

H.R. 605, COURT OF APPEALS FOR VETERANS CLAIMS ACT OF 1999; H.R. 690, RELATING TO BRONCHIOLO-ALVEOLAR CARCINOMA; H.R. 708, SURVIVING SPOUSES BENEFIT RESTORATION ACT; H.R. 784, REGARDING DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES OF CERTAIN FORMER PRISONERS OF WAR; H.R. 1214, VETERANS' CLAIMS ADJUDICATION IMPROVEMENT ACT OF 1999; AND H.R. 1765, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1999

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTH CONGRESS  
FIRST SESSION

—————  
JUNE 10, 1999  
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**THURSDAY, JUNE 10, 1999**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON BENEFITS,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.***

The subcommittee met, pursuant to call, at 10 a.m., in room 334, Cannon House Office Building, Hon. Ray LaHood presiding.

Present: Representatives LaHood, Filner and Berkley.

Also Present: Representative Evans.

**OPENING STATEMENT OF HON. RAY LAHOOD, ACTING  
CHAIRMAN**

Mr. LAHOOD (presiding). Good morning. The hearing will coming to order. We have a very full agenda, so we will get started. This legislative hearing of the Subcommittee on Benefits is the first of two hearings to receive testimony on several bills covering a wide array of veterans' benefits, and I look forward to hearing the views of our witnesses on the bills.

We have several panels, so I ask each of the witnesses to summarize their testimony and limit their remarks to no more than 5 minutes. Without objection the witnesses' entire statements will be included in the hearing record.

Before we bring up the first panel, I would like to briefly summarize each bill we will be discussing today. H.R. 605 would make improvements to the retirement and survivor annuity programs applicable to judges of the U.S. Court of Appeals for Veterans Claims. Some of you may remember these provisions as ones we discussed in the last Congress. H.R. 690 will add bronchiolo-alveolar car-

cinoma, a rare form of lung cancer not associated with tobacco use, to the list of diseases presumed to be service-connected for radiation exposure. We are pleased to have Congressman Chris Smith with us this morning to discuss his bill.

H.R. 708 would restore eligibility for CHAMPVA medical care, education and housing loans to surviving spouses who lost eligibility for these benefits as a result of remarriage. These same spouses regained dependency and indemnity compensation eligibility, but not these benefits, as the result of the legislation enacted in 1988.

H.R. 784, introduced by Congressman Bilirakis, also here with us this morning, would authorize the payment of dependency and indemnity compensation to the surviving spouses of certain former prisoners of war dying with a service-connected disability rated totally disabled at the time of the death.

H.R. 1214 would provide for an enhanced quality assurance program within the Veterans Benefit Administration requiring quality reviews of services furnished to veterans by the Compensation and Pension Service, the Education Service, the Vocational Rehabilitation Service, the Loan Guaranty Service, and the Insurance Service.

Finally, H.R. 1765 would provide a cost-of-living adjustment effective December 1, 1999, to the rates of disability compensation for veterans with service-connected disabilities and the rates of DIC for survivors of certain service-connected disabled veterans. As in the past, the percentage amounts would follow Social Security Administration figures.

Mr. LAHOOD. We certainly have a full plate today. I will now recognize Mr. Bilirakis, who I know has a markup, and welcome to you, Mike, and for whatever comments you would like to make. Please proceed.

**STATEMENT OF HON. MICHAEL BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. BILIRAKIS. Thank you very much, Ray.

Mr. Chairman, I appreciate the opportunity to testify before the subcommittee in support of H.R. 784. As you know, the Dependency and Indemnity Compensation, DIC, Program provides monthly benefits to the survivors of veterans who die of service-connected conditions. Under current law DIC payments may also be authorized in some cases for the survivors of veterans whose deaths were not the result of their service-connected disability. In the case at hand, a spouse qualifies for DIC benefits if the former POW was rated totally disabled for a period of 10 years or more immediately preceding his death.

There are approximately, as I understand it, 20 presumptive service-connected conditions for former prisoners of war who were detained or interned for at least 30 days. These conditions include malnutrition, peptic ulcer disease, frostbite and PTSD, post traumatic stress disorder.

Unfortunately Mr. Chairman some of these presumptions have been in effect for less than that 10-year period of time. This means that a spouse of a former POW may not qualify for those DIC bene-

fits if the veteran dies of a non-service-connected condition prior to that 10-year period of time having been met.

Even if our presumption has been in effect for 10 or more years, many ex-POWs, as we know, will not have been rated as totally disabled for the minimum period required at the time of their deaths. This may occur for a variety of reasons. For example, the POW may not have filed a disability claim as soon as the presumption was enacted, or it may have taken a while for his claim to be adjudicated. Alternately, the POW could have had a lower disability rating that worsened over time.

This issue was first brought to my attention by a very close friend of mine, Wayne Hitchcock. Wayne has testified before our committee a number of times. He is the past national commander of the American Ex-Prisoners of War, and, Mr. Chairman, he is now very, very seriously ill.

After talking to Wayne, I introduced the bill to waive the 10-year time requirement for the surviving spouses of former POWs. Full committee Chairman Bob Stump and the Ranking Minority Member Lane Evans are among the bill's original cosponsors.

The bill has received strong bipartisan support. It has, as of yesterday, 94 cosponsors. It just keeps picking up cosponsors every day, including 23 members of the Veterans' Affairs Committee, and I am pleased to report every member of this Benefits Subcommittee has cosponsored this legislation.

Both the American Ex-Prisoners of War and the Department of Veterans Affairs POW Advisory Committee have recommended waiving the 10-year time requirement for the surviving spouses of ex-POWs. At their 1998 national convention, the members of the American Ex-Prisoners of War voted to make this issue a legislative priority.

We all know, of course, that military service does not take place in a vacuum. Military life affects every member of the family, especially when U.S. troops are sent into battle. I cannot imagine what it is like to find out that your spouse has been taken prisoner and then living with the uncertainty of not knowing what is happening to him or her while in captivity.

Many POWs experience horrors unimaginable in the annals of civilized existence today. Many continue to experience prolonged battles with various illnesses and other disabilities. Consequently, their spouses spent years caring for them after their release from prisoner of war camps, and these women deserve DIC benefits.

According to the CBO, there are approximately 1,800 totally disabled former POWs receiving disability compensation for a presumptive condition. CBO estimates that about 30 spouses would receive benefits in fiscal year 2000 if H.R. 784 were enacted. By 2004, the total number of spouses receiving benefits under this proposal would increase to about 250. The estimate, the spending estimate, is less than \$500,000 in fiscal year 2000 and \$9 million over 5 years, and I think this is a small price to pay for the surviving spouses of our ex-POWs.

I hope that our full committee can act expeditiously on this legislation. I look forward to working with you, of course, and the other members of the subcommittee on this important issue. Of course, I am available for your questions. Thank you very much.

[The prepared statement of Congressman Bilirakis appears on p. 90.]

Mr. LAHOOD. Thank you, Congressman Bilirakis.

We will now recognize Congressman Chris Smith of New Jersey for whatever statement he would like to make.

**STATEMENT OF HON. CHRISTOPHER SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. SMITH. Thank you very much, Chairman LaHood. I do have a very full statement with much documentation, and I do appreciate that becoming a part of the record.

Mr. LAHOOD. It will.

Mr. SMITH. Thank you very much.

Just let me summarize, Mr. Chairman, and thank you again for this opportunity to discuss my legislation, H.R. 690, which would add a rare form of lung cancer, bronchiolo-alveolar carcinoma, to the list of cancers that are presumed to be service-connected for veterans disposed to radiation during their service to our country.

The need for this legislation was brought to my attention back in 1989 when I became acquainted with Joan McCarthy, a woman from New Jersey who was I put or made in contact with by a former Senate candidate, a Democrat, Steve Foley, who happens to be a very good friend of mine, who said, you just have to hear her out and hear her case. She has tried the process. She tried to use the adjudication process of the VA and met one wall after another. And that was in 1989. We are now 10 years later.

Just give me a moment to just lay out some of the facts of the case. Tom McCarthy, Joan's husband, served as a navigator on the U.S.S. McKinley and was a participant in Operation Wigwam, a nuclear test, on May 14, 1955, which involved a deep underwater detonation of a 30-kiloton plutonium bomb in the Pacific Ocean, about 500 miles southwest of San Diego, California. The detonation of the nuclear bomb broke the surface the of water, creating a giant wave and bathing the area with a radioactive mist. The spray from the explosion was described in an official government report, and I quote that report, as "an insidious hazard which turned into an invisible radioactive aerosol," closed quote.

In April of 1981, at the age of 44, 2 years younger than I am today, Tom McCarthy died of a rare form of lung cancer, bronchiolo-alveolar carcinoma. Tom was a nonsmoker, and according to the American Cancer Society, 87 percent of all lung cancers are related to smoking. He never smoked.

Mr. Chairman, it has been well documented in medical literature that exposure to ionizing radiation can cause this particular type of lethal lung cancer. The BEIR V report, and that stands for the Biological Effects of Ionizing Radiation report, states, and I quote from that report briefly, that "bronchiolo-alveolar carcinoma is the most common cause of delayed death from inhaled plutonium 239."

A 1996 paper entitled Health Effects of Exposure to Low-Level Ionizing Radiation includes a chapter by Dr. John Boice, Jr., the former chief of Radiation Epidemiology Branch of the National Cancer Institute. Dr. Boice concluded that the evidence is very strong that long cancer, which would include bronchiolo-alveolar, is induced following exposure to low levels of ionizing radiation. Fur-

thermore, the VA has also acknowledged that the clear linkage between bronchiolo-alveolar carcinoma and radiation exposure.

In May of 1994, then VA Secretary Jesse Brown wrote to then Chairman Sonny Montgomery—and I had been pushing this in this committee at that time as well—regarding the issue, Secretary Brown stated as follows, and I quote:

“The Veterans’ Advisory Committee on Environmental Hazards considered the issue of radiogenicity of bronchiolo-alveolar carcinoma and advised me that, in their opinion, this form of lung cancer may be associated with exposure to ionizing radiation.”

“The Advisory Committee went on to state that when it had recommended that lung cancer be accepted as a radiogenic cancer, it was intended to include most forms of lung cancer, including bronchiolo-alveolar carcinoma.”

Despite this, Mr. Chairman, the VA has repeatedly denied Joan McCarthy’s claims for surviving benefits. The VA has claimed in the past that adjudication on a case-by-case basis is the appropriate means for resolving these claims. Well, frankly, Mr. Chairman, I and Joan and some of those widows, and there aren’t many in that universe, our patiences are at an end. This is a 20-year battle. He died 20 years ago. I have been in Congress 19 years. She has lived through this stonewalling by the VA, and to some extent by the Congress and by the White House for far too long.

Mr. Chairman, I believe our veterans should not be required to meet an impossible standard of proof in order to receive DIC benefits. The high estimate is that H.R. 690 will cost the Federal Government a mere \$15 million over 5 years, which on average translates into about a \$10,000 cost for each of the affected widows. Clearly this is a small price to pay. And as my colleagues will remember, we have done our job in this committee, and the House has done its job repeatedly. Last year, for example, my legislation passed 400 to nothing to provide identical to what we are offering today or under consideration today, and then the Senate again failed to take it up. I am at a loss as to why.

Joan McCarthy is with us today. Joan, if you could just stand for one second. Joan and I walked down, we met with Jesse Brown. We walked down with one file folder after another showing—laying out the case. He was very sympathetic. Then we ran into the bureaucratic—not him, but people around him, who said, can’t do it. We walked over and met with Senator Arlen Specter, and, again, we had document after document. He was running in and out like we all do because of our tight schedules, but we said, please, Mr. Chairman, take a look at this.

And again in a bipartisan way we passed the legislation 400 to zip. And the previous Congress passed it as a part or provision of another bill as an amendment.

The time has come. You know, Victor Hugo said, nothing is more compelling than an idea whose time has come. This one has come and gone for 20 years. I do think you know we have got to pass this legislation and help widows like Joan, because we have—you know, justice delayed is justice denied. And for 20 years justice has been denied in this case.

I urge the committee to mark up this legislation. Let’s get it to the floor early. Let’s petition our Senators. Tim Hutchinson on the

Senate side has introduced companion legislation, and I think this is the year we have to do it. And I do ask the Chairman and my friends on the Minority party, please help us on this. Thank you.

Mr. LAHOOD. Thank you, Mr. Smith.

[The prepared statement of Congressman Smith appears on p. 94.]

Mr. LAHOOD. And let me offer a very special welcome to Mrs. McCarthy for being at the hearing today. You are welcome here, and we appreciate your being here.

I don't know if any of the Members have any questions of the Members, but if you do, Mr. Filner, you may proceed.

#### OPENING STATEMENT OF HON. BOB FILNER

Mr. FILNER. I thank the Chairman, and I apologize for missing the earlier testimony, but I really want to thank you for your passion on this, Congressman Smith. You have such passion and energy and commitment that when we agree, I love it; when you are on the other side, it is very disconcerting.

But you are absolutely right. And I just don't understand it. You have been here longer than I. I wish you could explain it to me. But we need to support you on this. There is a wider bill that includes this that we ought to also deal with.

I assume you are familiar with this memorandum that had come from the Under Secretary of Health that says that he doesn't understand why the VA—which we are going to hear from—is against this. Are you familiar with this memo?

Mr. SMITH. I haven't seen that one.

Mr. FILNER. Let me quote from the Under Secretary of Health from the VA who says, "I only learned that the Department was opposing this measure last night on reading the Department's prepared testimony for today's hearing; I had no input into that testimony."

I think that is incredible that in the bureaucracy that is doing this, the top health person was not consulted and disagrees with it. We need to change this immediately. I know you have both the energy and the knowledge to get it on the floor and get it passed quickly, but we need to be behind you every step of the way, and I promise from this side that whatever you need, just ask us, because this is ridiculous.

Mr. SMITH. I want to thank you for those very kind remarks. I think as the millennium bill pointed out the other day, and Mr. Evans had some inputs and Mr. Gutierrez on that bill, this committee traditionally has been the most bipartisan committee in the House. And I think we have now reconfigured that, and we will work together on a lot of issues.

You know, just let me point out to the committee, when you hear the VA is against it, one of the first things I did when I got elected in 1981 was push with Tom Daschle, who was then a member of our committee, an Agent Orange legislation. Then we met with stonewalls about how there was no—you know, we could not provide a presumption. And we had at the time even then back in 1981, 1982, some very compelling information about soft tissue sarcoma and some of the other problems that could be attributed to Agent Orange, and we met with that. And that was the Republican

administration. And now we have found that same sense of we don't want to do it on the Democrat administration.

I think it has to do with more with the bureaucrats, and as this memo would indicate, you know we need to work in a bipartisan way to get this legislation and other pieces of legislation passed on behalf of our veterans. And this one, though, 20 years, Joan doesn't deserve this. She is a tenacious woman. Other widows will benefit from it, not many. But I think we are talking about someone who has been really injured by the government.

And had it not been for her husband telling her near the end of his life about Wigwam, she would have never known as to the cause of this. And this—you know, the evidence is so overwhelming—and I won't belabor this—so overwhelming. And it is presumptive disability or payment because it is not absolute. You know, we can't prove it, like we couldn't prove Agent Orange. And as Elaine knows so well the big fight on post traumatic for so long and all the obstacles that were faced in trying to increase that amount of money for post traumatic stress syndrome. So I thank you, Mr. Filner, for your very kind remarks, and we will work together on this.

Mr. LAHOOD. Without objection, we will enter this memorandum into the record of today's hearing.

