq and Afghanistan return from those wars, experts say. VA gives veterans from the current conflicts top priority in claims processing.

"The projected number of claims from the wars in Iraq and Afghanistan will rapidly turn the disability claims problem into a crisis," said Linda J. Bilmes, a Harvard University professor of public policy who has studied the claims process and met with VA Secretary Jim Nicholson last month to discuss ways to improve it. Bilmes, who noted that those officially wounded in combat would be a small percentage of new veterans applying for compensation, estimated the long-term cost of providing them disability benefits at \$70 billion to \$150 billion.

Presidents, Members of Congress and VA leaders have long promised to eliminate the backlog, but still the veterans wait. Some depict a cultural problem at VA—an attitude of indifference or hostility among claims workers, a lack of appreciation for veterans' service reflected in snubbed phone calls, slow answers and repetitive paperwork. Some even believe the delays are deliberate, a way to keep costs down by deterring new claims or postponing awards until older veterans die.

"Once we can no longer be utilized as a soldier, we are of no use to them," said Michael Foley, 52, a former Navy intelligence specialist who served in Vietnam and Cyprus during the seventies. "There is an impression of indifference when you are dealing with the VA benefits people. They are going to get a paycheck no matter what."

Foley has trouble sleeping and endures nightmares from things he saw in the service. The Thomasville, N.C., resident said he is in therapy for post-traumatic stress disorder, but VA denied the disability benefits claim that he filed more than 2½ years ago. He has appealed. Foley also wants VA compensation for a heart procedure in 2004 that he says left him in the hospital for 137 days with complications that included a paralyzed right leg.

"A lot of people think all veterans want a handout. That's not it," said Foley, who is unemployed and lives on less than \$1,100 a month, including a \$240 VA pension. "When I was in the Navy, they asked me to do things. At the time, it was exciting. My grandfather warned me that this was going to come back and bite me . . . 1 day. And it has. I lost my job, my house and everything else."

Ronald R. Aument, VA deputy undersecretary for benefits, acknowledged that the department needs to do better, but he rejected the idea that the delays and denials are motivated by money concerns.

"It's not as though we're working on commission here," Aument said. "There is very much a shared passion in this organization in trying to do right by veterans. . . . As far as whether or not we treat people rudely, I would certainly hope that's just an exception as opposed to the rule."

The department fields 7 million phone calls about disability claims each year, he said. Forty-eight percent of the workers who handle claims are veterans. In part, the process is slow so that veterans have time to submit documents and other evidence bolstering their cases, Aument said.

The VA load is getting heavier. Disability-related claims rose to 806,000 in 2006—a 39-percent increase from the claims filed in 2000. The work force handling them grew by 36 percent over the same period, to 7,858 employees. VA officials expect 800,000 new claims this year.

Veterans' disabilities are also growing more complex, with increasing claims for PTSD, diabetes (often tied to herbicide exposure in Vietnam) and multiple ailments. As the veteran population grows older, those who suffer from chronic, progressive conditions—heart, joint and hearing problems, for example—file repeat claims, which account for more than half of all claims, VA says.

Earl Armstrong, 87, a former Army technician from Ravenna, Ohio, is a repeat filer.

Armstrong drove an armored vehicle and won a Purple Heart and a Bronze Star while serving under Gen. George Patton in France and Germany in 1944. He suffers from PTSD and persistent ringing in his ears, the latter from the machine gun that was mounted a few feet from his head, he said. The problems have worsened, and for 3 years Armstrong and his wife have tried to persuade VA to raise his disability rating from 50 percent to 100 percent, which would more than triple the couple's \$781 monthly compensation to \$2,610.

"I am sick of the VA and the way they've been treating us," Armstrong said. "I can't understand it. There's too many [claims], I guess, and they don't have enough people to handle them."

VA handed out \$34.5 billion in disability payments to more than 3.5 million veterans and their survivors last year. Aument said VA has increased its claims workforce by more than 580 people in the past year and plans to hire more than 400 additional staff by June. "The cornerstone of our long-term strategy is to develop more processing capacity," he said.

It is too early to predict whether there will be a "huge surge" of claims from Iraq and Afghanistan veterans, Aument said, and claims for severe disabilities such as lost limbs are those VA can process fastest. Still, some older veterans say their younger counterparts are in for a rude awakening when they apply.

Army veteran Raymond L. Goings, 61, served as a military policeman in Vietnam from 1969 to 1971, an experience that left the Las Vegas resident with PTSD, he said. He praised his VA psychiatrists, but not the regional office that denied the disability claim he has pursued for 3 years.

"Basically they said I was never being shot at, that the things I told them I saw, I didn't see," said Goings, who has appealed. "They wanted dates and times, even though I tried to explain to them that there are a lot of things about combat that I can't remember."

Jerrel Cook of Joplin, Mo., another Army veteran, breathes with the help of an oxygen tank and suffers from asthma, chronic bronchitis, hearing loss, hypertension and thyroid problems. Cook, 62, blames biological and chemical testing in Alaska while he was stationed there in the mid-sixties. VA has denied his 5-year-old disability claim.

"They are playing a waiting game," he said. "It's easier to stall out until the veteran dies rather than to pay his claim. . . . This is ongoing practice with the VA, and it's certainly something that needs to be corrected."

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**Congressional Research Service**

**CRS Report to Congress**

**Veterans Affairs: The Appeal Process for Veterans' Claims**

**Updated April 9, 2007**

**Douglas Reid Weimer, Legislative Attorney, American Law Division**

**Summary**

Congress, through the United States Department of Veterans Affairs (VA), provides a variety of benefits and services to veterans and to certain Members of their families. These benefits range from health care and related services to burial benefits. The veteran's basic eligibility for these programs and services is usually determined by the local VA office. Veterans not satisfied with the VA's decision(s) may wish to have them reviewed and may appeal the decision(s). This report traces the various steps involved in the appeal process—starting with the original application for benefits and concluding with an appeal to the U.S. Supreme Court. A flow chart outlining all of the steps in the appeal process is provided.

Following the filing of the initial appeal, the local VA office will either allow or disallow the claim. If the veteran/claimant wishes to appeal, a written request for appeal must be filed and various time deadlines and other requirements must be met prior to the case being considered by the Board of Veterans' Appeals (BVA). The appeal before the BVA may be a hearing at the local VA office by a traveling Board Member; a hearing at the BVA office in Washington, DC; or a videoconference hearing at the local VA office. Various filing requirements and time limits must be met by the veteran/claimant in his/her appeal. There are specific guidelines for a person representing a veteran before the BVA. Legislation enacted in the 109th Congress changed traditional guidelines to allow for legal representation for veterans throughout the administrative appeals process.

The veteran/claimant may appeal the decision of the BVA to the Court of Appeals for Veterans Claims (CAVC), which is an independent federal court and not part of the VA. The decision of the CAVC may be appealed by either the veteran/claimant or the VA to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), an Article III court that sits in Washington, DC and has exclusive jurisdiction to hear cases challenging CAVC rulings. Decisions of the Federal Circuit may be appealed to the U.S. Supreme Court, which has final jurisdiction.

The VA has various statutory obligations to assist the veteran in the preparation of his/her application for benefits and any subsequent appeal(s). Among these obligations are assistance in the preparation of the initial application; provision of various records; medical exams; and other related issues. Certain legal and factual presumptions are established by statute that may be favorable to the veteran's claim. These issues are examined in the appendix to this report.