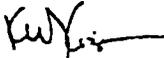
[The attachment follows:]

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** April 21, 1998  
**From:** Under Secretary for Health (10)  
**Subj:** Request for Reconsideration of the Department's Position on S. 1385 (Wellstone)  
**To:** Secretary (00)

1. I request that you reconsider the Department's position on S. 1385 (Wellstone), which would add a number of conditions as presumptive service-connected conditions for atomic veterans to those already prescribed by law. I only learned that the Department was opposing this measure last night on reading the Department's prepared testimony for today's hearing; I had no input into that testimony. Indeed, my views on this bill have not been obtained. I would strongly support this bill as a matter of equity and fairness.
2. I do not think the Department's current opposition to S. 1385 is defensible in view of the Administration's position on presumed service-connection for Gulf War veterans, as well as its position on Agent Orange and Vietnam veterans.
3. While the scientific methodology that is the basis for adjudicating radiation exposure cases may be sound, the problem is that the exposure cannot be reliably determined for many individuals, and it never will be able to be determined in my judgment. Thus, no matter how good the method is, if the input is not valid then the determination will be suspect.
4. I ask that we formally reconsider and change the Department's position on S. 1385. I feel the proper and prudent position for the Department is to support S. 1385.



Kenneth W. Kizer, M.D., M.P.H.

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Mr. LAHOOD. Ms. Berkley.

**OPENING STATEMENT OF HON. SHELLEY BERKLEY**

Ms. BERKLEY. Yes. I also want to thank you for your testimony, your passionate testimony. You have been here 19 years, and you are frustrated. I have been here 19 weeks, and I am very frustrated. I don't understand how everybody that I speak with, everybody that testifies, everybody that sits on this committee, everyone in the administration that I have contacted in the VA is all supportive of veterans, and we all say wonderful, glowing things, and we get up in front of veterans groups and we talk about how important they are and how much they have sacrificed for their country and how this country now needs to live up to its obligations to our veterans and their families and their loved ones. I have cosponsored every piece of legislation that comes my way that would help the veterans. I have held a number of town hall meetings and other hearings in my district. And then when I meet with my veterans, I realize that nothing has changed. And I am frustrated, and I am most anxious to help you. Together I believe in a very bipartisan way we can get some of these things accomplished, and it is amazing to me that they haven't been done years ago.

Mr. SMITH. Thank you, Ms. Berkley. Appreciate it.

Mr. LAHOOD. Any other questions for Mr. Smith?

Thank you very much, Congressman Smith, for being here, and also to Congressman Bilirakis for being here.

Mr. Filner, if you have a statement now would be a good time. Go ahead, Mr. Evans.

**OPENING STATEMENT OF HON. LANE EVANS, RANKING DEMOCRATIC MEMBER, FULL COMMITTEE ON VETERANS' AFFAIRS**

Mr. EVANS. Thank you Mr. Chairman. I have an opening statement that I would like to include as part of the record.

Mr. LAHOOD. Without objection.

Mr. EVANS. I want to thank the Chairman and the Ranking Member. I would strongly support each bill that we are considering today. I do dispute the cost assessments that we have from the VA, but that is something that I think we can get to the bottom of it at future hearings. Thank you for the opportunity.

Mr. LAHOOD. Thank you for being here.

[The prepared statement of Congressman Evans appears on p. 98.]

Mr. LAHOOD. Mr. Filner.

Mr. FILNER. I thank the Chairman. Again, I apologize to the chair and to those who were in the hearing room for being late this morning. As we have heard already, we are considering legislation this morning which will improve the lives of veterans and their survivors. We did pass in the last Congress a bill that I had originally introduced that provides reinstatement of the DIC, the Dependency and Indemnity Compensation benefits, for surviving spouses who had lost that benefit due to remarriage. It was certainly not my intention that those reinstated spouses would receive anything less than the benefits they had lost by remarrying. So I

am pleased we are considering H.R. 708 today to ensure that those full benefits will be reinstated.

We have already started some expressions of frustration with Veterans Affairs' Department. We know we are partners in this, and we want to work together. As you can tell, we are extremely frustrated about what we see as a bureaucratic system that just sometimes does not seem responsive. Joe, you are going to be next. We love you and you have had a past reputation and present job of cutting through some of that red tape. But we are still very disappointed in just getting testimony to us, delays in responding to requests, and this internal situation where I guess all departments would have disagreements. But when your chief health advisor is so frustrated that he cannot get a word in on the health testimony, there is something wrong going on. So we get apologies, but then we get more tardiness and responses, and it is not comfortable for those of us who want to be very supportive and want to be in a working partnership.

So I hope that we can get something in writing, perhaps, of how you prepare for these hearings, the follow-up and how we get responses. For example, it was my understanding that the Department's views and estimates were requested as long ago as last January for legislation that we are considering today, which was originally scheduled for earlier this month. I think we just got that testimony 24 hours before this hearing, and included therein looks like some inaccuracies that we have tried to let you know about.

I hope that on both the substance and the process that we have been going through with the VA, I think we need to understand each other more and get into a working relationship that will lead us to compliment everybody instead of coming here to be blasted by frustrated Congresspeople who are only really expressing the frustration of our constituents. It is not us, it is the folks that we represent that come into our offices, call us on the phone, accost us in the supermarket and say, we are not getting the response. And it is almost impossible for me to say, hey, you know, I can't get the response either. Our job is to do that. And we need help. You need to be honest with us. If that requires resources that you don't have, just let's be up front. Let's note for our constituents if we had this, we can do that, and what is causing the problems here.

So I thank all the witnesses for being here. I hope that we will be in a more positive and working posture with you all.

Thank you, Mr. Chairman.

[The prepared statement of Congressman Filner appears on p. 98.]

Mr. LAHOOD. The second panel today will include Mr. Joseph Thompson, Under Secretary for Benefits, accompanied by Ms. Nora Egan and Mr. Robert Epley. If you would come forward, we welcome you. You are welcome to make whatever statement you would like, and then your entire statement will be a part of the record.

**STATEMENT OF JOSEPH THOMPSON, UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION; ACCOMPANIED BY NORA EGAN, DEPUTY UNDER SECRETARY FOR MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, AND ROBERT EPLEY, DIRECTOR OF COMPENSATION AND PENSION SERVICES, VETERANS BENEFIT ADMINISTRATION**

Mr. THOMPSON. Thank you. I am pleased to be here this morning to provide the views of the Department of Veterans Affairs on the proposed bills.

Mr. Chairman, the most important bill on today's agenda is H.R. 1765. This bill would raise the rates of compensation for service-disabled veterans and DIC for the survivors of veterans whose deaths are service-related. This would become effective December 1, 1999. We currently believe the cost-of-living allowance estimated at 2.4 percent is necessary and appropriate in order to protect the affected benefits from the eroding effects of inflation. Therefore, we strongly support this bill.

H.R. 605 is intended to make improvements relating to the judicial staffing of the U.S. Court of Appeals for Veterans Claims. We support, in principle, the staggered retirement authority proposed in section 7 of this bill, although we defer to the Office of Personnel Management regarding the mechanics for accomplishing it. It makes sense to stagger these retirements over several years in order to minimize operational disruptions.

VA also supports the principle that section 3 of this bill embodies, which is to authorize the Chief Judge to recall retired judges as necessary to meet caseload demands.

The administration, however, objects to section 6 of this bill which would require retired Court judges to forfeit retired pay for any period, plus 1 year, during which they represent a client making any veterans benefits claim against the United States. Both the Office of Personnel Management and the Office of Government Ethics raised concerns about this particular provision of the bill.

H.R. 690 would add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service-connected if suffered by a radiation-exposed veteran. VA opposes this bill. VA has never advocated presumptions of service connection for radiation-related claims. The military services have documented that individual exposure for these veterans were for the most part so low as to pose little health risk to most former members.

Studies such as the 1996 Institute of Medicine's "Mortality of Veteran Participants in the CROSSROADS Nuclear Test," which analyzed causes of death among 40,000 test participants, determined that exposure to ionizing radiation did not contribute to increased mortality among this sizable study population. Under the circumstances, blanket presumptions would be vastly over-inclusive. We believe the better policy is to afford claimants case-by-case determinations based on the individual merits of their unique cases.

Regarding H.R. 708, a surviving spouse who would be entitled to dependency and indemnity compensation based on a veteran's service-connected death loses this entitlement if he or she remarries. Until last year this bar to benefits remained in place even if this subsequent marriage ended.

The law was changed last year to reauthorize DIC if the remarriage ends. However, several other important service-connected death benefits, CHAMPVA, dependents educational assistance, and home loans, continued to be barred under these circumstances. H.R. 708 would reinstate these benefits for these spouses. The VA sees no reason why these benefits should continue to be denied.

H.R. 784 would authorize the payment of DIC to the surviving spouses of former prisoners of war dying after September 30, 1999. These veterans would have to have been rated totally disabled for service-connected disabilities at the time of death and have a presumptive prisoner of war disease rated at least 10 percent disabling.

The deaths of most former prisoners of war with 100 percent service-connected disabilities are rated as service-connected deaths, and their spouses are granted dependency and indemnity compensation benefits. By virtue of all that these folks have endured for their Nation, the relatively few others with 100 percent service-connected disabilities are entitled to the assurance that their survivors will be provided for. We thus support enactment of H.R. 784.

H.R. 1214 would require VA to carry out a quality assurance program in the Veterans Benefits Administration either through a single quality assurance division in VBA or through separate quality assurance entities for each of VBA's principal organizational elements. This quality assurance entity must meet generally applicable governmental standards for independence and internal controls, and the number of full-time VBA employees assigned to these functions must be adequate to perform the functions.

The objective of H.R. 1214 is to improve the quality and accuracy of claims decisions. Although we fully support this objective, and appreciate the intent of the legislation, we believe that the enactment of this bill is unnecessary to achieve a goal. We believe that this objective can be achieved through quality control programs already under way in each of VBA's principal organizational elements.

Mr. Chairman, this concludes my opening statement.

[The prepared statement of Mr. Thompson appears on p. 100.]

Mr. LAHOOD. Mr. Evans.

Mr. EVANS. No.

Mr. LAHOOD. Mr. Filner.

Mr. FILNER. I thank the Chairman. I don't know if you want to comment on any of the process questions or the frustrations that we voiced earlier.

Mr. THOMPSON. I could do that, Mr. Filner. A couple of days ago it was brought to my attention that we had been remarkably remiss in providing feedback to the committees' questions on proposed legislation. I asked the staff to find out where these particular comments were, and without making a long story out of this, I will say that it comes down to bureaucratic dithering. We simply didn't put enough focus and emphasis on getting the responses out. And it is my responsibility, in particular, and the organization's responsibility to do that.

I promise you that we will put some processes in place to make sure that when you ask for our comments you receive them. This is an opportunity for us to have early input into the process, and

it is not just an obligation we have to you, although we do have that, but it is important to make sure that the bills are the best they can be. So with that having been said, I do apologize. It is our fault and our responsibility.

Mr. FILNER. Well, I appreciate that. But let me ask you more substantively, then, on the presumption of service connection. I quoted the Under Secretary for Health. Your testimony commented on the data. Well, Dr. Kizer says that although this methodology may be sound, the problem is that the exposure—and I am quoting here—cannot be reliably determined for any individual. And it never will be able to be determined, in my judgment. Thus, no matter how good the method is, if the input is not valid, a determination will be suspect.

I just don't understand, Joe, the fallback to these studies, when everyone that we have met in person, that we heard the testimony this morning, every individual we meet, all the anecdotal evidence which you can dismiss as not science is consistent. I will tell you that Congresspeople, in collecting anecdotal evidence, became far more informed than any studies. But I just don't understand why, in the face of all this evidence the benefit of the doubt does not go to the veteran.

We have incredible testimony of suffering. We have incredible testimony of problems. You know, why not just go with the veteran? I just don't understand.

This is just one example. I can probably list a whole bunch of them. It just seems the presumption, if I can use that word, misplaced here, is against the veteran rather than for the veteran.

Mr. THOMPSON. Well, we have had a number of discussions on presumption, presumptive conditions, within the agency and certainly on radiation-related claims. You are correct. There are differing views as to the scientists and the doctors that study this particular issue. However, when we look at the studies, there doesn't seem to be convincing evidence that the mortality or the health of people with radiation exposure has worsened.

With presumptive conditions you need to be very, very careful about what you call a presumptive condition. You are in fact blurring the line. Every time you add a presumptive condition, you blur the line between what is related to a person's service and what is not. The VA, as I said, has consistently opposed adding radiation-related presumptive conditions, although the Congress obviously has added legislation that does include some presumptive conditions. We believe that this is the most prudent course.

Mr. FILNER. Well, we disagree. I hope we pass this legislation. There is just some stuff we are not going to understand completely in time to help people. And we ought to go, in my view, with the veterans.

You had an estimate for the cost of the DIC reinstatement on page 7 of your written testimony. Our staff can't figure out where you got that \$24- to \$34 million. Given the fact that at age 65, people are subject to different situations, that it would be impossible with the number of people you have to run more than, I don't know, half million or a million dollars, and you are 35 times that.

Mr. THOMPSON. The staff did share the committee's concerns over that number with us, and based on a quick analysis that was

done very recently, we would agree. That number is considerably higher than reality. We are working right now to come up with a more accurate figure and will provide it to the committee very shortly.

Mr. FILNER. One last comment, if I may, Mr. Chairman.

Under your testimony for quality assurance, where you, I guess, came out against the bill. With the concurrence of Mr. Evans, who has been the leader of this, the GAO report on this has a different conclusion, and I would ask the chair on behalf of Mr. Evans that the GAO report entitled Veterans Benefits Claims: Further Improvements Needed in Claims Processing Accuracy be included in the record.

Mr. LAHOOD. Without objection.

[The attachment appears on p. 57.]

Mr. LAHOOD. Ms. Berkley.

Ms. BERKLEY. Hi. Good morning.

The people—my colleagues on this committee have heard me talk about my district and about the veterans in it. I represent Las Vegas, NV, which has the faster growing veterans population in the United States. I am very close with my veterans, I meet with them very often, and we have got some very serious problems in Las Vegas because of the incredible amount of growth and the lack of resources that are available to my committee through the Veterans' Administration. There are two points that I would like to make.

Did you hear all of that?

Mr. THOMPSON. Yes, I did.

Ms. BERKLEY. There are two points I want to make, one, of course, on 1214. And my colleague Congressman Filner probably said what I was going to say, but the State of Nevada has the fourth highest remand rate when it comes to veterans' claims. And if there is anything that I could do, including passing this piece of legislation, to help them, I am going to do it.

So I disagree with your assessment of this and support the GAO assessment, which is substantially different than your own, because the experience in my district is just the opposite of what you are saying, and I think you do need congressional action to get something accomplished.

The other thing is more in the form of a question, and I am wondering if you are the person that I should speak with after this hearing. I held mobile office hours in my district recently, and before I got there, people were lined up. The first person lined up was a veteran that had been fighting with the Veterans' Administration for almost a decade regarding a health-related matter where he was, I guess, 60 percent disabled, where he thinks he is 100 percent disabled. And after talking with him for a very short length of time, and reading the information that he gave me, which was very well documented, I wouldn't want him going to work for me, and I don't think anybody else would, too. And I think there was severe psychological problems here. To whom do I speak? Because I have had one heck of a time getting through to anybody, and after 2 weeks nobody has called me back yet.

Mr. THOMPSON. Well, you have the right person here today. I will be glad to speak to you right after the hearing.

Ms. BERKLEY. I appreciate that.

Mr. THOMPSON. If I could, I would like to comment on H.R. 1214? We quite agree with the intent. The quality of our decisions needs an awful lot of work. It is an area we have acknowledged and, in fact, have devoted a tremendous amount of resources to improving.

Our problem with the bill isn't its intent. We agree with the intent. It is with the mechanism that we think would result from it. We don't think that would be as effective as the processes that we are putting in place right now. That is the nature of the disagreement.

Ms. BERKLEY. I appreciate that. The problem that I have in my district and in my State is we don't have enough personnel and enough resources to keep up with the growth. And until we get some, there are going to be major mistakes. And I think that accounts for having the fourth highest remand rate, as you have got a handful of people processing claims for thousands and thousands of veterans, and it is not going to slow down in any district. If anything, with 5,000 new residents every month, largely senior citizens, largely veterans, it is not going away. It is getting worse. We need some relief.