Legislation introduced in the first session of the 110th Congress on the appeal process is summarized in the appendix.

## Introduction

### Veterans' Benefits

Congress, through the United States Department of Veterans Affairs (VA) provides a broad variety of benefits and services to veterans and certain Members of their families.<sup>1</sup> Among the benefits that the VA extends to veterans are various types of health care and related services, such as nursing homes, clinics, and medical centers; various types of financial benefits, including disability compensation and pensions; education, vocational training, and related career assistance; home financing; life insurance; burial benefits; and benefits for certain family survivors.<sup>2</sup>

The veteran's basic eligibility for these various services and programs is usually determined by the local VA office.<sup>3</sup> Various criteria must be met in order for the veteran to be eligible for VA benefits and the local VA office scrutinizes the veteran's claim before determining eligibility.<sup>4</sup>

### Appeals from the Local VA Office Decisions

Veterans not satisfied with the decisions made by the local VA office on their claims or benefits may wish to have the decisions reviewed on appeal.<sup>5</sup> The VA has stated that the two most common types of appeals are 1) the denial of benefits for a disability that the veteran believes is service-connected; and 2) the veteran believes that his/her disability is more severe than the VA has rated it.<sup>6</sup> The first issue involves *disability compensation*, which is a monthly cash benefit for veterans currently impaired from past service-connected activities.<sup>7</sup> The second issue involves the VA's *rating of the severity of the veteran's disability*—which is directly related to the amount of monthly disability compensation (a cash payment) the veteran re-

<sup>1</sup> See generally *Federal Benefits for Veterans and Dependents*, published by the Department of Veterans Affairs (2007 edition), available online at <http://www1.va.gov/opa/vadocs/fedben.pdf>. See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Programs*, by Douglas Reid Weimer. This report deals with the fundamental requirements for disability benefit programs. See CRS Report RL33323, *Veterans Affairs: Benefits for Service-Connected Disabilities*, by Douglas Reid Weimer. This report discusses various aspects of disability compensation, a monthly cash benefit program for veterans currently impaired from past service-connected activities.

<sup>2</sup> See CRS Report RL33323.

<sup>3</sup> The *local VA office* is defined by the VA as "any local office of the Department of Veterans Affairs where claims for VA benefits are received and determined." This is usually a VA Regional Office or an administrative office at a VA medical center. The legal term for such an office is the "agency of original jurisdiction." A VA *Regional Office* is one of 58 VA regional offices located throughout the United States and its territories, and it is at these offices where most claims for VA benefits are filed and determined. *Thus, all Regional Offices are considered to be "local offices," but the concept of "local office" may also include administrative offices located at VA medical centers.* Therefore, all Regional Offices are "local offices," but not all "local offices" are Regional Offices. See *Board of Veterans' Appeals, Understanding the Appeal Process*, published by the Department of Veterans Affairs; VA Pamphlet 01-00-1 (Jan. 2000) at 38-39 (cited to afterward as "Understanding"). See <http://www.va.gov/vbs/bva/pamphlet.htm> for the publication online. Go to the website and click on "Understanding the Appeal Process."

<sup>4</sup> See CRS Report RL33323.

<sup>5</sup> *How Do I Appeal?*, published by the Board of Veterans Appeals, Department of Veterans Affairs; VA Pamphlet 1-02-02A (April 2002) at 1 (cited to afterward as "*How Do I Appeal?*"). See <http://www.va.gov/vbs/bva/pamphlet.htm>. Go to the website and click on "How Do I Appeal?" for an online copy of the pamphlet.

<sup>6</sup> *Id.*

<sup>7</sup> See CRS Report RL33323.

ceives.<sup>8</sup> While these two issues seem to be the most prevalent types of appeals, nearly any decision made by the local VA office concerning veterans' benefits may be appealed.<sup>9</sup>

An appeal of the local VA office's decision may be made to 1) the local VA office (which made the original decision) and/or 2) the Board of Veterans' Appeals (BVA), which is discussed below. The findings of the BVA may be appealed to the U.S. Court of Veterans Claims. Subsequent appeals may be made to the U.S. Court of Appeals for the Federal Circuit and ultimately to the U.S. Supreme Court.

#### THE APPEAL PROCESS

##### **Flow Chart of the Various Steps in the Appeal Process**

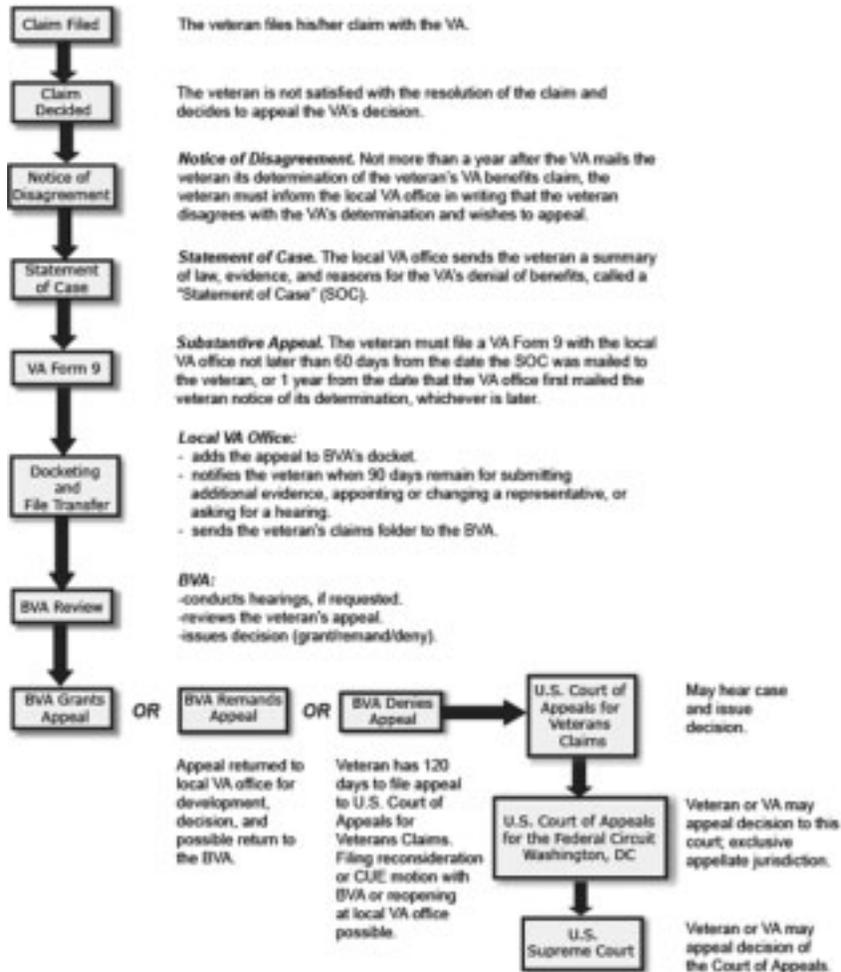
The appeal process consists of several steps. The following flow chart provides a simplified outline of the steps that must be taken by the veteran in his/her appeal. Each step is discussed in detail in the text following the chart.

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<sup>8</sup>*Id.* at 7–10. For instance, the local VA office may determine that the veteran is 10% disabled, while the veteran believes that he/she is 40% disabled.