Mr. THOMPSON. We are going to add some benefits staff at the medical center, at the clinic in Las Vegas. We are, with limited resources, going to staff up a bit there.

Ms. BERKLEY. I can't tell you how welcome that would be. And if we get out of Vision 22 where we are competing with all of southern California, that would help us probably as well.

Mr. THOMPSON. I can't help you with that one.

Ms. BERKLEY. Thank you.

Mr. LAHOOD. Mr. Thompson, in the Committee's fiscal year 2000 budget Views and Estimates, we recommended an additional \$5 million for quality assurance and training for VBA. If H.R. 1214 were enacted, and in the absence of us getting the \$5 million for VA, would the additional 14 FTE you cite in your testimony come from new hires or the shifting of current personnel?

Mr. THOMPSON. To staff up for H.R. 1214, we would have to take existing personnel and move them into those jobs. The responsibilities of quality assurance require a person who is not simply trained and experienced, but highly trained and highly experienced. One of the impacts of that would be taking people that we rely on very heavily and taking them out of their current roles and putting them into the quality assurance role.

Mr. LAHOOD. Mr. Filner, do you have any other questions of this panel?

Mr. FILNER. Not at this point.

Mr. LAHOOD. Thank you for being here. Appreciate it.

Mr. LAHOOD. The third panel this morning is composed of several members of veterans' service organizations: Mr. Rick Surratt of the Disabled American Veterans, Mr. Bill Russo of the Vietnam Veterans of America, Mr. Larry Rhea of the Non Commissioned Officers Association, and Mr. Harley Thomas of the Paralyzed Veterans of America.

If all of you would join us.

If Mr. Surratt would like to begin, we will go in order of any of you that would like to make a statement. Your entire statement

will be a part of the hearing record. If you could limit your comments to 5 minutes, we will hold our questions until each panelist has offered their testimony.

So please proceed, and welcome to all of you.

**STATEMENTS OF RICK SURRATT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; BILL RUSSO, ESQ., DIRECTOR, VETERANS BENEFITS PROGRAM, VIETNAM VETERANS OF AMERICA; LARRY D. RHEA, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION; AND HARLEY THOMAS, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA**

**STATEMENT OF RICK SURRATT**

Mr. SURRATT. Thank you, Mr. Chair and members of the subcommittee. Good morning. On behalf of the DAV, thank you for inviting us to present our views on the six bills under consideration today.

H.R. 605 would make changes in provisions governing retirement of the judges of the Court of Appeals for Veterans Claims. It has been recognized that an exodus of most of the court's judges at the same time when their 15-year terms expire might be detrimental to the functioning of the court. The DAV, therefore, supports H.R. 605 insofar as it would permit staggered retirement to avoid this effect.

We have no opposition to the other provisions of the bill. What does concern us is the lack of provisions to make other badly needed refinements to the judicial review process or to counteract some of the unintended consequences of judicial review.

The independent budget identified some of the more pressing problems and recommended specific legislative changes to remedy them. Most important among these issues is the need for legislation to restore the VA's duty to assist veterans in developing their claims.

This duty existed as a fundamental element of the VA claims process throughout VA's history until the court gave the law an entirely new meaning, and thereby essentially nullified the duty and complicated the claims process. Other matters related to improving the functioning of the court are discussed in the independent budget. Any legislation on the court should include provisions to correct these more pressing problems.

The DAV supports H.R. 690, which would authorize service connection to be presumed for bronchiolo-alveolar cancer, developing in veterans exposed to radiation during military service. Congress previously authorized presumptive service connection for other diseases related to radiation exposure, and scientific studies have shown an association between this type of cancer and radiation. However, consistent with a resolution adopted by our members and the recommendation of the Independent Budget, we also urge you to expand the presumption to include all diseases that have a recognized association with radiation exposure.

It has been a long-standing principle of VA law that, although benefits for surviving spouses terminate upon their remarriage, the

benefits resume upon dissolution of that marriage by death or divorce. Deficit reduction measures enacted in 1990 changed the law to bar reinstatement of benefits under these circumstances, however.

Congress has since amended the law to provide for reinstatement of dependency and indemnity compensation upon termination of a disqualifying marriage, but did not extend provisions for reinstated entitlement to other survivors' benefits.

H.R. 708, would restore provisions for revived eligibility for medical care, educational assistance, and home loan guarantee when an otherwise eligible remarried spouse terminates a disqualifying marriage. The DAV supports H.R. 708.

DAV also supports H.R. 784, which would authorize payment of dependency and indemnity compensation to the surviving spouses of former prisoners of war who suffer from POW-related diseases, and who are totally disabled by reason of service-connected disabilities at the time of death.

The effectiveness of benefits for veterans and their eligible dependents and survivors depends a great deal on the effectiveness of the benefits delivery system. In turn, effective quality assurance is essential to the effectiveness of the claims adjudication and benefits delivery system.

H.R. 1214 would enhance VA's quality assurance mechanisms for the benefit programs and require the Secretary of Veterans' Affairs to devote sufficient staffing to this activity. The DAV supports H.R. 1214, but because VA does not have staff for this purpose, it should be also authorized additional full-time employees to perform these quality assurance functions or to replace the people that are transferred into that function.

The effectiveness of benefits also depends on how well they offset the economic loss or costs associated with disability. Unless benefits are regularly adjusted to correspond to the cost of living, their effectiveness erodes. The DAV, therefore, supports H.R. 1765, which would provide a cost-of-living adjustment for compensation, dependency and indemnity compensation, and the clothing allowance. For the same reasons that annual adjustments are warranted for these benefits, they are also warranted for other benefits provided to severely disabled veterans and their eligible dependents and survivors. The value of the special grants for adapted housing and automobiles and educational assistance for dependents and survivors also erodes to the extent these benefits are not adjusted every year to offset inflation.

The Independent Budget therefore recommends regular cost-of-living adjustments for these other benefits, and the DAV urges you to consider including these programs in an annual cost-of-living bill.

Mr. Chairman, the DAV wishes to express its appreciation to the sponsors of these bills and to the members of this subcommittee for their interest in improving veterans' programs for our Nation. That concludes my statement. I will be happy to answer any questions you have.

[The prepared statement of Mr. Surratt appears on p. 112.]

Mr. LAHOOD. Thank you. Mr. Rhea.

**STATEMENT OF LARRY D. RHEA**

Mr. RHEA. Thank you, Mr. Chairman. Good morning to you and distinguished members of the subcommittee. The Non Commissioned Officers Association thanks you for your invitation to appear today and comment on the legislation under consideration.

We appreciate the opportunity, and we appreciate deeply the willingness and desire of the distinguished members of this subcommittee to improve important veterans' programs and benefits. NCOA has no objections to any of the legislative proposals under review today. We did, however, offer comment on three of the bills in our prepared statement, and I will briefly discuss some of those. I will briefly discuss those bills and comments in just a moment.

For openers let me say, Mr. Chairman, NCOA strongly supports H.R. 1765, the Veterans' Compensation Cost-of-Living Adjustment Act; and we strongly support H.R. 690, a bill that would add that rare form of lung cancer disease to the list of presumptive diseases for certain radiation-exposed veterans. And likewise, we support H.R. 708 relating to the reinstatement of certain benefits for remarried spouses.

We have no objection to H.R. 605 regarding the Court of Appeals for Veterans Claims, but we take the position, Mr. Chairman, of deferring to the court on this particular proposal. That legislation did raise several interesting questions, in our mind at least, and we enumerated those questions in our prepared statement.

In short, Mr. Chairman, this association, as a great believer in equity, believes that judges on the U.S. Court of Appeals for Veterans Claims should in all respect be treated equally with all other Federal judges in terms of appointment, compensation and retirement.

The association supports H.R. 784, but we do recommend that the bill be modified to authorize identical eligibility for the surviving spouses of all veterans.

And, finally, Mr. Chairman, again, we do not have any objections to H.R. 1214, the Veterans' Claims Adjudication Improvement Act of 1999. We are certainly hopeful that the establishment of a quality assurance entity will lead to improvements in the quality and timeliness of veterans' claims, but it seems to us, Mr. Chairman, that we already know the nature of the problems in VA claims and where those problems lie in the process. While we are hopeful that the proposed legislation, if enacted, will be helpful, this association continues to believe that we are not demanding sufficient accountability within the entire Veterans Benefits Administration.

Again, thank you, Mr. Chairman. We are grateful that you will include our prepared testimony in the hearing record. As always, we appreciate the privilege of working with the members of this subcommittee and the outstanding committee staff on both sides of the aisle. Thank you, Mr. Chairman.

[The prepared statement of Mr. Rhea appears on p. 117.]

Mr. LAHOOD. Mr. Russo.

**STATEMENT OF BILL RUSSO, ESQ.**

Mr. RUSSO. Mr. Chairman, on behalf of Vietnam Veterans of America, I am pleased to have this opportunity to present our

views in regard to several pieces of legislation now pending before the House Veterans' Affairs Committee.

Regarding H.R. 605, improving retirement for judges of the U.S. Court of Appeals for Veterans Claims, DVA supports this legislation since it would ensure the orderly transition and replacement process for installing new judges. Specifically, we note that the terms of all but one of the judges will expire in the 2004-2005 time frame. Unless all current judges are renominated, this could lead to several vacancies simultaneously. This in turn would lead to unfair delays in the processing of cases for disabled veterans and their families. This legislation will allow early retirement of one or more judges over the next few years so that their replacements could be installed prior to the year 2004.

With respect to H.R. 690, DVA supports this proposed legislation which will provide presumptive service connection for bronchiolo-alveolar carcinoma for veterans exposed to radiation in service. The premise behind presumptive service connection is that in certain claims mainly involving technical or complex medical/scientific issues, it is difficult or impossible for veterans to obtain medical evidence for their—in support of their particular claim, and presumptions are therefore needed to allow fair adjudication of those claims. It would be unfair to burden sick and indigent veterans with the task of getting a physician to provide a supporting statement for these claims when we know that these conditions are linked with radiation exposure.

DVA further urges Congress to consider adding other radiogenic diseases to the list as medical studies so warrant. Specifically, the Independent Budget recommended adding 10 particular diseases to the radiogenic disease presumptive service connection list, and we support that proposal.

Regarding H.R. 708 for reinstatement of benefits for remarried surviving spouses, DVA strongly supports this proposed legislation. This bill completes the reinstatement of benefits which was begun last year in the Veterans Benefits Act of 1998 by ensuring that medical care and other benefits are restored as well as DIC.

We believe this legislation is entirely appropriate and consistent with most other Federal benefit programs for surviving spouses. In fact, some Federal programs are more generous than this in that they allow even currently remarried surviving spouses to receive full surviving benefits after they reach a certain age. So these provisions are not overly generous, they are simply fair, and we support H.R. 708.

With respect to H.R. 784, DVA supports this legislation, which will provide DIC benefits for surviving spouses of certain prisoners of war. Specifically this legislation will entitle surviving spouses to DIC benefits if the former POW is rated totally service-connected disabled at the time of his death. This is fair, since in many instances it is the service-connected condition which is actually the cause of death. Requiring the spouses to obtain medical proof that the service-connected condition was the cause of death is unduly burdensome.

Former POWs and their families have clearly sacrificed greatly for our Nation. Easing the financial burdens of their surviving

spouses is a very appropriate means of trying to repay our Nation's debt to them.

And lastly, with respect to H.R. 1214, DVA supports this legislation which will create an enhanced quality assurance program within the Veterans Benefits Administration. While DVA has great confidence in Under Secretary Thompson and in the VBA's current Systematic Technical Accuracy Review program, we see the utility of having DVA's quality assurance comply with generally applicable government standards for independence and internal controls for the performance of quality reviews of government performance.

First, this was recommended by the General Accounting Office in their recent report on the VBA's quality assurance. Secondly, we would point out that while the current leadership of VBA is placing great emphasis on quality assurance, as Under Secretary Thompson stated this morning, future leaders may not place that same emphasis. Requiring integrity and uniformity of the quality assurance by statute is therefore quite logical. DVA also hopes that Congress will ensure that sufficient funding is provided to VBA to carry out its responsibilities under this legislation.

Thank you very much.

[The prepared statement of Mr. Russo appears on p. 122.]

Mr. LAHOOD. Thank you, Mr. Russo. Mr. Thomas.

#### STATEMENT OF HARLEY THOMAS

Mr. THOMAS. Good morning, Mr. Chairman. On behalf of the Paralyzed Veterans of America, it is a pleasure to be here today to issue our comments on the six pending pieces of legislation.

Regarding H.R. 605, the Court of Appeals for Veterans Claims Act of 1999, PVA agrees with the general provisions of this bill; however, we have in our written testimony suggested some substitute language, and I won't go into that at this time. The rationale, however, for these changes is the same rationale for placing a limitation on a retired judge for undertaking representation of a claimant, is equally, if not more, applicable to a retired judge who is employed by or associated with the Department of Veterans Affairs after retirement. Indeed, since the DVA is a party to every appeal heard by the court, there is an even greater appearance of impropriety created by a retired judge seeking employment with or otherwise providing services to the DVA. For example, there would always be a question whether a retired judge's decisions were influenced by his or her opportunities with the DVA upon retirement.

Additionally, PVA is disappointed in the bill's absence of language addressing important issues pertaining to the judicial review as presented in the Independent Budget. These issues directly impact the rights of veterans and the claims and appellate process. Most important among them is the need for legislation to restore the VA's duty to assist veterans in developing their claims. This duty existed throughout VA's history until the court gave the law an entirely new meaning and thereby essentially nullified the duty and subsequently complicated the claims process for veterans.

On H.R. 1765, PVA supports the general provisions including the Veterans' Compensation Cost-of-Living Adjustment Act. We note, however, that the bill does not include an increase in the so-called K Award for loss or loss of use of certain body parts or functions.

This part of a veteran's service-connected compensation should be adjusted along with the rest of the award. As in the past, PVA believes provisions rounded down to the next lower whole dollar amount should be stricken from the language of H.R. 1765.

On H.R. 784, PVA would like to thank Mr. Bilirakis for his dedication to veterans' issues and the introduction of H.R. 784. While we agree with and support the provisions of the bill, PVA suggests that the reference to title 38, United States Code, section 1112(b) that limits the types of qualifying service-connected conditions be stricken from the bill. Even if a veteran is a former POW who also has 100 percent service-connected disability for any condition, we believe his or her survivor should receive DIC benefits regardless of how long the veteran was rated 100 percent service-connected. The reasons and duration he or she was rated 100 percent service-connected or what caused his or her death should not be conditional in the receipt of the DIC benefits.

Additionally, by making this adjustment in the DIC program, the committee should as well look into adjusting the DIC rate for the survivors of catastrophically disabled veterans. Savings to the VA accrued over a lifetime of a veteran with a catastrophic disability through the care provided by a spouse in turn creates a severe loss of saving capability for the survivor. PVA believes higher rates for these survivors is fully justified.

H.R. 1214. Provisions contained in H.R. 1214 are of concern to PVA. While we agree with the concept of strong quality assurance for PVA programs, we have some concerns with the possibility of separation of the proposed quality assurance program from the actual PVA program elements. We foresee the possibility of counterproductive infighting occurring if the proposed quality assurance program had no ownership or responsibility to the program for which it was reviewing. PVA would suggest that strong language be inserted in this section of the bill to preclude any misunderstanding with respect to the intent of the program.

Mr. Chairman, that concludes my testimony. I would be happy to answer any questions.

Mr. LAHOOD. Thank you very much.

[The prepared statement of Mr. Thomas appears on p. 127.]

Mr. LAHOOD. I wanted to make note to Mr. Surratt that the corrections in the language of H.R. 784 with respect to DIC have already been made. And I appreciate—the committee appreciates you bringing that to our attention.