<sup>9</sup>See *How Do I Appeal?* at 1. For example, a veteran may appeal a denial of education benefits made by the local VA office.

Figure 1. Appeal Process



**Source:** Adapted from charts at *How Do I Appeal?* at 2 and *Understanding* at 32.

**Note:** These filing time limits apply in most cases. However, they do not apply to "simultaneously contested claims," when more than one person is trying to receive benefits that only one person is entitled to, such as life insurance proceeds. See *Understanding* at 11.

### Filing the *Original Claim for Benefits at the VA*

In order to apply for VA benefits, the veteran must file a claim at the local VA office or VA medical facility.<sup>10</sup> A claim for benefits may also be filed online.<sup>11</sup> The claim must specifically state the requested benefit(s).<sup>12</sup> Assistance to the veteran during the application process may be provided by representatives from Veterans Service Organizations (VSOs)<sup>13</sup> and/or by other persons or agents.<sup>14</sup> The VSOs have staff located at most local VA offices.

In addition to assistance that may be provided by the VSOs or other agents, the VA is obligated by statute and regulation to provide certain assistance to the claimant during the original claim procedure and during any subsequent appeal(s). Such assistance may involve locating and producing records and providing medical examinations. Certain presumptions relating to medical conditions are also mandated by statute. These obligations and presumptions are summarized in the Appendix to this report.<sup>15</sup>

Following receipt of the veteran's claim for benefits, the local VA office will review the claim and make a decision about the claim(s).<sup>16</sup> The local VA office will either allow or deny the claim.<sup>17</sup> Where relevant, the local VA office may also rate (on a percentage basis) the veteran's degree of service-connected disability.<sup>18</sup> The local VA office's determination will be mailed to the veteran.<sup>19</sup> If the veteran is not satisfied with the local VA office decision, the veteran may appeal.

### The Appeal: The First Steps

An appeal<sup>20</sup> is a request for a review of a local VA determination<sup>21</sup> on a claim for benefits.<sup>22</sup> Anyone who has filed a claim for benefits with the VA and has received a determination from a local VA office is eligible to appeal a complete or a partial denial of a claim.<sup>23</sup> The veteran may also appeal the level of benefit granted.<sup>24</sup>

**Time Limit.** The veteran seeking a review of the local VA office decision (called "the appellant") has 1 year from the date on which the local VA office mails the appellant its initial determination of the claim to appeal. After one year, the local VA office determination is considered final and cannot be appealed unless there is proof of clear and unmistakable error on the part of the VA.<sup>25</sup>

**The Notice of Disagreement (NOD).**<sup>26</sup> There is no special form needed to initiate the appeal process. The appellant need only submit a written statement dis-

<sup>10</sup>The *local VA office* is defined by the VA as "any local office of the Department of Veterans Affairs where claims for VA benefits are received and determined." This is usually a VA Regional Office or an administrative office at a VA medical center. The legal term for such an office is the "agency of original jurisdiction." A VA *Regional Office* is one of 58 VA regional offices located throughout the United States and its territories, and it is at these offices where most claims for VA benefits are filed and determined. *Thus, all Regional Offices are considered to be "local offices," but the concept of "local office" may also include administrative offices located at VA medical centers.* Therefore, all Regional Offices are "local offices," but not all "local offices" are Regional Offices. See *Board of Veterans' Appeals, Understanding the Appeal Process*, published by the Department of Veterans Affairs; VA Pamphlet 01-00-1 (Jan. 2000) at 38-39 (cited to afterward as "Understanding"). See <http://www.va.gov/vbs/bva/pamphlet.htm> for the publication online. Go to the website and click on "Understanding the Appeal Process."

<sup>11</sup>See *How Do I Appeal* at 3. File the claim at <http://www.vba.va.gov>

<sup>12</sup>Such benefits might relate to medical care, disability compensation, or educational benefits.

<sup>13</sup>Such organizations are the American Legion, the Disabled American Veterans, and other veterans' groups.

<sup>14</sup>See *How Do I Appeal?* at 3.

<sup>15</sup>See discussion at Appendix.

<sup>16</sup>See CRS Report RL33323

<sup>17</sup>*Id.*

<sup>18</sup>*Id.* at 7-10.

<sup>19</sup>See *How Do I Appeal?* at 3.

<sup>20</sup>See 38 C.F.R. § 20.200. What Constitutes An Appeal. "An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal."

<sup>21</sup>See *Understanding* at 6. Most local determinations are made by the local VA office. However, some determinations made by VA medical facilities, such as eligibility for medical treatment, may also be appealed.

<sup>22</sup>38 U.S.C. § 511(a) outlines the authority of the Secretary of the VA to make decisions regarding benefits for veterans.

<sup>23</sup>Again, see *Understanding* at 6. Most local determinations are made by the local VA office. However, some determinations made by VA medical facilities, such as eligibility for medical treatment, may also be appealed.

<sup>24</sup>For example, a veteran may be determined to be 20% disabled and the veteran may believe that he/she is 40% disabled and appeal.

<sup>25</sup>See *Understanding* at 6-7.

<sup>26</sup>See 38 C.F.R. § 20.201.

agreeing with the local VA office's claim determination and stating the veteran's wish to appeal the claim determination. This statement is called the Notice of Disagreement (NOD).<sup>27</sup>

**Appeal to the Local VA Office.** The NOD is filed with the same local VA office that made the decision being appealed,<sup>28</sup> as this is the location of the appellant's claims file or claims folder,<sup>29</sup> unless the appellant has moved. After the NOD is filed, the appellant may request that his/her claims file be reviewed by a Decision Review Officer (DRO) from the local VA office. The DROs provide a second review of the entire file and may also hold a personal hearing on the claim.<sup>30</sup>

**The Statement of the Case.** At this point, the local VA office will either allow or not allow the claim. If the claim is disallowed, the local VA office will prepare and send to the appellant a Statement of Case (SOC) and a blank VA Form 9 to be used for continuation of the appeal. The SOC summarizes the submitted evidence and the relevant laws and regulations and provides the local VA office's reasons for making its determination and disallowing the claim.<sup>31</sup>

**VA Form 9 and the Substantive Appeal.**<sup>32</sup> To continue an appeal, the appellant must fill out and return the VA Form 9—the Substantive Appeal—to the local VA office. Form 9 is available online.<sup>33</sup> The appellant must state the requested benefit, any mistakes in the SOC, and indicate whether a personal hearing is requested.<sup>34</sup> The Form 9 becomes part of the claims folder and is the basis for adding the appeal to the Board of Veterans Appeals docket. Specific provisions exist for the withdrawal of the appeal.<sup>35</sup>

**Supplemental Statement of Case.**<sup>36</sup> If the appellant submits new evidence or information, the local VA office will prepare a Supplemental Statement of Case (SSOC). The SSOC is similar to the SOC and includes the newly submitted information.<sup>37</sup> The appellant has sixty days from the date the SSOC was mailed to submit, in writing, any matter in dispute on the SSOC.