Mr. Rhea, with respect to quality assurance, in your written statement you suggest that H.R. 1214 does not address the one ingredient that is sorely needed within the Veterans Benefit Administration: accountability. Could you expand on that or expand on what you said in your statement?

Mr. RHEA. Well, I will just simply try to answer that this way: I think we know what the problems are. As I indicated, I think we know where those problems lie. And quite bluntly, Mr. Chairman, when we have adjudication officers that continually put forward poorly developed claims, when we have ROs that continually have a high remand rate and so forth, and we don't see accountability to the employees that are involved in doing that, something is wrong.

Mr. LAHOOD. Well, I have no further questions. I thank each of you for being here to support these very important pieces of legislation.

Mr. LAHOOD. Our final panel also represents the veterans' service organizations: Ms. Philip Wilkerson of The American Legion, Ms. Margaret Murphy Peterson of the Gold Star Wives, and Mr. Peter Gaytan of AMVETS, and I hope I didn't butcher your name too badly, Dr. Charles Stenger of the American Ex-Prisoners of War, and Mr. John McNeill of the Veterans of Foreign Wars. Please join us at the table.

Why don't we begin with Mr. McNeill. And if you would like to begin, and we will proceed down the table. Mr. Williams, you are here representing The American Legion.

Mr. WILLIAMS. That is correct.

Mr. LAHOOD. I am sorry I didn't acknowledge that.

Mr. WILLIAMS. That is okay.

Mr. LAHOOD. Mr. McNeill, you may proceed, and we will just go down the line with any statement that any of you would like to make. Your entire statement will be made a part of the record. Thank you all for being here.

**STATEMENTS OF JOHN J. McNEILL, ASSISTANT DIRECTOR FOR VETERANS BENEFITS POLICY, VETERANS OF FOREIGN WARS; MARGARET MURPHY PETERSON, LEGISLATIVE COMMITTEE DIRECTOR, GOLD STAR WIVES OF AMERICA, INC.; CARROLL WILLIAMS, DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; PETER GAYTAN, LEGISLATIVE DIRECTOR, AMVETS; AND CHARLES A. STENGER, Ph.D., VETERANS AFFAIRS AND LEGISLATIVE CONSULTANT, AMERICAN EX-PRISONERS OF WAR**

#### **STATEMENT OF JOHN J. McNEILL**

Mr. McNEILL. Thank you, Mr. Chairman. The Veterans of Foreign Wars supports all six bills that are the subject of this hearing. I will say this one thing on H.R. 605: While we have no specific comments in our written testimony, VFW also fully supports the need for additional legislation concerning the VA's duty to assist mission in relationship to establishing well-grounded claims, as well stated in the Independent Budget and the testimony of our colleagues today, the DAV and the PVA.

We appreciate Congress's intention to add an additional presumptive disability to the list of disorders for radiation exposed veterans as stipulated in H.R. 690. However, that job is not complete. In our written testimony, we reference the past April 30, 1996, hearing this subcommittee held where there were indications by the Members of establishing at least equality for veterans to that of what is being done for the Marshall Islanders. We believe there are, at the minimum, 10 additional disabilities that Congress can establish as presumptive disabilities under title 38, section 1112, subsection (c)(2). We further explain our reasoning on this in our written testimony.

We also appreciate very much Congress's intention to clarify the law on ancillary DIC benefits for remarried spouses. Those are needed, and H.R. 708 is very excellent. But talking about DIC pro-

vides us the opportunity to mention that there are what we perceive to be two current inequities on DIC. The first is that TEA-21 did not reconcile the situation for remarried spouses who were in previous receipt of death pension, as opposed to compensation. The second is that no surviving spouse can receive DIC if the claim is received after the date of June 10, 1998, and it is related to a veteran's already established service connection for the use of tobacco products. In other words, a veteran could be established on June 8, 1998, for a service connection disability for use of tobacco products and die on June 11, and the widow is precluded from receiving DIC. In our written testimony, again we elaborate on these two situations.

H.R. 1214, on establishing a quality assurance program in the VBA, is a very interesting bill. Our initial reaction is to highly recommend its passage, but we have two major concerns. The first is on how the VBA will be able to implement the program without having the attendant necessary increase in FTE to do it. The second concern is that we feel there should be an added mission of training attached to the program. That is, once deficiencies are shown through quality assurance, there needs to be a method to immediately implement a program of correction through intensified training.

The quality assurance section should be the agency to perform that mission, and it should be located in VBA, not outside. The question whether it should be under the direct supervision of Under Secretary for Benefits or within one of the business lines, is certainly one for debate. We believe it should be under the Under Secretary for Benefits. But again, if the necessary additional FTE is not provided—and again, we elaborate on this in our written testimony—we must oppose this legislation.

I need to add that FTE in VBA is a heartfelt concern to the VFW. We have testified twice on this in the past, and very strongly so, I believe. We may be the lone voice crying in the desert on this issue, but the VBA is quite simply now facing a personnel shortage of catastrophic proportions. We just visited the Newark Regional Office, and they have suffered a 20 percent on the average attrition in the last 3 years because of FTE reductions. Currently, they have 21 rating specialists, that is subject matter experts, five of which are eligible for retirement this year, and an additional nine over the next 5 years. You have both a combination of reduction shortage of FTE plus the impending disaster, if I may say, of a whole bunch of subject matter experts available now to retire.

We have recommended that the VBA at this time needs an infusion of 250 additional FTE. There are major programs ongoing, particularly the decision review officer program, that they are estimating is going to have an additional 170 FTE to implement. (Incidentally, the Decision Officer Review program is actually a compliance with the well-stated and excellent recommendation by the Veterans Claims Adjudication Commission to enhance the hearing officer program.) We don't see, quite simply, Mr. Chairman, how the VBA is going to survive if there is not an immediate infusion of personnel.

The VBA has suffered a 20 percent reduction for the last 6 years, which equates to a loss of a little bit more than 2,000 personnel.

There is just no way for the VBA to improve unless the Congress steps in. And we believe Congress needs to take this unilateral action to reverse the personnel shortages within the VBA, at this time.

That concludes my testimony. I will be glad to answer any questions at this time, sir.

[The prepared statement of Mr. McNeill appears on p. 131.]

Mr. LAHOOD. Thank you. Ms. Peterson.

#### STATEMENT OF MARGARET MURPHY PETERSON

Ms. PETERSON. Mr. Chairman, thank you for giving us the opportunity to appear before you to testify in support of H.R. 708, the Surviving Spouses Benefit Restoration Act. It was introduced by Congressman Lane Evans. Additionally, we also support H.R. 1765, the COLA bill; H.R. 6784, the Ex-POW bill; and H.R. 690, the presumptive service connection bill.

Gold Star Wives of America is a congressionally chartered veterans' service organization of the widows of service members who died while on active duty or as a result of service-connected disabilities. As you may well remember, for years our organization fought to restore a sacred benefit that was mistakenly taken away from us in 1990. Just a year ago yesterday, our right to be reinstated to our DIC after termination of a remarriage was signed into law. Today we are asking merely that the remainder of the VA benefits we and our husbands have been statutorily promised in exchange for their lives would also be restored.

H.R. 708 would restore the CHAMPVA benefit to widows who are not yet Medicare-eligible as well as the educational and home loan benefits for these reinstated Gold Star Wives. As a practical matter the educational benefit will be used by only a few widows returning to the VA rolls because typically their short 10-year delimitation date would have run.

Some remarried widows might use the home loan benefit, but again, this benefit will not be in high demand by remarried widows who are, on the average, 69 years old when they return to the rolls. However the home loan and educational benefits will immeasurably enhance the lives of the widows who will use these benefits.

The CHAMPVA benefit is the prized remaining benefit to be reinstated. Restoration of CHAMPVA will apply only to the younger reinstated widows, those under the age of 65. Historically most reinstated widows do not use the CHAMPVA benefit, but, again, for those reinstated widows without health insurance, CHAMPVA will allow them to seek needed medical care. Restoration of CHAMPVA will also encourage younger widows with health problems to remarry.

And I must say, I was pleased that the VA is backing off their cost estimates as stated in their written statement, because so far only 1,032 widows have been reinstated, and it has been 1 year and 1 day since the application process started. Only 31 percent of them, or 323 widows, are under age 65 and potentially eligible for CHAMPVA. There has never been a 100 percent participation rate among the eligible widows, but even if all 323 were to use their CHAMPVA benefit at an average annual cost of a \$1,042 per year per widow, the total annual cost is a mere \$300,000. We believe

fewer than 100 reinstated widows will actually apply and use the CHAMPVA coverage.

We Gold Star Wives, including our remarried sisters, are diverse, but we have a single thread that holds us together; that is, after our husbands died, we all continued to care for what was left of our homes and our families. Our husbands' lives were cut short, but we Gold Star Wives, including those who later remarried, also lost a part of our lives forever. We had to comfort our children during our own sorrow, and it was heartbreaking to see their grief in what should have been their carefree years. We learned to live on a lot less. Our own time was spread thin when our families needed us most.

And Gold Star Wives are happy when a widow among us finds love and remarries, but please don't think her sorrow is over. The remarried widow typically also has children who, for the most part, are now older than their fathers ever lived to be. In our children, we see glimpses of what we can only imagine their fathers, our husbands, would have been like had they lived. The remarried widow continues to feel the same pain in the pit of her stomach as do the rest of us. It does not matter what paths our lives took, all of us Gold Star Wives paid a heavy price for the freedoms every American enjoys. For that reason we know we can come to this Congress of the United States and be heard. We ask only that you listen and remember.

[The prepared statement of Ms. Peterson appears on p. 134.]

Mr. LAHOOD. Thank you very much, Ms. Peterson. Mr. Williams.

#### STATEMENT OF CARROLL WILLIAMS

Mr. WILLIAMS. Thank you very much, Mr. Chairman. Mr. Wilkerson was initially scheduled to present testimony, but unfortunately his mother passed away 2 days ago.

Mr. Chairman, the American Legion appreciates the opportunity to present its views on several legislative proposals that we believe will benefit veterans and their dependents of this Nation, H.R. 605, 690, 708, 784, 1214 and 1765.

Under the provisions of H.R. 605, the American Legion is not opposed to amending title 38, United States Code, Chapter 72 of the U.S. Court of Appeals of Veterans Claims that would give authority to recall retired judges from the court as deemed necessary by the Chief Judge for no more than 90 days during any calendar year without a judge's consent.

Under H.R. 605, the American Legion also supports the proposed changes as specified in section 4, 5, 6 and 7 of that proposed legislation. We submit that these revisions governing the operations of the court will address certain issues facing the court which have arisen since the court's inception in 1988.

H.R. 690 proposes to add bronchiolo-alveolar carcinoma to the existing list of presumptive diseases for certain radiogenic veterans under section 1212(c) in title 38. The American Legion supports the addition of this condition to the presumptive list of radiogenic diseases. This is supported by the National Research Council's Report on the Biological Effects of Ionizing Radiation, which was released in 1994, which reported essentially a high rate of incidence among

individuals exposed to ionizing radiation in this particular lung cancer.

H.R. 708 proposes the reinstatement of certain benefits for remarried spouses who were previously recipients of DIC upon the termination of the remarriage through death or divorce. This provision also would apply to surviving spouses who cease living with another person and holding themselves out openly to the public as that person's spouse. These provisions would be effective at the beginning of the new budget cycle for fiscal year 2000 or whichever is later.

Mr. Chairman, last year Public Law 105-178 authorized the reinstatement of DIC to remarried surviving spouses subsequent to the termination of a remarriage. However, the legislation failed to resupport specific benefits such as medical care, educational assistance and home loan guaranty assistance. The American Legion believes H.R. 708 will remedy this defect and ensure that all eligible surviving spouses receive the benefits and services for which Congress intended.

H.R. 784 would authorize payment of DIC to surviving spouses of former POWs who at the time of death were rated totally disabled for a service-connected disability, and who have been diagnosed as having one of the presumptive POW diseases listed in section 1112 and paren (b) of title 38. The current provision requires payment of DIC if a veteran was evaluated as totally disabled for a period of 10 years prior to death. Under this proposal the time requirement would not apply, providing the veteran was a POW for 30 days of war, was rated totally disabled from a service-connected disability, and the veteran was diagnosed as having one of the POW presumptive diseases.

The American Legion has been a strong advocate for expansion of the presumptives, which were—which are applicable to former POWs. We believe this legislation will recognize the psychological, physiological experiences unique only to veterans who were held in captivity by an enemy of our great Nation.

The American Legion also supports the enactment of H.R. 1214. We submit that the Veterans Benefits Administration needs to put in place a quality assurance program that veterans will have confidence in regardless of whether by executive decision or by legislative initiative.

Finally, the American Legion supports H.R. 1765, which proposes a cost-of-living adjustment in the monthly rate of compensation for service-connected veterans, including an annual clothing allowance and dependency indemnity compensation to surviving spouses and dependent children of veterans who died of service-connected disability. We ask that this subcommittee take the appropriate action to ensure the continued welfare and well-being of our service-disabled veterans and their families by enacting periodic adjustments in their benefits reflective of the increase in the cost of living.

Mr. Chairman, that completes my oral remarks. Thank you.

[The prepared statement of The American Legion appears on p. 137.]

Mr. LAHOOD. Thank you, Mr. Williams. Mr. Gaytan.

**STATEMENT OF PETER GAYTAN**

Mr. GAYTAN. Thank you, Mr. Chairman. I appreciate the opportunity to provide testimony this morning on behalf the members of AMVETS. We appreciate the efforts of this committee in proposing legislation to secure the benefits of America's veterans.

AMVETS supports H.R. 605, the Court of Appeals for Veterans Claims Act of 1999. Maintaining an experienced, qualified staff of judges in the U.S. Court of Appeals for Veterans Claims would help to ensure that cases before the court are reviewed in a fair and timely manner. Also the authorization of early retirement for judges will help to prevent a simultaneous departure of the most experienced judges from the court.

AMVETS, along with the Disabled American Veterans, the Paralyzed Veterans of America and the Veterans of Foreign Wars, have outlined our concerns regarding the U.S. Court of Appeals for Veterans Claims in the Independent Budget. Although the recommendations listed in the IB are not directly addressed in H.R. 605, AMVETS recognizes the efforts of this committee to create a fair and just system for veterans to process their claims.

AMVETS also supports H.R. 690, which seeks to add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service connected for certain radiation-exposed veterans. The Veterans Advisory Committee on Environmental Hazards concluded through a series of scientific studies that indeed bronchiolo-alveolar carcinoma may be associated with exposure to ionizing radiation. As a result of the committee's findings, the VA recognizes bronchiolo-alveolar carcinoma as a radiogenic cancer.

Although the VA has recognized this disease, it has not been included in the list of diseases subject to presumptive service connection under section 1112(c) of title 38. As long as this condition is excluded from the list of diseases recognized by VA, veterans must continue to prove that their cancer has been caused by radiation during military service.

H.R. 708 seeks to amend title 38, United States Code to provide for reinstatement of certain benefits administered by the Secretary of Veterans' Affairs for remarried surviving spouses of veterans upon termination of their remarriage. The provisions of this bill would revive eligibility for medical care, educational assistance and home loan guaranty. AMVETS supports the provisions of H.R. 708.

H.R. 784 will authorize the payment of dependency and indemnity compensation to the surviving spouses of certain former prisoners of war with the service-connected disability rated totally disabling at the time of death.

POW-MIA affairs have always been a key concern of AMVETS members. We have consistently adopted resolutions during our national conventions to keep POW-MIA affairs at the forefront of our organizational priorities. We acknowledge the importance of serving the spouses of former prisoners of war and commend the actions of this committee to secure benefits for their spouses. AMVETS supports the provisions of H.R. 784.

H.R. 1214 would provide for an enhanced quality assurance program within the Veterans Benefit Administration. AMVETS supports the creation of a quality assurance division within the VBA as outlined in this bill. It is our hope that the creation of such a

division will help to correct the existing difficulties experienced by veterans when filing claims with the VA.