**Time Limitation.**<sup>38</sup> The local VA office must receive the VA Form 9 within sixty days from the date that the VA mailed the SOC (or SSOC) or within 1 year of the date that the original decision denying the claim, whichever date is later.<sup>39</sup>

**Withdrawal of Issue(s).** If the appellant does not wish the Board of Veterans Appeals to examine an issue that is contained in the SOC or the SSOC, the appellant may state on Form 9 that the appellant is withdrawing the issue(s) on the appeal.<sup>40</sup>

### Issues Related to the Appeal Process

**Filing Extensions.**<sup>41</sup> An appellant may request an extension of the sixty day filing period for filing a Substantive Appeal or the sixty day period to respond to a Supplemental Statement of the Case.<sup>42</sup> The appellant makes this request in writing to the local VA office handling the appeal. The appellant needs to explain to the VA local office why extra time is needed to file.

**Representation for the Appeal.**<sup>43</sup> The appellant may represent him/herself at the appeal. However, the VA has reported that about 90 percent of appeals heard before the Board of Veterans Appeals (BVA) have some representation.<sup>44</sup>

There are three different categories of representatives that the appellant may engage. The first includes representatives of the VSO or from the state or local veterans' office. Usually, the representatives from the VSOs and the government vet-

<sup>27</sup> See *Understanding* at 39.

<sup>28</sup> 38 C.F.R. § 20.300.

<sup>29</sup> For the purpose of this report, the appellant's records will be referred to as "claims file."

<sup>30</sup> See *How Do I Appeal?* at 4.

<sup>31</sup> See *Understanding* at 8–9.

<sup>32</sup> 38 C.F.R. § 20.202.

<sup>33</sup> See <http://www.vba.va.gov>

<sup>34</sup> A personal hearing must be requested. Without such a request, the BVA will review the claims file and the VA Form 9 and make a decision without meeting or speaking with the appellant and his/her representative.

<sup>35</sup> 38 C.F.R. § 20.204.

<sup>36</sup> 38 C.F.R. § 20.302(b), (c).

<sup>37</sup> See *Understanding* at 40–41.

<sup>38</sup> 38 C.F.R. § 20.302.

<sup>39</sup> *Id.* See *How Do I Appeal?* at 6.

<sup>40</sup> See *Understanding* at 10.

<sup>41</sup> 38 C.F.R. § 20.303.

<sup>42</sup> 38 U.S.C. § 5105(d)(3); 38 C.F.R. § 20.303.

<sup>43</sup> See in general, 38 C.F.R. § 20.600. Legislation pending in the 110th Congress, discussed below, may change the representation available to appellants.

<sup>44</sup> See *Understanding* at 12.

erans' offices do not charge for their services.<sup>45</sup> Second, the VA recognizes certain "agents" who are able to represent appellants and who are certified by the VA.<sup>46</sup> Third, the appellant may engage a lawyer for representation.<sup>47</sup>

The appellant must complete a **VA Form 21-22** to authorize representation by a VSO or a related entity on the appeal.<sup>48</sup> The appellant must complete a **VA Form 22a** to authorize representation by a lawyer<sup>49</sup> or a recognized agent for his/her appeal.<sup>50</sup> An appellant is limited to one representative recognized by the BVA.<sup>51</sup>

**Attorney Representation: Recent Legislation.** The Veterans Benefits, Health Care, and Information Technology Act of 2006,<sup>52</sup> enacted in the 109th Congress, modified attorney participation in the appeal process. The act also requires the Secretary of the VA to provide additional qualifications and standards for agents and attorneys who represent veterans before the VA, including standards that deal with (1) training and character and (2) fee criteria and limitations. The Secretary is authorized to charge and collect fees from the agents or attorneys to be used for administrative expenses for veterans' benefits programs. The following grounds for suspension of agents or attorneys are provided in the act: presenting frivolous claims, prior suspensions, charging excessive or unreasonable fees, or failure to comply with the Secretary's regulations.

The legislation significantly broadens opportunities for legal representation during administrative appeals. Previously, an attorney could not represent a veteran for a fee until the BVA made a final decision.<sup>53</sup> This had the effect of excluding an attorney from the process until all of the administrative appeals had been exhausted. The act now permits an attorney to enter the appeal process at a much earlier date—after the veteran has received a decision on his or her claim from the VA and decides to appeal this initial decision administratively through the filing of a NOD.<sup>54</sup> An attorney may now provide representation for a fee after the NOD is filed. The act requires the Secretary to provide Congress with an evaluation of the effect of the new system of representation. The Secretary is also authorized to review fee agreements, and the Secretary may order a reduction in an agreed upon fee if the Secretary finds the fee excessive or unreasonable. The Secretary's decision may be reviewed by the BVA, which is authorized to make the final review of the issue.<sup>55</sup>

Broadening attorney participation in the veterans' appeal process has been somewhat controversial. Opposition has focused on attorneys' fees and the possibility of additional delays in the appeal process. On March 5, 2007, Representative Ron Lewis introduced H.R. 1318,<sup>56</sup> which, if enacted, would repeal the authority for certain agent or attorney representation in veterans' benefit cases before the VA. In effect, the bill would return to the process that existed prior to the enactment of the 2006 law and would permit representation only after the BVA renders a final decision in the case. The bill has been referred to the House Committee on Veterans' Affairs.

Information for the Appeal. Should new evidence or medical proof supporting the appellant's claim arise during the appeal process, the evidence should be submitted to the VA. If the appellant's claims file is at the local VA office and the new evidence is sent there, the VA local office will send the appellant an SSOC if it does not allow the claim after reviewing the new evidence. The new evidence will be added to the claims file and considered during the appeal process.<sup>57</sup>

**Location of the VA Form 9.** After the Form 9 is filed, it becomes part of the claims file and serves as the basis for the appeal to the BVA. The Form 9, as part of the claims file, will be sent by the local VA office to the BVA and will be reviewed later by the BVA when the BVA considers the appeal and reviews the entire claims file.

<sup>45</sup> See *Understanding* at 12.

<sup>46</sup> 38 U.S.C. § 5904; 38 C.F.R. § 20.604.

<sup>47</sup> 38 C.F.R. § 20.603.

<sup>48</sup> 38 C.F.R. § 20.602.

<sup>49</sup> 38 C.F.R. § 20.603.

<sup>50</sup> 38 C.F.R. § 20.604.

<sup>51</sup> See *Understanding* at 12.

<sup>52</sup> P.L. 109-461, Title I.

<sup>53</sup> See Figure I. Appeal Process at 3.

<sup>54</sup> *Id.*

<sup>55</sup> 38 U.S.C. § 7104.

<sup>56</sup> 110th Cong., 1st Sess. (2007).

<sup>57</sup> *Id.* at 13-14.