H.R. 1765 will increase the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected veterans. The bill would also increase the amounts to be paid for disability compensation, clothing allowance and disability and indemnity compensation to reflect the increases in the cost of living.

During our 54th annual conventional, AMVETS members adopted a resolution which called for organizational support for increased funding of veterans' benefits. It is important that we recognize cost of living increases and adjust existing benefits accordingly. AMVETS supports the initiatives of this bill also.

Mr. Chairman, that concludes my testimony. On behalf of the members of AMVETS, we commend this committee on their continuing efforts to secure the entitlements of our Nation's veterans. We look forward to working with you again in the future.

[The prepared statement of Mr. Gaytan appears on p. 141.]

Mr. LAHOOD. Thank you for being here.

Dr. Stenger.

#### STATEMENT OF CHARLES A. STENGER, Ph.D.

Mr. STENGER. Thank you, Mr. Chairman. The American Ex-Prisoners of War are very grateful to this committee and Congressman Bilirakis for introducing this legislation and your support for it.

If I could deviate from my written testimony which supports all the other bills, I would like to do so.

By history, this committee at the close of World War II was the first to alert this Nation and the VA that there would be long-term consequences of the prisoner of war experience. At that time members of this committee also recommended to the National Academy of Sciences that it begin the longitudinal studies of prisoners of war. It is those studies that have produced most of the evidence that resulted in the presumptive disease category this committee has then acted on. We are very much appreciative of that. This committee also recommended the establishment of the POW Advisory Committee, which has continued to provide additional evidence, and it is that committee that identified a problem what we had overlooked.

Since 1980, many, many things have been done on behalf of prisoners of war by Congress, by the Veterans' Administration and by our colleague veteran organizations, tremendous number. It changed the lives of prisoners of war. Ninety-three percent of all prisoners of war are now service-connected—all prisoners of war who were service-connected are service-connected for one or more of the presumptive conditions. You have done a great many things for prisoners of war that have changed their lives, but somehow in the process we overlooked the fact that the widows of prisoners of war were not benefiting by this. If a presumptive was approved by this committee after the death of the veteran and for which the veteran might have been 100 percent service-connected, and the widow might have been eligible, she lost that opportunity. That is still true.

We have conditions that the advisory committee is recommending be added to the presumptive list. They have not yet come to your attention. But some of those will be conditions, like heart conditions that are one of the major cause of death—POWs are now dying at the rate of about 300 a month. Their widows, unless we get legislation that benefits them in the meantime, they will suffer again as the 60 percent have died earlier have suffered.

Anyhow, we urge this legislation. It is well justified by the facts. The—if the military and the VA had understood the long-term consequences of prisoners of war disabilities at the end of World War II, they would have been service-connected for many of these things, and the widows would have been benefited by it, but because we did not know this, we have all neglected to help the widows, and I think it is time. And the VA and all these organizations, and we know from the members of your committee, strongly support this, and the VA also. We can't fault the VA in their support of prisoners of war since 1980. And we know that they are looking for ways to help us, too. And they work with the committee and they work with you, and we very much urge the support of 784. Thank you.

[The prepared statement of Mr. Stenger appears on p. 144.]

Mr. LAHOOD. Thank you all very much.

Mr. Filner, if you have questions, we will be back after we vote.

Mr. FILNER. I have one comment, then I just suggest we adjourn. The written testimony of both panels raised problems with H.R. 605, and I just want you to know we recognize those, and we will be working with you on them. The Independent Budget, I think, had some very strong statements, and we will be working with you on that.

I thank you, Mr. Chairman, and I move that we do adjourn.

Mr. LAHOOD. We thank all of you for being here and probably see some of you next week when the subcommittee has a second legislative hearing. And we hope that the bills that we have heard testimony on today will be considered by the full committee within the next few weeks. Thank you so much for being here today, and we are adjourned.

[Whereupon, at 11:31 a.m., the subcommittee was adjourned.]

**APPENDIX**

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I

106TH CONGRESS  
1ST SESSION**H. R. 605**

To amend title 38, United States Code, to improve retirement authorities applicable to judges of the United States Court of Appeals for Veterans Claims, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

FEBRUARY 4, 1999

Mr. STUMP (for himself and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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**A BILL**

To amend title 38, United States Code, to improve retirement authorities applicable to judges of the United States Court of Appeals for Veterans Claims, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Court of Appeals for  
5 Veterans Claims Act of 1999".

1 **SEC. 2. AUTHORITY TO PRESCRIBE RULES AND REGULA-**  
2 **TIONS.**

3 Section 7254 of title 38, United States Code, is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(f) The Court may prescribe rules and regulations  
7 to carry out this chapter.”.

8 **SEC. 3. RECALL OF RETIRED JUDGES.**

9 (a) **AUTHORITY TO RECALL RETIRED JUDGES.—**  
10 Chapter 72 of title 38, United States Code, is amended  
11 by inserting after section 7256 the following new section:  
12 **“§ 7257. Recall of retired judges**

13 “(a)(1) A retired judge of the Court may be recalled  
14 for further service on the Court in accordance with this  
15 section. To be eligible to be recalled for such service, a  
16 retired judge must at the time of the judge’s retirement  
17 provide to the chief judge of the Court (or, in the case  
18 of the chief judge, to the clerk of the Court) notice in writ-  
19 ing that the retired judge is available for further service  
20 on the Court in accordance with this section and is willing  
21 to be recalled under this section. Such a notice provided  
22 by a retired judge is irrevocable.

23 “(2) For the purposes of this section—

24 “(A) a retired judge is a judge of the Court of  
25 Veterans Appeals who retires from the Court under

1 section 7296 of this title or under chapter 83 or 84  
2 of title 5; and

3 “(B) a recall-eligible retired judge is a retired  
4 judge who has provided a notice under paragraph  
5 (1).

6 “(b)(1) The chief judge may recall for further service  
7 on the court a recall-eligible retired judge in accordance  
8 with this section. Such a recall shall be made upon written  
9 certification by the chief judge that substantial service is  
10 expected to be performed by the retired judge for such  
11 period, not to exceed 90 days (or the equivalent), as deter-  
12 mined by the chief judge to be necessary to meet the needs  
13 of the Court.

14 “(2) A recall-eligible retired judge may not be re-  
15 called for more than 90 days (or the equivalent) during  
16 any calendar year without the judge’s consent or for more  
17 than a total of 180 days (or the equivalent) during any  
18 calendar year.

19 “(3) If a recall-eligible retired judge is recalled by the  
20 chief judge in accordance with this section and (other than  
21 in the case of a judge who has previously during that cal-  
22 endar year served at least 90 days (or the equivalent) of  
23 recalled service on the court) declines (other than by rea-  
24 son of disability) to perform the service to which recalled,

1 the chief judge shall remove that retired judge from the  
2 status of a recall-eligible judge.

3       “(4) A recall-eligible retired judge who becomes per-  
4 manently disabled and as a result of that disability is un-  
5 able to perform further service on the court shall be re-  
6 moved from the status of a recall-eligible judge. Deter-  
7 mination of such a disability shall be made in the same  
8 manner as is applicable to judges of the United States  
9 under section 371 of title 28.

10       “(c) A retired judge who is recalled under this section  
11 may exercise all of the powers and duties of the office of  
12 a judge in active service.

13       “(d)(1) The pay of a recall-eligible retired judge who  
14 retired under section 7296 of this title is specified in sub-  
15 section (c) of that section.

16       “(2) A judge who is recalled under this section who  
17 retired under chapter 83 or 84 of title 5 shall be paid,  
18 during the period for which the judge serves in recall sta-  
19 tus, pay at the rate of pay in effect under section 7253(e)  
20 of this title for a judge performing active service, less the  
21 amount of the judge’s annuity under the applicable provi-  
22 sions of chapter 83 or 84 of title 5.

23       “(e)(1) Except as provided in subsection (d), a judge  
24 who is recalled under this section who retired under chap-

1 ter 83 or 84 of title 5 shall be considered to be a reem-  
2 ployed annuitant under that chapter.

3 “(2) Nothing in this section affects the right of a  
4 judge who retired under chapter 83 or 84 of title 5 to  
5 serve as a reemployed annuitant in accordance with the  
6 provisions of title 5.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
8 at the beginning of such chapter is amended by inserting  
9 after the item relating to section 7256 the following new  
10 item:

“7257. Recall of retired judges.”.

11 **SEC. 4. CALCULATION OF YEARS OF SERVICE AS A JUDGE.**

12 Section 7296(b) of title 38, United States Code, is  
13 amended by adding at the end the following new para-  
14 graph:

15 “(4) For purposes of calculating the years of service  
16 of an individual under this subsection and subsection (c),  
17 only those years of service as a judge of the Court shall  
18 be credited. In determining the number of years of such  
19 service, that portion of the aggregate number of years of  
20 such service that is a fractional part of one year shall be  
21 disregarded if less than 183 days and shall be credited  
22 as a full year if 183 days or more.”.

23 **SEC. 5. JUDGES' RETIRED PAY.**

24 (a) IN GENERAL.—Subsection (c)(1) of section 7296  
25 of title 38, United States Code, is amended by striking

1 “at the rate of pay in effect at the time of retirement.”

2 and inserting the following: “as follows:

3           “(A) In the case of a judge who is a recall-eli-  
4 ble retired judge under section 7257 of this title or  
5 who was a recall-eligible retired judge under that  
6 section and was removed from recall status under  
7 subsection (b)(4) of that section by reason of disabil-  
8 ity, the retired pay of the judge shall be the pay of  
9 a judge of the court (or of the chief judge, if the in-  
10 dividual retired from service as chief judge).

11           “(B) In the case of a judge who at the time of  
12 retirement did not provide notice under section 7257  
13 of this title of availability for service in a recalled  
14 status, the retired pay of the judge shall be the rate  
15 of pay applicable to that judge at the time of retire-  
16 ment.

17           “(C) In the case of a judge who was a recall-  
18 eligible retired judge under section 7257 of this title  
19 and was removed from recall status under subsection  
20 (b)(3) of that section, the retired pay of the judge  
21 shall be the pay of the judge at the time of the re-  
22 moval from recall status.”.

23           (b) COST-OF-LIVING ADJUSTMENTS.—Subsection (f)  
24 of such section is amended by adding at the end the follow-  
25 ing new paragraph:

1       “(3)(A) A cost-of-living adjustment provided by law  
2 in annuities payable under civil service retirement laws  
3 shall apply to retired pay under this section only in the  
4 case of retired pay computed under paragraph (2) of sub-  
5 section (c).

6       “(B)(i) If such a cost-of-living adjustment would (but  
7 for this subparagraph) result in the retired pay of a re-  
8 tired chief judge being in excess of the annual rate of pay  
9 in effect for the chief judge of the court as provided in  
10 section 7253(e)(1) of this title, such adjustment may be  
11 made in the retired pay of that retired chief judge only  
12 in such amount as results in the retired pay of the retired  
13 chief judge being equal to that annual rate of pay (as in  
14 effect on the effective date of such adjustment).

15       “(ii) If such a cost-of-living adjustment would (but  
16 for this subparagraph) result in the retired pay of a re-  
17 tired judge (other than a retired chief judge) being in ex-  
18 cess of the annual rate of pay in effect for judges of the  
19 court as provided in section 7253(e)(2) of this title, such  
20 adjustment may be made only in such amount as results  
21 in the retired pay of the retired judge being equal to that  
22 annual rate of pay (as in effect on the effective date of  
23 such adjustment).”.

24       (c) COORDINATION WITH MILITARY RETIRED  
25 PAY.—Subsection (f) of such section is further amended

1 by adding after paragraph (3), as added by subsection (b),  
2 the following new paragraph:

3       “(4) Notwithstanding subsection (c) of section 5532  
4 of title 5, if a regular or reserve member of a uniformed  
5 service who is receiving retired or retainer pay becomes  
6 a judge of the court, or becomes eligible therefor while  
7 a judge of the court, such retired or retainer pay shall  
8 not be paid during the judge’s regular active service on  
9 the court, but shall be resumed or commenced without re-  
10 duction upon retirement as a judge.”.

11 **SEC. 6. LIMITATION ON ACTIVITIES OF RETIRED JUDGES.**

12       (a) IN GENERAL.—Chapter 72 of title 38, United  
13 States Code, is amended by adding at the end the follow-  
14 ing new section:

15 **“§ 7299. Limitation on activities of retired judges**

16       “If a retired judge of the Court in the practice of  
17 law represents (or supervises or directs the representation  
18 of) a client in making any claim relating to veterans’ bene-  
19 fits against the United States or any agency thereof, the  
20 retired judge shall forfeit all rights to retired pay under  
21 section 7296 of this title or under chapter 83 or 84 of  
22 title 5 for the period beginning on the date on which the  
23 representation begins and ending one year after the date  
24 on which the representation ends.”.

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

“7299. Limitation on activities of retired judges.”.

4 **SEC. 7. EARLY RETIREMENT AUTHORITY FOR CURRENT**  
5 **JUDGES IN ORDER TO PROVIDE FOR STAG-**  
6 **GERED TERMS OF JUDGES.**

7 (a) RETIREMENT AUTHORIZED.—One eligible judge  
8 may retire in accordance with this section with respect to  
9 each year beginning in 1999 and ending in 2003.

10 (b) ELIGIBLE JUDGES.—For purposes of this section,  
11 an eligible judge is an associate judge of the United States  
12 Court of Appeals for Veterans Claims who—

13 (1) has at least 10 years of service creditable  
14 under section 7296 of title 38, United States Code;

15 (2) has made an election to receive retired pay  
16 under section 7296 of such title;

17 (3) has at least 20 years of service described in  
18 section 7297(l) of such title; and

19 (4) is at least 55 years of age.

20 (c) MULTIPLE ELIGIBLE JUDGES.—If for any year  
21 specified in subsection (a) more than one eligible judge  
22 provides notice in accordance with subsection (d), the  
23 judge who has the greatest seniority as a judge of the  
24 United States Court of Appeals for Veterans Claims shall

1 be the judge who is eligible to retire in accordance with  
2 this section in that year.

3 (d) NOTICE.—An eligible judge who desires to retire  
4 in accordance with this section with respect to any year  
5 covered by subsection (a) shall provide to the President  
6 and the chief judge of the United States Court of Appeals  
7 for Veterans Claims written notice to that effect not later  
8 than April 1 of that year, except that in the case of an  
9 eligible judge desiring to retire with respect to 1999, such  
10 notice shall be provided not later than November 1, 1999,  
11 or 15 days after the date of the enactment of this Act,  
12 whichever is later. Such a notice shall specify the retire-  
13 ment date in accordance with subsection (e). Notice pro-  
14 vided under this subsection shall be irrevocable.

15 (e) DATE OF RETIREMENT.—A judge who is eligible  
16 to retire in accordance with this section shall be retired  
17 during the fiscal year in which notice is provided pursuant  
18 to subsection (d), but not earlier than 90 days after the  
19 date on which that notice is provided, except that a judge  
20 retired in accordance with this section with respect to  
21 1999 shall be retired not earlier than 90 days, and not  
22 later than 120 days, after the date on which notice is pro-  
23 vided pursuant to subsection (d).

24 (f) APPLICABLE PROVISIONS.—Except as provided in  
25 subsection (g), a judge retired in accordance with this sec-

1 tion shall be considered for all purposes to be retired under  
2 section 7296(b)(1) of title 38, United States Code.

3 (g) RATE OF RETIRED PAY.—The rate of retired pay  
4 for a judge retiring in accordance with this section is—

5 (1) the rate applicable to that judge under sec-  
6 tion 7296(c)(1) of title 38, United States Code, mul-  
7 tiplied by

8 (2) the fraction (not in excess of 1) in which—

9 (A) the numerator is the sum of: (i) the  
10 number of years of service of the judge as a  
11 judge of the United States Court of Appeals for  
12 Veterans Claims creditable under section 7296  
13 of such title; and (ii) the age of the judge; and

14 (B) the denominator is 80.