### The Board of Veterans' Appeals (BVA)

#### Organization<sup>58</sup>

Known as the "Gateway to VA Appeals,"<sup>59</sup> the Board of Veterans' Appeals (BVA) is a part of the VA based in Washington, DC.<sup>60</sup> The BVA reviews benefit claims appeals and issues decisions on those appeals. The BVA is composed of "Members of the Board" who are attorneys experienced in veterans' law, appointed by the Secretary of Veterans Affairs and approved by the President of the United States. Staff attorneys, who are designated as Counsel or Associate Counsel, assist Members of the Board in preparing decisions.<sup>61</sup> The function that they provide is similar to a law clerk who assists a judge in his/her legal capacities.<sup>62</sup>

#### The BVA's Docket

**The BVA Docket and Docket Number.** The local VA office will forward the appellant's claims file to the BVA's docket. The law requires that the BVA decide cases on a "first come, first served" basis.<sup>63</sup> Each appellant's case is added to the docket when the VA receives the substantive appeal—VA Form 9—and the claims file from the local VA.<sup>64</sup>

On occasion, the BVA may, on a motion by the appellant, advance the order of a claim on its docket.<sup>65</sup> The appellant must demonstrate compelling need, exceptional circumstances, or proof of hardship.<sup>66</sup> The BVA seldom grants a request for "advancement on the docket," as the BVA feels that most appeals involve some form of hardship and the BVA wishes to treat all appellants fairly.<sup>67</sup>

**Waiting Time.** Once a case/claim has been entered on the BVA's docket, it is uncertain how long it may take for the BVA to reach a decision on the case. The VA has stated, that as of the fall 1999, it took an average of 2 years from the time a NOD was filed, until a final decision was issued.<sup>68</sup> However, 2005 congressional testimony by the Undersecretary for Benefits of the VA appears to indicate that the decision time has been substantially reduced.<sup>69</sup>

### Personal Hearings

There are two types of personal hearings: a *local VA office hearing*<sup>70</sup> and a *BVA hearing*.

As previously discussed,<sup>71</sup> a local office hearing is held at the local VA office between the appellant and a *hearing officer* from the local VA office staff. Such a hearing is arranged between the appellant and the local VA office. The local VA office may find in favor of the appellant. The appellant may subsequently appeal the local office hearing through the BVA.

The appellant may present his/her case in person to a member of the BVA. There are three types of BVA hearings: a hearing by a Board Member at a the local VA office (Regional Office), called a Travel Board hearing;<sup>72</sup> a hearing at the BVA office in Washington, DC; or a videoconference hearing at the local VA office, if it is equipped for videoconferencing. The VA does not provide travel expenses to the appellant.<sup>73</sup>

<sup>58</sup> For a general overview of the BVA, see the website at <http://www.va.gov/vbs/bva>

<sup>59</sup> See note 57.

<sup>60</sup> 38 U.S.C. § 7101(a); 38 U.S.C. § 7104.

<sup>61</sup> *Id.* at 36.

<sup>62</sup> *Id.* at 36–37.

<sup>63</sup> 38 U.S.C. § 7107(a); 38 C.F.R. § 20.900.

<sup>64</sup> See *Understanding* at 15. Each case is assigned a docket number when it is added to the list of cases. The first two numbers are the year in which the case was filed and the remaining numbers indicate the order in which the case was added to that year's list/docket. For example, 05-00111, would indicate the 111th claim filed in 2005.

<sup>65</sup> 38 U.S.C. § 7107(a)(2); 38 C.F.R. § 20.900.

<sup>66</sup> For example, terminal illness, bankruptcy, pending eviction, and other hardships.

<sup>67</sup> See *Understanding* at 16.

<sup>68</sup> *Id.* at 16.

<sup>69</sup> Testimony of Daniel L. Cooper, Undersecretary of Benefits, Department of Veterans Affairs before the Senate Veterans Affairs Committee (May 26, 2005). See <http://www.va.gov/OCA/testimony/svac/05052620.asp>

<sup>70</sup> This is sometimes called a Regional Office hearing, an RO hearing, or a hearing officer hearing.

<sup>71</sup> See "Appeal to the Local VA Office" on page 4.

<sup>72</sup> See note 3.

<sup>73</sup> See *Understanding* at 18.

### **Request for a BVA Hearing**

The typical way to request a BVA hearing is for the appellant to indicate on VA Form 9 the type of hearing that the appellant wishes. The appellant may also write to the BVA to request a hearing, indicating whether a hearing is requested at the local level or in Washington, DC.

### **Scheduling the BVA Hearing**

The schedule of the hearing depends upon the type of hearing requested. The BVA has reported that the Travel Board hearings are usually held as soon as they can be scheduled on the hearing officer's calendar,<sup>74</sup> but that they may be difficult to arrange because of the schedules of the BVA Board Members and the accumulation of a sufficient number of appeals to warrant a scheduled visit from a BVA Member.<sup>75</sup> Videoconferenced hearings are less complicated to arrange and can be scheduled more quickly than Travel Board hearings, according to the BVA.<sup>76</sup>

Hearings that are held at the BVA offices in Washington DC are usually scheduled close to the time when the BVA will consider the case. In 2000, the BVA reported that the BVA will schedule a case about three months before the case is reviewed.<sup>77</sup>

### **The Ninety Day Rule**

The local VA office will notify the appellant by letter when it transfers the claims file to the BVA in Washington, DC. The letter will inform the claimant that the claimant has ninety days from the date of the letter or until the BVA decides the case, whichever comes first, to add additional evidence to the file, request a hearing (if none was selected), and/or select or change representation.<sup>78</sup>

In order for the BVA to accept any of these materials after the expiration of the ninety day period, the appellant must submit a motion—a written request—asking the BVA to accept the item, even though it is late. The motion needs to include an explanation of why the item is late and demonstrate why the BVA should accept the item into the claims file.

### **The Appeal at the BVA**

The local VA office will forward the appellant's file to the BVA. The appellant will be notified in writing when the file is officially transferred and received by the BVA.<sup>79</sup> The decision time in the appeal process varies from case to case. After the file is received by the BVA, the appellant's case will then be assigned to a Board Member for review. When the docket number for the appeal has been reached, the file will be examined by a Board Member and a staff attorney. They will check the file for completeness, review all of the evidence and arguments, the transcript of the local VA hearing, the statement of the appellant's representative (if the appellant has a representative), and any additional information that may be with the claims file.<sup>80</sup> The Board Member may request the staff attorney to undertake additional research on the case and prepare recommendations for the review of the Board member. If the appellant requested a BVA hearing, the Board Member assigned to the case will conduct the hearing before reaching a decision.

Before reaching a decision, the Board Member will examine all of the material in the appellant's file, along with the recommendations prepared by the staff attorney. The Board Member will then issue a decision on the appeal.<sup>81</sup>

### **Notification of the Board's Decision**

The BVA will issue its decision in writing. The decision may contain legal documents and legal discussions as well as medical discussions. The decision will be mailed to the appellant's home address.<sup>82</sup>

The decision will allow, deny, or remand the claim. If the claim is allowed or denied, the BVA's decision is final. A remand is not a final decision and allows further work on the claim.<sup>83</sup>

<sup>74</sup>*Id.* at 19.

<sup>75</sup>*Id.*

<sup>76</sup>*Id.*

<sup>77</sup>*Id.*

<sup>78</sup> 38 C.F.R. § 20.1304.

<sup>79</sup>*Id.* Appellants may check the status of their file after its transfer to by BVA by telephone at 202-565-5436.

<sup>80</sup>*Id.*

<sup>81</sup>*Id.* at 23.

<sup>82</sup>*Id.*

<sup>83</sup> See *How Do I Appeal* at 11.

If the appeal is denied, the BVA will send a copy of the “Notice of Appellate Rights” that describes additional actions that the appellant may choose to pursue.

### **The Remand**

At times the BVA may review an appeal and determine that the case is not ready for a final decision. The BVA will send the case back to the local VA office with directions as to what should be done. The action of returning the case to the local VA office for additional work is called a remand. It is sometimes described as “additional development.”<sup>84</sup>

After the case has been returned to the local VA office, it will perform the additional work on the file. The local VA office will review the case and issue a new determination. If the local VA office does not allow the claim, it will return the case to the BVA for a final decision. The case keeps its original place on the BVA’s docket, so it is usually reviewed relatively soon after it is returned to the BVA.<sup>85</sup>

Certain cases are remanded because of new rulings by the U.S. Court of Appeals for Veterans Claims or changes in the law. The local VA office will then review them within the context of the new legislation or the court ruling.<sup>86</sup>

### **Additional Appeal Options**

Should the appellant wish to appeal the BVA’s decision, the appellant may appeal to the United States Court of Appeals for Veterans Claims (CAVC), an independent court and not part of the VA.<sup>87</sup> An appellant may also wish to pursue further motions with the BVA.

**Notice of Appeal.** Usually, the appellant must file the Notice of Appeal with the CAVC within 120 days from the date the BVA’s decision is mailed. (The mailing date is stamped on the front of the BVA’s decision.)

If the appellant filed a motion to reconsider with the BVA within the 120 day time period and that motion was denied, the appellant has a new 120 day period to file the Notice of Appeal with the CAVC.<sup>88</sup> The new 120 day period begins on the date the BVA mails the appellant a letter notifying the appellant that it has denied the motion to reconsider.

**Motion for Reconsideration.** If the appellant is able to demonstrate that the BVA made an obvious error of fact or of law in its decision, the appellant may file a written “motion to reconsider” of the appeal.<sup>89</sup> The appellant may have the VSO representative advise him/her whether to file the motion and the VSO representative may also provide assistance in its preparation. The motion to reconsider is sent directly to the BVA and not to the local VA office.

The appellant will need to demonstrate that the BVA made a mistake in law or in fact and that the BVA’s decision would have been different if the mistake had not been made.<sup>90</sup>

**Reopening the Case.** If the appellant has “new and material” evidence relating to his/her claim, the appellant can request that the case be opened.<sup>91</sup> In order to be considered “new and material,” the evidence submitted needs to include information related to the case that was not included in the claims folder when the Board reviewed and decided the case.

To reopen a case, the appellant must submit the new evidence directly to the local VA office and not to the BVA.<sup>92</sup>

**CUE Motion.** A BVA decision may be reversed or revised if the appellant is able to show that the decision contained “clear and unmistakable error” (CUE).<sup>93</sup> The written request for the BVA to review its decision for CUE is called a motion. CUE motions are filed directly with the BVA and not with the local VA office.

The motion for CUE review must meet various requirements and if the motion is denied, the appellant cannot request another CUE review.<sup>94</sup> The VA has reported that not many CUE motions are successful. In order to succeed, the conclusion must

<sup>84</sup> See *Understanding* at 24.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See the CAVC’s website: <http://www.vetapp.uscourts.gov/>

<sup>88</sup> See *Understanding* at 25–26 for the appropriate addresses to file the Notice of Appeal and a copy of the Notice of Appeal.

<sup>89</sup> 38 U.S.C. § 7103; 38 C.F.R. § 20.1000; 38 C.F.R. § 20.1001.

<sup>90</sup> See *Understanding* at 27.

<sup>91</sup> 38 U.S.C. § 5108; 38 U.S.C. § 7104(b); 38 C.F.R. § 3.156; 38 C.F.R. § 20.1105.

<sup>92</sup> See *Understanding* at 27.

<sup>93</sup> 38 U.S.C. § 7111; 38 C.F.R. § 20, subpart O.

be reached that the BVA would have decided the case differently, but for the error. A difference in opinion is not sufficient.<sup>95</sup>

The appellant may file a motion to review a BVA decision for CUE at any time. However, if the motion for CUE is filed after filing a timely Notice of Appeal with the CAVC (120 days),<sup>96</sup> the BVA will not be able to rule on the CUE motion.<sup>97</sup>

#### **Death of the Appellant Before a Decision Issued**

The death of the appellant usually ends the appeal.<sup>98</sup> If the appellant dies, the BVA normally dismisses the appeal without issuing a decision. Any rights of a deceased appellant's survivors are not affected by this action. The survivors may file a claim at the VA regional office (RO) for any benefits to which they may be entitled.<sup>99</sup>

#### **Subsequent Judicial Appeals**

The *U.S. Court of Appeals for the Federal Circuit* (Federal Circuit) has exclusive jurisdiction to hear cases involving challenges to VA decisions in an appeal of a CAVC decision and in a direct challenge to VA regulation and VA policies of general applicability.<sup>100</sup> A decision of the CAVC may be appealed to the Federal Circuit by the persons who appealed to the CAVC or by the VA. An appeal to the Federal Circuit must be filed within sixty days of the final CAVC decision. After the Federal Circuit issues a final decision, either the claimant or the VA may petition the U.S. Supreme Court for certiorari (to hear the case) within ninety days of the Federal Circuit's final action.<sup>101</sup> The Supreme Court is the court of last resort and the Supreme Court's decision is final.

## **Appendix**

### **Duties and Obligations of the VA to the Claimant/Appellant**

#### **The Obligations of the VA to the Claimant/Appellant**<sup>102</sup>

The VA<sup>103</sup> has various legal obligations to a claimant/appellant relating to the completeness of the application for benefits (or a subsequent appeal), the provision of medical and service records, and other issues related to the application/appeals process.

**Application and Notice of Incomplete Application.** The VA is required to provide to any person claiming or applying for any benefit, the "instructions and forms necessary to apply for that benefit."<sup>104</sup> These materials are to be provided "free of all expense" to the claimant.<sup>105</sup>

If the claimant's application for a VA benefit is incomplete, the VA is required to notify the claimant of the information that is necessary to complete the application.<sup>106</sup>

**Required Information and Evidence; and Time Limitation.**<sup>107</sup> After the VA receives a complete or a nearly complete application for benefits, the VA is required to notify the claimant of any information or medical or lay evidence that is needed to substantiate the claim.<sup>108</sup> As part of this notification requirement, the VA is required to indicate which information and evidence is to be provided by the claimant and which information the VA will attempt to obtain on the claimant's behalf to substantiate and complete the claim.

The claimant is required to submit the above-mentioned evidence to substantiate the claim *within 1 year of the date of the VA's notification*. If no further evidence is obtained, no benefits will be paid or furnished on this claim.<sup>109</sup>

<sup>95</sup> *Id.*

<sup>96</sup> See "Nature of Appeal" at 11.

<sup>97</sup> See *Understanding* at 28.

<sup>98</sup> 38 U.S.C. § 7104(a); 38 C.F.R. § 20.1302.

<sup>99</sup> See *Understanding* at 29.

<sup>100</sup> 38 U.S.C. § 7292.

<sup>101</sup> 38 U.S.C. § 7292(c).

<sup>102</sup> See CRS Report RL33323

<sup>103</sup> The statutory language provides that "the Secretary" is required to provide various assistance to the claimant. For the purposes of this summary and for consistency, the term "VA" is used instead.

<sup>104</sup> 38 U.S.C. § 5102(a); 38 C.F.R. § 3.150(a).

<sup>105</sup> 38 U.S.C. § 5102(a).

<sup>106</sup> 38 U.S.C. § 5102(b); 38 C.F.R. § 3.159(b)(2).