15 (h) ADJUSTMENTS IN RETIRED PAY FOR JUDGES  
16 AVAILABLE FOR RECALL.—Subject to section  
17 7296(f)(3)(B) of title 38, United States Code, an adjust-  
18 ment provided by law in annuities payable under civil serv-  
19 ice retirement laws shall apply to retired pay under this  
20 section in the case of a judge who is a recall-eligible retired  
21 judge under section 7257 of title 38, United States Code,  
22 or who was a recall-eligible retired judge under that sec-  
23 tion and was removed from recall status under subsection  
24 (b)(4) of that section by reason of disability.

1 (i) DUTY OF ACTUARY.—Section 7298(e)(2) of title  
2 38, United States Code, is amended—

3 (1) by redesignating subparagraph (C) as sub-  
4 paragraph (D); and

5 (2) by inserting after subparagraph (B) the fol-  
6 lowing new subparagraph:

7 “(C) For purposes of subparagraph (B), the term  
8 ‘present value’ includes a value determined by an actuary  
9 with respect to a payment that may be made under sub-  
10 section (b) from the retirement fund within the contempla-  
11 tion of law.”.

○

106TH CONGRESS  
1ST SESSION

# H. R. 690

To amend title 38, United States Code, to add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service-connected for certain radiation-exposed veterans.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1999

Mr. SMITH of New Jersey (for himself and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service-connected for certain radiation-exposed veterans.

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

3 **SECTION 1. PRESUMPTION THAT BRONCHIOLO-ALVEOLAR**  
4 **CARCINOMA IS SERVICE-CONNECTED.**

5 Section 1112(c)(2) of title 38, United States Code,  
6 is amended by adding at the end the following new sub-  
7 paragraph:

“(P) Bronchiolo-alveolar carcinoma.”

○

106TH CONGRESS  
1ST SESSION

# H. R. 708

To amend title 38, United States Code, to provide for reinstatement of certain benefits administered by the Secretary of Veterans Affairs for remarried surviving spouses of veterans upon termination of their remarriage.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1999

Mr. EVANS (for himself, Mr. SHOWS, Mr. FILNER, Ms. BROWN of Florida, Ms. CARSON, Mr. RODRIGUEZ, Mr. THOMPSON of California, Mr. KENNEDY of Rhode Island, Mr. FROST, Mr. MCGOVERN, Mr. OLVER, Mr. GREEN of Texas, Ms. DEGETTE, and Mr. UNDERWOOD) introduced the following bill; which was referred to the Committee on Veterans' Affairs

---

## A BILL

To amend title 38, United States Code, to provide for reinstatement of certain benefits administered by the Secretary of Veterans Affairs for remarried surviving spouses of veterans upon termination of their remarriage.

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

1 **SECTION 1. REINSTATEMENT OF CERTAIN BENEFITS FOR**  
2 **REMARRIED SURVIVING SPOUSES OF VETER-**  
3 **ANS UPON TERMINATION OF THEIR REMAR-**  
4 **RIAGE.**

5 (a) **RESTORATION OF PRIOR ELIGIBILITY.**—Section  
6 103(d) of title 38, United States Code, is amended—

7 (1) by inserting “(1)” after “(d)”; and

8 (2) by adding at the end the following:

9 “(2) The remarriage of the surviving spouse of a vet-  
10 eran shall not bar the furnishing of benefits specified in  
11 paragraph (5) to such person as the surviving spouse of  
12 the veteran if the remarriage has been terminated by  
13 death or divorce unless the Secretary determines that the  
14 divorce was secured through fraud or collusion.

15 “(3) If the surviving spouse of a veteran ceases living  
16 with another person and holding himself or herself out  
17 openly to the public as that person’s spouse, the bar to  
18 granting that person benefits as the surviving spouse of  
19 the veteran shall not apply in the case of the benefits spec-  
20 ified in paragraph (5).

21 “(4) The first month of eligibility for benefits for a  
22 surviving spouse by reason of this subsection shall be the  
23 month after—

24 “(A) the month of the termination of such re-  
25 marriage, in the case of a surviving spouse described  
26 in paragraph (2); or

1           “(B) the month of the cessation described in  
2       paragraph (3), in the case of a surviving spouse de-  
3       scribed in that paragraph.

4           “(5) Paragraphs (2) and (3) apply with respect to  
5       benefits under the following provisions of this title:

6           “(A) Section 1311, relating to dependency and  
7       indemnity compensation.

8           “(B) Section 1713, relating to medical care for  
9       survivors and dependents of certain veterans.

10          “(C) Chapter 35, relating to educational assist-  
11       ance.

12          “(D) Chapter 37, relating to housing loans.”.

13       (b) **CONFORMING AMENDMENT.**—Section 1311 of  
14       such title is amended by striking subsection (e).

15       (c) **EFFECTIVE DATE.**—The amendments made by  
16       subsections (a) and (b) shall take effect on the first day  
17       of the first month beginning after the month in which this  
18       Act is enacted or October 1, 1999, whichever is later.

19       (d) **LIMITATION.**—No payment may be made to a  
20       person by reason of paragraphs (2) and (3) of section  
21       103(d) of title 38, United States Code, as added by sub-  
22       section (a), for any period before the effective date speci-  
23       fied in subsection (c).

○

106TH CONGRESS  
1ST SESSION

# H. R. 784

To amend title 38, United States Code, to authorize the payment of dependency and indemnity compensation to the surviving spouses of certain former prisoners of war dying with a service-connected disability rated totally disabling at the time of death.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1999

Mr. BILIRAKIS (for himself, Mr. STUMP, Mr. EVANS, Mr. SHOWS, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to authorize the payment of dependency and indemnity compensation to the surviving spouses of certain former prisoners of war dying with a service-connected disability rated totally disabling at the time of death.

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

3 **SECTION 1. DEPENDENCY AND INDEMNITY COMPENSATION**

4 **FOR SURVIVING SPOUSES OF FORMER PRIS-**

5 **ONERS OF WAR.**

6 (a) **ELIGIBILITY.**—Section 1318(b) of title 38,

7 United States Code, is amended—

1           (1) by striking “that either—” in the matter  
2 preceding paragraph (1) and inserting “rated totally  
3 disabling if”; and

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

6           “(3) the veteran was a former prisoner of war  
7 who died after September 30, 1999, and who had  
8 been diagnosed as having one of the diseases speci-  
9 fied in section 1112(b) of this title.”.

10          (b) CONFORMING AMENDMENTS.—Such section is  
11 further amended—

12           (1) in paragraph (1)—

13               (A) by inserting “the disability” after  
14 “(1)”; and

15               (B) by striking “or” after “death;”; and

16           (2) in paragraph (2)—

17               (A) by striking “if so rated for a lesser pe-  
18 riod, was so rated continuously” and inserting  
19 “the disability was continuously rated totally  
20 disabling”; and

21               (B) by striking the period at the end and  
22 inserting “; and”.

○

106TH CONGRESS  
1ST SESSION

# H. R. 1214

To amend title 38, United States Code, to provide for an enhanced quality assurance program within the Veterans Benefits Administration.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1999

Mr. EVANS (for himself, Mr. FILNER, Ms. BROWN of Florida, Mr. DOYLE, Ms. CARSON, Mr. REYES, Mr. RODRIGUEZ, Mr. SHOWS, Ms. BERKLEY, Ms. MILLENDER-MCDONALD, Ms. DANNER, Mr. COSTELLO, Mr. LaFALCE, Mrs. KELLY, Mr. FRANK of Massachusetts, Mr. PASCRELL, Mr. STRICKLAND, Mr. UNDERWOOD, Mr. OLVER, Mr. HINCHEY, Mr. STENHOLM, Mr. KLINK, Ms. MCKINNEY, Mr. FROST, Ms. SCHAKOWSKY, Mr. FARR of California, Mr. NORWOOD, Mrs. CLAYTON, Mr. SPRATT, Ms. WOOLSEY, Mr. BALDACCI, Mr. RANGEL, Ms. HOOLEY of Oregon, Mr. DAVIS of Florida, Mr. GUTIERREZ, Mr. MURTHA, Ms. KILPATRICK, and Mr. LUTHER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to provide for an enhanced quality assurance program within the Veterans Benefits Administration.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Veterans' Claims Adju-  
5 dication Improvement Act of 1999".

1 **SEC. 2. ENHANCED QUALITY ASSURANCE PROGRAM WITH-**  
2 **IN THE VETERANS BENEFITS ADMINISTRA-**  
3 **TION.**

4 (a) IN GENERAL.—(1) Chapter 77 of title 38, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing new subchapter:

7 “SUBCHAPTER III—QUALITY ASSURANCE  
8 “§ 7731. **Establishment**

9 “(a) The Secretary shall carry out a quality assur-  
10 ance program in the Veterans Benefits Administration.  
11 The program may be carried out through a single quality  
12 assurance division in the Administration or through sepa-  
13 rate quality assurance entities for each of the principal  
14 organizational elements (known as ‘services’) of the Ad-  
15 ministration.

16 “(b) The Secretary shall ensure that any quality as-  
17 surance entity established and operated under subsection  
18 (a) is established and operated so as to meet generally ap-  
19 plicable governmental standards for independence and in-  
20 ternal controls for the performance of quality reviews of  
21 Government performance and results.

22 “§ 7732. **Functions**

23 “The Under Secretary for Benefits, acting through  
24 the quality assurance entities established under section  
25 7731(a), shall on an ongoing basis perform and oversee  
26 quality reviews of the functions of each of the principal

1 organizational elements of the Veterans Benefits Adminis-  
2 tration.

3 **“§ 7733. Personnel**

4 “The Secretary shall ensure that the number of full-  
5 time employees of the Veterans Benefits Administration  
6 assigned to quality assurance functions under this sub-  
7 chapter is adequate to perform the quality assurance func-  
8 tions for which they have responsibility.

9 **“§ 7734. Annual report to Congress**

10 “The Secretary shall include in the annual report to  
11 the Congress required by section 529 of this title a report  
12 on the quality assurance activities carried out under this  
13 subchapter. Each such report shall include—

14 “(1) an appraisal of the quality of services pro-  
15 vided by the Veterans Benefits Administration,  
16 including—

17 “(A) the number of decisions reviewed;

18 “(B) a summary of the findings on the de-  
19 cisions reviewed;

20 “(C) the number of full-time equivalent  
21 employees assigned to quality assurance in each  
22 division or entity;

23 “(D) specific documentation of compliance  
24 with the standards for independence and inter-

1           nal control required by section 7731(b) of this  
2           title; and

3                   “(E) actions taken to improve the quality  
4           of services provided and the results obtained;

5                   “(2) information with respect to the accuracy of  
6           decisions, including trends in that information; and

7                   “(3) such other information as the Secretary  
8           considers appropriate.”.

9           (2) The table of sections at the beginning of such  
10          chapter is amended by adding at the end the following  
11          new items:

                  “SUBCHAPTER III—QUALITY ASSURANCE

                  “7731. Establishment.

                  “7732. Functions.

                  “7733. Personnel.

                  “7734. Annual report to Congress.”.

12           (b) **EFFECTIVE DATE.**—Subchapter III of chapter 77  
13          of title 38, United States Code, as added by subsection  
14          (a), shall take effect on the later of October 1, 1999, or  
15          at the end of the 60-day period beginning on the date of  
16          the enactment of this Act.

○

106TH CONGRESS  
1ST SESSION

# H. R. 1765

To increase, effective as of December 1, 1999, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1999

Mr. STUMP (for himself, Mr. EVANS, Mr. QUINN, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To increase, effective as of December 1, 1999, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Veterans' Compensa-  
5 tion Cost-of-Living Adjustment Act of 1999".

1 **SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSA-**  
2 **TION AND DEPENDENCY AND INDEMNITY**  
3 **COMPENSATION.**

4 (a) **RATE ADJUSTMENT.**—The Secretary of Veterans  
5 Affairs shall, effective on December 1, 1999, increase the  
6 dollar amounts in effect for the payment of disability com-  
7 pensation and dependency and indemnity compensation by  
8 the Secretary, as specified in subsection (b).

9 (b) **AMOUNTS TO BE INCREASED.**—The dollar  
10 amounts to be increased pursuant to subsection (a) are  
11 the following:

12 (1) **COMPENSATION.**—Each of the dollar  
13 amounts in effect under section 1114 of title 38,  
14 United States Code.

15 (2) **ADDITIONAL COMPENSATION FOR DEPEND-**  
16 **ENTS.**—Each of the dollar amounts in effect under  
17 sections 1115(1) of such title.

18 (3) **CLOTHING ALLOWANCE.**—The dollar  
19 amount in effect under section 1162 of such title.

20 (4) **NEW DIC RATES.**—The dollar amounts in  
21 effect under paragraphs (1) and (2) of section  
22 1311(a) of such title.

23 (5) **OLD DIC RATES.**—Each of the dollar  
24 amounts in effect under section 1311(a)(3) of such  
25 title.

1           (6) ADDITIONAL DIC FOR SURVIVING SPOUSES  
2           WITH MINOR CHILDREN.—The dollar amount in ef-  
3           fect under section 1311(b) of such title.

4           (7) ADDITIONAL DIC FOR DISABILITY.—The  
5           dollar amounts in effect under sections 1311(c) and  
6           1311(d) of such title.

7           (8) DIC FOR DEPENDENT CHILDREN.—The  
8           dollar amounts in effect under sections 1313(a) and  
9           1314 of such title.

10          (e) DETERMINATION OF INCREASE.—(1) The in-  
11          crease under subsection (a) shall be made in the dollar  
12          amounts specified in subsection (b) as in effect on Novem-  
13          ber 30, 1999.

14          (2) Except as provided in paragraph (3), each such  
15          amount shall be increased by the same percentage as the  
16          percentage by which benefit amounts payable under title  
17          II of the Social Security Act (42 U.S.C. 401 et seq.) are  
18          increased effective December 1, 1999, as a result of a de-  
19          termination under section 215(i) of such Act (42 U.S.C.  
20          415(i)).

21          (3) Each dollar amount increased pursuant to para-  
22          graph (2) shall, if not a whole dollar amount, be rounded  
23          down to the next lower whole dollar amount.

24          (d) SPECIAL RULE.—The Secretary may adjust ad-  
25          ministratively, consistent with the increases made under

1 subsection (a), the rates of disability compensation pay-  
2 able to persons within the purview of section 10 of Public  
3 Law 85-857 (72 Stat. 1263) who are not in receipt of  
4 compensation payable pursuant to chapter 11 of title 38,  
5 United States Code.

6 **SEC. 3. PUBLICATION OF ADJUSTED RATES.**

7       At the same time as the matters specified in section  
8 215(i)(2)(D) of the Social Security Act (42 U.S.C.  
9 415(i)(2)(D)) are required to be published by reason of  
10 a determination made under section 215(i) of such Act  
11 during fiscal year 1999, the Secretary of Veterans Affairs  
12 shall publish in the Federal Register the amounts specified  
13 in subsection (b) of section 2, as increased pursuant to  
14 that section.

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United States General Accounting Office

**GAO**

Report to the Ranking Minority Member,  
Committee on Veterans' Affairs, House  
of Representatives

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March 1999

# VETERANS' BENEFITS CLAIMS

## Further Improvements Needed in Claims-Processing Accuracy



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GAO/HEHS-99-35



United States  
General Accounting Office  
Washington, D.C. 20548

Health, Education, and  
Human Services Division

B-281315

March 1, 1999

The Honorable Lane Evans  
Ranking Minority Member  
Committee on Veterans' Affairs  
House of Representatives

Dear Mr. Evans:

In fiscal year 1997, the Department of Veterans Affairs (VA) paid about \$19 billion in compensation and pension benefits to more than 3 million veterans and their dependents and survivors. The compensation program pays monthly benefits to veterans with service-connected disabilities (injuries or diseases incurred or aggravated while on active military duty). Veterans with service-connected disabilities are entitled to compensation benefits even if they are working and regardless of the amount they earn. By contrast, the pension program pays monthly benefits to wartime veterans who have low incomes and are permanently and totally disabled for reasons not connected to their service.