<sup>107</sup> These provisions are not applicable for any application or claim for government insurance benefits. 38 U.S.C. § 5103(b)(2).

<sup>108</sup> 38 U.S.C. § 5103(a); 38 C.F.R. § 3.159(b).

<sup>109</sup> 38 U.S.C. § 5103(a); 38 C.F.R. § 3.159(b)(1).

**Duty to Assist Claimants—Records.** The VA is required to make “reasonable efforts” to assist a claimant in obtaining evidence necessary to substantiate the claim for benefits.<sup>110</sup> However, certain exceptions exist to this requirement. The VA is not required to provide assistance to the claimant if “no reasonable possibility” exists that such assistance would aid in substantiating the claim.<sup>111</sup> The VA may defer providing assistance pending the claimant’s submission of essential information that is missing from the claimant’s application.<sup>112</sup>

**Assistance in Obtaining Records.** The VA is required to make “reasonable efforts” to obtain relevant records (including private records) that the claimant adequately identifies to the VA and authorizes the VA to obtain.<sup>113</sup> Federal regulations outline the procedures for obtaining records not in the custody of a Federal department or agency<sup>114</sup> and obtaining records in the custody of a Federal department or agency.<sup>115</sup> If after making reasonable efforts, the VA is unable to locate the records, the VA will notify the claimant that the VA is unable to obtain the records pursuant to this claim.<sup>116</sup> The notification is required to identify the records being sought, explain the efforts made to obtain the records, and described any further action to be taken by the VA regarding this claim.<sup>117</sup> It is required that the VA’s efforts to obtain records from the Federal department or agency will continue until the records are obtained, unless it is reasonably certain that such records do not exist or that further efforts to obtain the records would be futile.<sup>118</sup>

**Records for Compensation Claims.** If the case involves a claim for disability compensation, additional assistance in obtaining records is required to be provided.<sup>119</sup> Assistance is to be provided in locating the claimant’s service medical records and other relevant records relating to the claimant’s active military, naval, or air service that are held or maintained by a governmental entity;<sup>120</sup> records of relevant medical treatment or examination at VA health-care facilities;<sup>121</sup> and any other relevant records held by any Federal department or agency that the claimant identifies and authorizes the VA to obtain.<sup>122</sup>

**Medical Examinations for Compensation Claims.** If the case involves a claim for disability compensation, the VA is required to provide a medical examination or obtain a medical opinion when such an examination or opinion is necessary to make a decision on the claim.<sup>123</sup> The VA is required to treat an examination or opinion as being necessary to make a decision on a claim if the evidence on the record, taking in consideration all information and lay or medical evidence 1) contains competent evidence that the claimant has a current disability or persistent or recurrent symptoms of disability<sup>124</sup> or 2) indicates that the disability or symptoms may be associated with the claimant’s active military, naval, or air service;<sup>125</sup> but does not contain sufficient medical evidence for the VA to make a decision on the claim.<sup>126</sup>

**Disallowed Claims.** The statute specifically provides that the VA is not required to reopen a claim that has been disallowed except when new and material evidence is presented or secured.<sup>127</sup>

**Other Assistance not Precluded.** The statute is not to be construed as precluding the VA from providing such other assistance to a claimant in substantiating a claim as the VA considers appropriate.<sup>128</sup>

**Decisions and Notices of Decisions.** When the VA makes a decision affecting the provision of benefits to a claimant, the VA is required, on a timely basis, to provide the claimant (and the claimant’s representative) notice of the decision.<sup>129</sup> The notice must include an explanation of the procedure for obtaining a review of the

<sup>110</sup> 38 U.S.C. 5103A(a)(1); 38 C.F.R. § 3.159(c)(1).

<sup>111</sup> 38 U.S.C. § 5103A(a)(2); 38 C.F.R. § 3.160(d).

<sup>112</sup> 38 U.S.C. § 5103A(a)(3).

<sup>113</sup> 38 U.S.C. § 5103A(b)(1); 38 C.F.R. § 3.160(c).

<sup>114</sup> 38 C.F.R. § 3.159A(c)(1).

<sup>115</sup> 38 C.F.R. § 3.159A(c)(2).

<sup>116</sup> 38 U.S.C. § 5103A(b)(2); 38 C.F.R. § 3.160(e).

<sup>117</sup> *Id.*

<sup>118</sup> 38 U.S.C. § 5103A(b)(3).

<sup>119</sup> 38 U.S.C. § 5103A(c); 38 C.F.R. § 3.159(c)(3).

<sup>120</sup> 38 U.S.C. § 5103A(c)(1).

<sup>121</sup> 38 U.S.C. § 5103A(c)(2).

<sup>122</sup> 38 U.S.C. § 5103A(c)(3).

<sup>123</sup> 38 U.S.C. § 5103A(c)(4); 38 C.F.R. § 3.159(c)(4).

<sup>124</sup> 38 U.S.C. § 5103A(d)(2)(A).

<sup>125</sup> 38 U.S.C. § 5103A(d)(2)(B).

<sup>126</sup> 38 U.S.C. § 5103A(d)(2)(C).

<sup>127</sup> 38 U.S.C. § 5103A(f).

<sup>128</sup> 38 U.S.C. § 5103A(g).

<sup>129</sup> 38 U.S.C. § 5104(a); 38 C.F.R. § 3.103(b).

decision.<sup>130</sup> If the VA denies a benefit, the notice is required to include a statement of the reason for the decision and a summary of the evidence considered by the VA.<sup>131</sup>

**VA's Obligation to Assist in the Development of Claims.** Federal regulations require the VA to assist the claimant "in developing the facts pertinent to the claim" and to render a decision that grants every benefit that can be supported in law while protecting the interests of the government.<sup>132</sup> Therefore, the VA has the duty to consider all legal theories upon which the claim could be granted,<sup>133</sup> regardless of whether the claimant argues or focuses on every possible legal theory.

**Reopening Disallowed Claims.** If any new or material evidence is presented or secured relating to a claim that has been disallowed, the VA is required to reopen the claim and review the former disposition of the claim.<sup>134</sup>

**Revision of Decisions on Grounds of Clear and Unmistakable Error.** A VA decision is subject to revision on the grounds of clear and unmistakable error, as previously discussed.<sup>135</sup> If there is evidence to establish the error, the prior decision is reversed or revised.<sup>136</sup> For the purposes of authorizing benefits, a rating, or other adjudicative decision that constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error, has the effect as if the decision had been made on the date of the prior decision.<sup>137</sup> A review to determine whether a clear and unmistakable error exists in a case may be initiated by the VA or upon the request of the claimant.<sup>138</sup> A request for a revision of a VA decision based on clear and unmistakable error may be made at any time after the decision is made.<sup>139</sup> Such a request for a revision shall be submitted to the VA and shall be decided in the same manner as any other claim.<sup>140</sup>

**Benefit of the Doubt Standard.** The VA is required to consider all information and the legal and medical evidence of record in a case before the VA with respect to benefits under the laws administered by the VA.<sup>141</sup> When there is an approximate balance of positive and negative evidence regarding any issue material to the determination, the VA "shall give the benefit of the doubt to the claimant."<sup>142</sup> Regulations provide that when reasonable doubt arises, such doubt will be resolved in favor of the claimant.<sup>143</sup> For instance, in order to satisfy this element, the submitted medical evidence generally needs to show that it is as likely as not that there is a connection between the in-service injury, occurrence, or illness and the current disability. Thus, the VA can deny the claim only if the preponderance of the evidence is against the claim.