VA has 58 regional offices (RO) that process veterans' compensation and pension claims and decide whether to award benefits. The ROs develop evidence and adjudicate these claims under program guidance and policy provided by VA's Veterans Benefits Administration (VBA). In recent years, the accuracy of RO claims processing has been the subject of concern and attention within VA and from the Congress and veterans' service organizations. Although VBA had been reporting until recently that ROs process claims accurately more than 95 percent of the time, questions arose about RO accuracy because, when dissatisfied veterans appealed ROs' initial decisions, the Board of Veterans' Appeals during fiscal years 1993-97 reversed about 19 percent of the appealed decisions and remanded about 47 percent back to ROs for further development and reconsideration. In fiscal year 1998, VBA pilot tested its new accuracy measurement system, known as the Systematic Technical Accuracy Review (STAR) system. Using the STAR system, VBA found an accuracy rate of only 64 percent for RO initial decisions, indicating that VBA needs to give more attention to ensuring that ROs make the correct decision the first time so that veterans need not make unnecessary appeals or be unnecessarily delayed in receiving benefits owed them.

VBA implemented the STAR system nationwide in October 1998. VBA sees STAR as an improvement in its ability to measure accuracy and identify and

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correct the causes of claims-processing errors. As agreed with your office, this report addresses (1) the extent of improvements made by STAR in measuring claims-processing accuracy, (2) additional efforts needed to strengthen the system, and (3) challenges VBA faces in meeting goals for improving claims-processing accuracy.

In conducting our review, we spoke with officials of and reviewed reports and policy guidance by VBA, the Board of Veterans' Appeals, and 15 ROS. We also received available data from VBA, the Board, and the ROS. Furthermore, we contacted and reviewed documents from several veterans' service organizations, the National Academy of Public Administration, the Veterans' Claims Adjudication Commission, and VA's Office of Inspector General. We also obtained information on the quality assurance programs of several other organizations, including the Social Security Administration (SSA), which administers the largest federal disability benefits program. We conducted our review between October 1997 and December 1998 in accordance with generally accepted government auditing standards.

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## Results in Brief

The new STAR system represents an important step forward by VBA in measuring the accuracy of compensation and pension claims processing. Compared with the previous system, STAR focuses more on RO decisions that are likely to contain processing errors, uses a stricter method for computing accuracy rates, provides more data on the performance of organizational levels within VBA, collects more data on processing errors, and stores more accuracy review results in a centralized database for review and analysis.

Even so, VBA can further strengthen STAR's ability to identify error-prone cases and claims-processing weaknesses so that it can take corrective actions. VBA needs to better pinpoint error-prone cases and weaknesses in the development of evidence by collecting more specific data on the types of medical characteristics and deficiencies in medical evidence that are most prevalent in incorrect decisions. VBA can also better address vulnerabilities in the integrity of accuracy data. Currently, STAR reviewers in ROS do not have sufficient separation of duties or adequate independence to meet government standards for internal controls or program performance audits. These shortcomings raise concern about the integrity of STAR accuracy data, which are a key factor in the performance

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measurement system designed by VBA to meet the requirements of the Government Performance and Results Act of 1993.<sup>1</sup>

While such system improvements are necessary, they alone are not sufficient for VBA to meet its goal for improving accuracy. Using the STAR pilot test's 64-percent accuracy rate as a baseline, VBA's goal is to achieve a 93-percent accuracy rate by fiscal year 2004. As acknowledged by VBA, however, it faces management challenges that it must address successfully in order to meet its accuracy improvement goal. To do this, VBA recognizes that (1) its newly implemented performance measurement system must hold program managers accountable for performance and (2) the training program under development must effectively train the current RO workforce as well as the many new employees who will have to be hired in the coming decade to replace those who retire. It is too early to determine whether VBA's efforts to meet these challenges will be successful.

This report makes recommendations to (1) further strengthen VBA's ability to identify error-prone cases by collecting more detailed data on the human body systems and specific impairments involved in disability claims as well as data on specific deficiencies in medical evidence and examinations, (2) implement a system for reviewing claims-processing accuracy that meets the government's internal control standard on separation of duties and the program performance audit standard on organizational independence, and (3) keep the Congress informed on VBA's progress in establishing stricter employee accountability and developing more effective training for claims adjudicators.

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## Background

VBA's Compensation and Pension Service, located at VA headquarters, formulates the policy and guidance used by the RO staff who receive, develop, and evaluate veterans' compensation and pension claims. The compensation program pays monthly benefits to veterans with service-connected disabilities (injuries or diseases incurred or aggravated while on active military duty). Veterans with service-connected disabilities are entitled to compensation benefits even if they are working and regardless of the amount they earn. By contrast, the pension program pays monthly benefits to wartime veterans who have low incomes and are permanently and totally disabled for reasons not connected to their service. In compensation cases, the payment amount varies according to

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<sup>1</sup>The Results Act requires agencies to clearly define their missions, set goals, measure performance, and make improvements. Agencies are required to submit annual reports on their success in achieving program performance goals for the previous fiscal year. The first performance reports for fiscal year 1999 are due by March 31, 2000.

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degree of disability; in pension cases, the amount varies according to financial need. When veterans are unable to manage their affairs, benefit payments are made to guardians who serve as their fiduciary representatives.

Adjudicating an original disability claim involves two basic functions—"authorization" and "disability rating." Authorization involves obtaining records from the military services and information from the veterans, such as medical records and information on income and dependents. Disability rating involves establishing whether a veteran's impairment is service-connected and, if so, evaluating the veteran's degree of disability. VBA considers claims requiring a disability rating to be the core workload of the compensation and pension program, and as a group, cases requiring a disability rating are considered to be the most error-prone in the program. In order to rate (or evaluate) a veteran's disability, ROs often determine that they need medical evidence in addition to evidence obtained from the veteran's physicians and other medical providers. In such cases, they send veterans to the Veterans Health Administration (VHA) for physical or mental examinations by VHA physicians.<sup>2</sup>

From the medical evidence, ROs rate a veteran's disability using VA's Schedule for Rating Disabilities, which lists physical and mental conditions and assigns a disability rating to each condition. Under this schedule, the degree of disability is expressed in 10-percent increments up to 100-percent disability. A veteran can also receive a "zero-percent" disability rating, which means the veteran's condition is service-connected but not severe enough to qualify for compensation payments on the basis of the medical criteria specified in the rating schedule. If the veteran's condition later worsens, he or she may reapply, asking VA to increase the rating from zero to 10 percent or more.

Evaluating the degree of disability for some conditions, such as mental impairments, can require adjudicators to make subjective judgments that are not always clear-cut. For veterans with multiple impairments, the RO must rate each impairment separately and then combine them into a composite rating. After a veteran is placed on the rolls, his or her condition or circumstances may change in ways that can result in adjustments to the RO's initial decision. For example, a veteran may file a claim for an increase in degree of disability if his or her medical condition

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<sup>2</sup>VA is currently conducting a pilot test to study the effectiveness of using private medical providers to perform these examinations.

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deteriorates. Or nonmedical issues may arise that require an adjustment to the initial decision but do not require a disability rating in order to make the new decision. Such cases could arise from changes in the status of the veteran's dependents or changes in the income of a veteran receiving pension benefits.

After the RO notifies the veteran of its decision, the veteran, if dissatisfied, may ask for a hearing before an RO hearing officer. The veteran also may file a notice of disagreement with the RO and then file an appeal asking for a review of the RO's decision by the Board of Veterans' Appeals, which makes VA's final decisions on appeals on behalf of the Secretary. The Board may conduct a hearing if the veteran requests one. In deciding appeals, the Board can grant benefits (reverse the RO decision), deny benefits (affirm the RO decision), or remand (or return) the case to the RO to develop further evidence and reconsider the claim. After further development of a remanded claim, the RO either awards the claim or returns it to the Board for a decision.

Before 1988, the Board's decisions on appeals were final. In that year, however, the Court of Veterans Appeals—established by the Veterans' Judicial Review Act of 1988 (P.L. 100-687, Nov. 18, 1988)—began to hear cases. As a result, the Board is no longer the final step in the claims adjudication process. When a veteran disagrees with a decision of the Board, the veteran may now appeal to the Court, which is independent of VA. Additionally, either veterans or VA may appeal decisions of the Court of Veterans Appeals to the Court of Appeals for the Federal Circuit.

Since veterans began appealing Board decisions to the Court of Veterans Appeals, according to a court official, the Court has remanded more than 4,500 decisions back to the Board for further development and reconsideration. According to the same official, this represents about 59 percent of the Board's decisions that were appealed to the Court, excluding dismissed cases. In turn, ROS have felt the repercussions of these Court decisions as evidenced by significant increases in the Board's reversals and remands of appealed RO decisions. Before the advent of the Court, the Board historically had annually awarded benefits in 12 to 14 percent of appealed RO decisions and had annually remanded another 12 to 24 percent back to ROS for further development.<sup>3</sup> However, in the years since the advent of the Court, the Board has annually awarded benefits in about 14 to 20 percent of the cases it reviewed and remanded

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<sup>3</sup>Veterans file relatively few appeals with the Board. In fiscal year 1997, for example, they filed appeals in only 5.4 percent of all RO initial decisions.

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another 31 to 51 percent back to ROS for further development. Despite these increases in awards and remands by the Board, VBA had continued to report—until STAR was implemented—that ROS were accurately processing compensation and pension claims more than 95 percent of the time. (See app. I for more details on the reversal and remand rates of the Court and the Board and on the accuracy rates reported by VBA.)

VBA considers a disability claim to have been accurately processed if basic eligibility has been determined correctly, the case file contains all required medical and nonmedical documentary evidence, the RO's decision on service-connection and the rating given to each impairment are correct, the payment amount is correct, and the RO properly notified the veteran of the outcome of his or her claim.

Under the accuracy measurement system that was in operation from fiscal year 1992 through fiscal year 1997, VBA headquarters annually reviewed approximately 100 cases randomly selected from the cases completed by each of 57 ROS.<sup>4</sup> These cases were selected from the entire universe of compensation and pension work products completed by the ROS. Using this procedure, VBA produced a national accuracy rate with a reasonable level of statistical precision.<sup>5</sup> While each year's sample was too small for VBA to produce accuracy rates for each RO with a reasonable level of statistical precision, VBA required each RO to self-review 300 to 900 cases annually, depending on the size of the RO. These RO self-reviews were to provide ROS with information needed to improve quality, not to compute accuracy rates for measuring performance.

VBA's new accuracy measurement system, STAR, is part of a customer service and benefits delivery improvement effort that involves, among other things, the restructuring of VBA's organization and accountability systems. Under the restructuring, VBA has grouped the ROS into nine service delivery networks (SDN). An SDN does not have a centralized office or staff. Instead, the ROS in each SDN are expected to closely collaborate with one another, provide mutual support, share resources, operate according to team-based principles, and share collective responsibility and

<sup>4</sup>Although 58 ROS receive and process claims, the RO in Cheyenne, Wyoming, reports administratively through the Denver RO; therefore, cases completed by the Cheyenne RO were included in the universe of cases from which the Denver RO sample was selected.

<sup>5</sup>Statistical precision refers to the amount of uncertainty in an estimate that results from sampling variability at a given level of confidence. For example, if a sample that has a 95-percent confidence level and a precision level of plus or minus 5 percentage points yields an estimated accuracy rate of 70 percent, this means that one can be 95-percent confident that the true accuracy rate is between 65 percent and 75 percent.

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accountability for the SDN's overall performance of all work assigned to it. In meeting the requirements of the Results Act, VBA headquarters will measure each SDN's performance, and each SDN will assess the performance of its ROs. This measurement will be made on the basis of five performance factors: claims-processing accuracy (as determined by STAR), timeliness of claims processing, unit cost, customer satisfaction, and employee satisfaction and development.

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### VBA Has Improved Its Measurement of Claims-Processing Accuracy

The new STAR system represents an important step forward by VBA in measuring the accuracy of compensation and pension claims processing and in providing data to identify error-prone cases and correct the causes of errors, including those that result in reversals and remands by the Board of Veterans' Appeals. Compared with the previous accuracy measurement system that VBA had been using since 1992, the STAR system is a step forward because it focuses more on RO decisions that are likely to contain claims-processing errors, uses a stricter method for computing accuracy rates, provides more data on the performance of additional organizational levels within VBA, collects more data on errors, and stores the results of more accuracy reviews in a centralized database for further review and analysis.

Whereas VBA had been reporting more than 95-percent accuracy under the previous accuracy measurement system, VBA, in its pilot test of STAR, reported that only 64 percent of veterans' claims were processed accurately. A primary reason for this difference is that the pilot test focused only on the most complex and more error-prone RO work products, those involving disability rating decisions. By contrast, the previous system drew its sample of cases from the entire universe of RO work products, including those not requiring an assessment of disability and, therefore, less error-prone. The newly implemented STAR system continues to focus on claims that involve disability ratings, but it also includes a sample of cases that address issues typically not requiring disability ratings and a separate sample of cases involving guardianship issues for veterans unable to represent themselves. Separate accuracy rates are computed for each of these two other samples.

Another reason that the STAR pilot test found an accuracy rate of 64 percent rather than 95 percent as reported under the previous system is STAR's stricter accuracy rate computation method. Under the previous system, VBA categorized each error into one of three areas of the claims adjudication process: (1) case control and development, (2) decision

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elements, and (3) notification to the veteran. Thus, if a case had one error, VBA would record this error under the appropriate area and show the two other areas as error-free. After reviewing all cases, VBA computed separate accuracy rates for each of the three claims adjudication areas and then determined an overall accuracy rate by calculating the arithmetic mean (or average) of the three accuracy rates. Under STAR, however, VBA does not compute separate accuracy rates for the three areas of the claims adjudication process. If a case has any errors in any area of the claims adjudication process, the entire case is counted as incorrect for accuracy rate computation purposes. This approach tends to result in a lower accuracy rate than under the previous system. (See app. II for a hypothetical example demonstrating how STAR's computation method can result in a lower accuracy rate.)

In addition to focusing more on error-prone RO decisions and using a stricter accuracy rate computation method, STAR provides accuracy rates with reasonable statistical precision not only for the nation as a whole but also for each SDN.<sup>9</sup> Under the previous system, VBA headquarters had reviewed about 5,700 cases annually. Its sampling methodology allowed VBA to produce an accuracy rate with reasonable statistical precision for the nation as a whole. Under STAR, VBA headquarters will review about 7,400 cases annually. Its sampling methodology will enable VBA to provide accuracy rates with reasonable statistical precision for the nation and each SDN for the sample of cases requiring disability ratings and the sample of cases typically not requiring such ratings (see app. II for SDN sample sizes and statistical precision data). However, the sample of cases involving guardianship issues will be too small to provide the same level of statistical precision.

VBA originally considered designing STAR so that VBA headquarters also could produce accuracy rates for each RO but dropped this option because it would have required VBA headquarters to review an additional 50,000 cases annually. Instead, VBA opted to require each RO to review samples of its own work products using STAR review procedures. As in the headquarters review, these RO self-reviews will produce accuracy rates with reasonable statistical precision for the sample of cases requiring disability ratings and the sample of cases typically not requiring such ratings. However, the sample of cases involving guardianship issues will be too small to produce accuracy rates with the same level of statistical precision. Nationwide, the ROS will review about 44,000 randomly selected cases (see app. II for RO sample sizes and statistical precision data). VBA

<sup>9</sup>See app. II for more information on statistical precision.

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estimates that every 1,000 cases in these samples require about 1.0 full-time equivalent review staff per year.