**Certain Presumptions.** In its analysis of certain claims, the VA is required by statute and/or regulation to make certain presumptions.

**Presumption of Medical Soundness.** In evaluating a veteran's claim, the VA generally presumes that the veteran entered the service in sound medical condition.<sup>144</sup> This may assist the veteran in proving a claim by making it difficult for the VA to claim that the condition or disease existed prior to service. However, if the medical impairment was noted at the time of entry into service, the veteran may have to prove that the condition was exacerbated in-service. If the VA is able to prove by "clear and unmistakable evidence" that the disease or injury was in existence prior to service, and that it was not worsened during service, the veteran's claim will be denied.

**Special Rules for Certain In-Service Occurrences.** Special rules exist under which the VA is required to consider a service-connected problem by presumption. For example, certain diseases associated with exposure to Agent Orange will be presumed to be service-related in the case of Vietnam veterans.<sup>145</sup>

<sup>130</sup> *Id.*

<sup>131</sup> 38 U.S.C. § 5104(b).

<sup>132</sup> 38 C.F.R. § 3.103(a).

<sup>133</sup> The VA would be required to consider all possible legal theories (e.g., secondary service connection, presumptive service connection, and so forth.) upon which the claim could be granted.

<sup>134</sup> 38 U.S.C. § 5108.

<sup>135</sup> 38 U.S.C. § 5109A(a). See discussion at 12.

<sup>136</sup> *Id.*

<sup>137</sup> 38 U.S.C. § 5109A(b).

<sup>138</sup> 38 U.S.C. § 5109A(c).

<sup>139</sup> 38 U.S.C. § 5109A(d).

<sup>140</sup> 38 U.S.C. § 5109A(e).

<sup>141</sup> 38 U.S.C. § 5107(b).

<sup>142</sup> *Id.* See 38 C.F.R. § 3.102.

<sup>143</sup> 38 C.F.R. § 3.102.

<sup>144</sup> 38 U.S.C. § 1111.

<sup>145</sup> 38 C.F.R. § 3.307(a)(6)(iii).

A similar regulation holds that veterans who were held prisoners of war, or who served in combat, can be presumed to have suffered traumatic, stressful events during their military service.<sup>146</sup> Similarly, combat veterans have special rules applicable to them in proving an in-service injury or other incident.<sup>147</sup> Usually, if a combat veteran states that he/she suffered a disease, injury, or other event during the combat, the VA will usually accept that statement as fact. This is the case even if there are no service records to substantiate the claim.

### Legislation Introduced in the 110th Congress

Legislation has been introduced in the 110th Congress, which, if enacted, may affect the appeal process. The summary below covers the following bills: H.R. 67, H.R. 1435, H.R. 1444, and H.R. 1490

#### H.R. 67

H.R. 67,<sup>148</sup> the proposed Veterans Outreach Improvement Act of 2007, would establish procedures for coordinating activities of the VA and various related entities, including the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery Administration. The Secretary would be required to review these procedures annually.

The bill would provide assistance to the states to help carry out veterans benefits and related programs. The Secretary could provide assistance to county veteran service programs, enter into agreements and arrangements with state veterans agencies, and make grants to state veterans agencies to assist in outreach activities and the submittal of benefits claims.

Outreach activities would be funded through a separate appropriation account.

A sum of \$25 million would be authorized for each fiscal year from 2007–2009.

The bill defines “outreach” within the context of the legislation as taking steps in a way to provide “information, services and benefits counseling to veterans” and their survivors who may be eligible for such benefits.<sup>149</sup>

H.R. 67 was introduced by Representative McIntyre on January 4, 2007, and referred to the House Committee on Veterans’ Affairs.

#### H.R. 1435

H.R. 1435, the proposed Department of Veterans Affairs Claims Backlog Reduction Act of 2007,<sup>150</sup> if enacted, would direct the Secretary to conduct a pilot program to reduce the backlog of pending benefits claims.

The bill would make various findings on claims backlogs and the quality of County Veterans Service Officers (CVSOs). The bill would establish a 3-year pilot program to reduce the backlog of veterans’ claims in the following states: California, Florida, Ohio, South Carolina, and Texas.<sup>151</sup> Claims identified as requiring further development would be referred to a CVSO, based upon the Officer’s geographical proximity to the claimant. The bill outlines the procedures for the development of the claim by the CVSO and the claimant.<sup>152</sup> Under the program, the CVSO would serve as the claimant’s advocate in developing and transmitting the claim. The CVSO could also cooperate with a veterans service organization to develop the claim. During the development of the claim, the CVSO would have access to client information, including information held by the VA.

Following the completion of the pilot program, the Secretary would report to Congress regarding backlog reduction, statistics, and other related information.

H.R. 1435 was introduced by Representative Baca on March 9, 2007, and referred to the House Committee on Veterans’ Affairs.

#### H.R. 1444

H.R. 1444,<sup>153</sup> if enacted, would direct the Secretary to make interim payments in cases remanded (referred back) to the VA by the BVA or the CAVC if the VA fails to decide the matter within 180 days of remand. If the Secretary does not make a decision within 180 days of the remand, then until the matter is finally decided, the Secretary would be required to pay an interim benefit of \$500 per month. When a claim is finally decided, and if benefits are awarded, the interim payments would

<sup>146</sup> 38 C.F.R. § 3.304(f).

<sup>147</sup> 38 U.S.C. §§ 1154(b); 38 C.F.R. § 3.304(d),(f).

<sup>148</sup> 110th Cong., 1st Sess. (2007).

<sup>149</sup> *Id.* If enacted, to be codified at 38 U.S.C. § 564.

<sup>150</sup> H.R. 1435, 110th Cong., 2nd Sess. (2007).

<sup>151</sup> *Id.* § 4.

<sup>152</sup> *Id.* § 4(d).

<sup>153</sup> H.R. 1444, 110th Cong. 1st Sess. (2007).

be considered advance benefit payments. If the final decision is not to award benefits, the interim benefits would not be considered an overpayment.

Under the bill, the Secretary would also be required to submit to Congress a report on measures that the Secretary intends to expedite the process of remanded claims for veterans benefits.

The bill was introduced by Representative Hall on March 9, 2007, and referred to the House Committee on Veterans' Affairs.

#### **H.R. 1490**

If enacted, H.R. 1490<sup>154</sup> would provide for a presumption of service-connectedness in certain claims for benefits, upon the claimant proving service in a conflict and the nature of the claim, unless the Secretary determines that there is positive evidence to the contrary. The bill would require the Secretary to award benefits, at a "median level" as determined by the Secretary, immediately upon processing the claim until such time as the appropriate level of benefits is determined.<sup>155</sup>

The bill would also provide for the redeployment of VA claims workers freed up by the presumption of service-connectedness to assist veterans with their claims.<sup>156</sup> Such staff would be redeployed to veterans centers or other locations that the Secretary determines are appropriate.

H.R. 1490 was introduced on March 13, 2007, by Representative Donnelly and referred to the House Committee on Veterans' Affairs.



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<sup>154</sup>H.R. 1490, 110th Cong., 1st Sess. (2007).

<sup>155</sup>*Id.* § 1.

<sup>156</sup>*Id.* § 2.