STAR is also an improvement over the previous accuracy measurement system because it provides more precise information on the inaccuracies it identifies. Under the previous system, VBA's database essentially captured only whether a decision did or did not contain errors. By contrast, STAR requires reviewers to answer a standardized series of questions about whether the RO's actions and decisions were correct or incorrect in various steps of claims processing. The reviewers enter their answers to these questions, along with brief narrative comments, in the STAR database. In addition, because the need for further development of evidence is a primary reason that the Board of Veterans' Appeals remands many cases to ROS, STAR asks reviewers to identify deficient evidence categories, such as private medical evidence, VA medical center records, and service records. Also, because the Board remands many cases to ROS to obtain further medical examinations by VHA physicians, STAR asks reviewers to indicate whether deficiencies in medical evidence supporting the decision relate to VHA medical examinations. These data on deficiencies in evidence are entered in the STAR database. The database also identifies cases involving five special conditions that have medical implications: prisoner of war, radiation exposure, Gulf War veteran, Agent Orange exposure, and posttraumatic stress syndrome.

Additionally, STAR's database captures the results of accuracy reviews conducted by both VBA headquarters and the ROS, whereas under the previous system, VBA's database captured only the results of accuracy reviews conducted by VBA headquarters. VBA planned to implement in February 1999 a new centralized database on its internal network (intranet) system that will permit both VBA headquarters and the ROS to input the results of all STAR reviews into the database. Capturing RO data will enrich the data available to analyze error trends, and both VBA headquarters and the ROS will have access to the full complement of data through the intranet.

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## VBA Can Strengthen Its Ability to Identify Error-Prone Cases and Address Vulnerabilities in the Integrity of Accuracy Reviews

Although STAR represents a significant step forward in VBA's ability to measure claims-processing accuracy and identify error-prone cases, VBA can take further steps to improve this ability. These steps involve collecting additional data for identifying and correcting error-prone cases and addressing vulnerabilities in the integrity of accuracy reviews.

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### VBA Can Improve the Ability to Identify Error-Prone Cases

Even with the improvements provided by STAR, VBA's ability to identify error-prone cases and target corrective actions is constrained by the limited data that it captures on the medical characteristics of claimants whose claims are processed incorrectly and on why medical evidence is deficient. Data captured on claimants' medical characteristics is currently limited to identifying whether a veteran was a prisoner of war, served in the Gulf War, or had posttraumatic stress syndrome, radiation exposure, or Agent Orange exposure. More detailed medical characteristics data could help pinpoint the specific types of claims in which errors occur. Also, although STAR captures data on whether medical evidence and medical examinations are adequate, it does not record statistical data identifying why reviewers found the evidence or examinations supporting RO final decisions to be deficient. Such data also could help pinpoint the types of corrective actions that need to be taken to improve the accuracy of RO decisions.

Limited studies by VBA demonstrate how capturing additional data in the STAR database on medical issues could help VBA focus on corrective actions that can reduce claims-processing errors and in turn reduce remands from the Board of Veterans' Appeals. In 1996, VBA and the Board of Veterans' Appeals jointly conducted a limited study of remanded cases and reported that inadequate medical examinations were the most frequent reason for remands and that a majority of the remanded cases involved the need for specialty examinations, such as orthopedic, psychiatric, neurologic, audiologic, and ear-nose-throat examinations. Also, in 1996, the Milwaukee RO reviewed claims that were awarded by the RO's hearing officers after the claims were initially denied. Of the cases in which the RO's hearing officers reversed the initial decision, the Milwaukee RO captured data on the specific conditions, such as orthopedic impairments, that were involved in significant numbers of cases, and using such data, the RO identified specific corrective actions. According to Milwaukee RO officials,

this helped reduce the RO's remand rate from the Board of Veterans' Appeals. From fiscal year 1995 to fiscal year 1998, the Milwaukee RO reduced its remand rate from about 40 percent to about 21 percent, one of the lowest remand rates in the nation.<sup>7</sup>

SSA, which administers the largest federal disability program, has a quality assurance system that captures detailed data on claimants' medical characteristics and on weaknesses in evidence. SSA has found that such data are helpful in identifying error-prone cases and targeting corrective actions. For each case reviewed, SSA's system captures data on the specific body systems involved, such as musculoskeletal, respiratory, cardiovascular, and mental systems. Further, using codes from the International Classification of Diseases, SSA's system identifies each claimant's specific impairments. Additionally, when medical evidence is judged not adequate, SSA's system records the specific medical specialty area in which evidence was lacking, such as orthopedic, psychiatric, and neurologic areas, and it identifies the specific type of test, study, or other medical evidence that was lacking.

Such data, according to an SSA quality assurance official, not only helps to identify error-prone cases but can pinpoint specific evidentiary weaknesses for cases involving specific body systems or impairments. Also, this official stated that spending resources up front to capture such data can reduce the need to conduct time-consuming special studies later to understand why certain types of cases are being processed incorrectly. According to the SSA quality assurance unit, the depth of the data collected from quality assurance reviews also enables it to assess the implementation of new or revised policies, perform analyses and make recommendations for operational and systems corrective actions, and provide broad levels of management information, such as information by categories of impairments.

VBA agrees that the STAR system deployed at the beginning of fiscal year 1999 provides a sound start for beginning to address claims-processing accuracy issues. VBA officials acknowledge, however, that they realized when STAR was deployed that continuous improvement should be sought to enhance its effectiveness. These VBA officials stated that VBA is open to considering the collection of additional data in order to enhance STAR.

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<sup>7</sup>Remand rates for the 58 ROs ranged from about 19 percent to 59 percent in fiscal year 1998.

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**VBA Can Further Address Vulnerabilities in the Integrity of Performance Data**

To ensure integrity in the operation of government programs, standards for internal controls call for separation of key duties, and standards for performance audits call for those who review and evaluate a program's performance to be organizationally independent of the program's managers.<sup>8</sup> Under STAR, however, the RO staff who review the accuracy of RO decisions are themselves responsible for making such decisions, and they report to RO managers responsible for claims processing. Such an arrangement does not meet the standard for separation of duties, nor does it meet the independence standard. Both the RO reviewers and their managers have an inherent self-interest in having as high an accuracy rate as possible. This self-interest derives from the fact that accuracy is one of five factors that determine RO performance scores, which VBA measures to meet Results Act requirements. Thus, without adequate separation of duties or adequate independence for RO reviewers, the integrity of both the STAR review process and the resulting accuracy rates and performance data reported under the Results Act are called into question.

The potential effect of impaired objectivity on performance data is exemplified by findings reported by VA's Inspector General in September 1998.<sup>9</sup> Because of concern about the accuracy of data used to meet Results Act requirements, the Inspector General examined the integrity of certain data used for Results Act reports. In this review, the Inspector General found instances in which RO staff had manipulated data on the timeliness of RO claims processing in order to make performance appear to be better than it actually was. The Inspector General found that weaknesses in internal controls had contributed to the lack of integrity in the timeliness data reported under the Results Act. During our review, some RO staff made comments on the integrity of accuracy reviews that parallel the findings of the Inspector General. These RO staff told us that ROS are biased against identifying their own errors. They also stated that ROS in the past, after selecting samples of cases to review, had sometimes "sanitized" or fixed problems in the case files before the cases underwent quality review.

No data are available to indicate the extent to which RO reviewers might attempt to overlook errors and sanitize case files to conceal errors in the approximately 44,000 cases that ROS review annually under STAR. However,

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<sup>8</sup>See U.S. General Accounting Office, *Standards for Internal Controls in the Federal Government* (Washington, D.C.: 1983), and *Government Auditing Standards* (Washington, D.C.: June 1994).

<sup>9</sup>See Department of Veterans Affairs, Office of Inspector General, *Audit of Data Integrity for Veterans Claims Processing Performance Measures Used for Reports Required by the Government Performance and Results Act*, Report No. BRS-B01-147 (Washington, D.C.: Sept. 22, 1998).

to the extent that such efforts may occur, the accuracy rates reported by the ROS would be overstated. Furthermore, any attempts by ROS to conceal errors and overstate their accuracy rates could also result in an overstatement of the accuracy rates that VBA reports for SDNS and the nation. This vulnerability in VBA's data exists because the sample of 7,400 cases that VBA reviews annually is selected directly from the approximately 44,000 cases reviewed by the ROS. VBA reviews its sample of 7,400 cases after the ROS complete their own reviews of these same cases. VBA believes that it can detect most attempts to sanitize case files because such attempts would likely require extensive backdating of corrected case file documents, which VBA believes would be difficult to conceal. VBA acknowledges, however, that it cannot ensure that it would detect every such attempt in the cases it reviews. To the extent that VBA may not detect all such attempts, the accuracy rates it reports for SDNS and the nation would be overstated.

Ensuring the integrity of accuracy data will require that staff who review claims-processing accuracy neither are responsible for claims processing nor report to program managers responsible for claims processing. VBA stated that resource restrictions prevent establishing independent accuracy review units either in the ROS or at VA headquarters; however, unless VBA provides adequate separation of duties and organizational independence for accuracy reviewers, potential questions about the integrity of accuracy-related performance data will likely persist. By contrast, we found that SSA has quality assurance units at its headquarters and in each of its 10 regional offices that are organizationally independent of program management. The independent quality assurance unit in SSA headquarters has overall responsibility for assessing disability claims-processing accuracy. To do this, it oversees the operation of the independent regional quality assurance units that review the accuracy of statistically random samples of the disability decisions rendered by 54 state agencies that process disability claims for SSA.

VBA contends that it would be impractical to establish independent accuracy review units in VBA's 58 ROS, many of which are relatively small in size. Establishing independent STAR units in ROS would be more practical if only a relatively small number of large ROS processed all compensation and pension claims. Under the present structure, however, a more workable long-term solution could involve establishing an independent headquarters unit responsible for conducting all reviews used to determine the accuracy rates that go into the calculation of overall performance scores for VBA headquarters, SDNS, and ROS.

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### VBA Faces Challenges in Meeting Its Goal for Improving Claims-Processing Accuracy

VBA has set a goal of achieving a claims-processing accuracy rate of 93 percent by fiscal year 2004. This would be almost 30 percentage points higher than the baseline rate of 64 percent established in the 1998 pilot test of STAR. VBA acknowledges, however, that the STAR system on its own cannot ensure that VBA will meet its accuracy goal. Beyond any improvements that VBA might make in the STAR system, VBA acknowledges that there are challenges it must address successfully in order to meet its goal for improving accuracy. These challenges include effectively establishing accountability for accuracy improvement and developing an effective training program for the current and future workforce.

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### Establishing Stricter Accountability

In May 1998, VBA identified several root causes of quality problems in processing disability compensation and pension claims.<sup>10</sup> One such cause was a lack of employee accountability. VBA plans to focus on quality and accountability with a quality assurance system that provides clear and fair accountability at all organizational levels. To accomplish this goal, VBA is implementing the "balanced scorecard" that scores the performance of VBA headquarters, SDNs, and ROS on the basis of five performance factors: claims-processing accuracy (as determined by STAR), timeliness of claims processing, unit cost, customer satisfaction, and employee satisfaction and development.

With the goal of achieving a 93-percent accuracy rate by fiscal year 2004, VBA believes its balanced scorecard approach will, among other things, drive organizational change, provide employees with feedback on measures they can influence, and link the performance appraisal and reward systems to organizational performance measures. VBA plans to use the balanced scorecard to give RO managers incentives to work as teams in their SDNs with a focus on meeting balanced scorecard performance measures, including accuracy. The extent to which this strategy will improve accountability and accuracy cannot yet be determined.

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### Developing More Effective Training

In our discussions with RO staff, many stated that VBA had not provided adequate training for claims adjudicators. They stated, for example, that there was confusion in the ROS on how to process cases because of apparent conflicts between decisions of the Court of Veterans Appeals and VA's regulations and guidance. They also stated that too much of their training was determined locally, resulting in inconsistent training among the ROS. VBA acknowledged shortcomings in training and stated that it had

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<sup>10</sup>See VBA, *Roadmap to Excellence—Planning the Journey* (Washington, D.C.: May 1998).

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not fared well in preparing its workforce, with a resultant decline in technical accuracy. vba acknowledged the need for an effective, centralized, and comprehensive training program that provides the background necessary for its decisionmakers to render decisions according to the statutes and regulations mandated for claims adjudication.

Such training is important not only for current employees but also for the many new employees whom vba will have to hire to replace retiring employees. According to vba, it may lose up to 30 percent of its workforce to retirement by fiscal year 2003. To develop a training program for ro staff, vba plans to identify the necessary employee skills and work processes for every decisionmaking position, implement skill certification or credentialing for these positions, and implement performance-based training connected to measurable outcomes. vba has already developed a computer-based training module for processing appeals and is working on modules for original disability claims, service-connected death indemnity benefits, and pensions. vba also plans to produce additional modules, including one for training ro staff when they first assume disability rating responsibilities. Whether these training efforts will enable vba to meet its accuracy goal cannot yet be determined.

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## Conclusions and Recommendations

Although vba had been reporting until recently that ros were processing claims accurately more than 95 percent of the time, the STAR pilot test in fiscal year 1998 revealed that the accuracy rate for decisions involving disability ratings was much lower, about 64 percent.<sup>11</sup> This confirmed that vba needs to give more attention to ensuring that ros make the correct decision the first time. Making the correct decision the first time would mean that veterans could avoid having to make unnecessary appeals and would not be unnecessarily delayed in receiving benefits owed them.

Although the new STAR system represents genuine improvement in vba's ability to measure accuracy and identify error-prone cases, vba needs to make further progress in collecting data for identifying difficult cases, assessing adjudication difficulties, and developing corrective actions. Despite its newly implemented STAR system, without further refinements in the data collected on errors, significant inaccuracies are likely to persist because vba is constrained in its ability to pinpoint error-prone cases and identify corrective actions. Moreover, the data produced from STAR

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<sup>11</sup>As mentioned, the lower accuracy rate under STAR is partially attributable to the fact that STAR computes accuracy rates more strictly than the previous system, thereby tending to produce lower accuracy rates (see app. II).

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reviews will be suspect because of weaknesses in internal controls and lack of adherence to performance audit standards. We believe this can potentially undermine progress made under STAR.

To further strengthen VBA's ability to identify error-prone cases, ensure the integrity of accuracy rate-related performance data reported under the Results Act, and keep the Congress informed about VBA's progress in addressing challenges that must be met in order to improve accuracy, we recommend that the Secretary of the Department of Veterans Affairs direct the Under Secretary for Benefits to take the following actions.

- For RO disability decisions found to be in error, revise STAR to collect more detailed medical characteristics data, such as the human body systems, the specific impairments, and the specific deficiencies in medical evidence involved in these disability claims, so that VA can identify and focus corrective actions on specific problems that RO adjudicators have in correctly evaluating certain types of medical conditions or in correctly determining whether medical evidence is adequate to make a decision.
- Implement a claims-processing accuracy review function that meets the government's internal control standard on separation of duties and the program performance audit standard on organizational independence.
- In the annual Results Act reports, inform the Congress on VBA's progress in (1) establishing stricter employee accountability for the achievement of performance goals and (2) developing more effective training for claims adjudicators.

## Agency Comments and Our Evaluation

In commenting on our draft report, VA stated that it found the report to be a fair and balanced appraisal. VA concurred that its process for assessing claims accuracy is critical and stated that continued urgent action is required for VA to meet its own and its stakeholders' expectations. VA stated that our recommendations were generally constructive but had concern about our first two recommendations.

The first recommendation in our draft report was that VA "revise STAR to include the collection of more detailed medical characteristics data on the human body systems, and specific impairments involved in disability claims as well as data on specific deficiencies in medical evidence and examinations." VA interpreted our recommendation to mean that STAR should collect data on the quality of examinations conducted by VHA. However, this was not the intent of our recommendation. The intent was for STAR to collect additional data that would help VA better identify

(1) specific types of medical conditions that RO adjudicators have difficulty evaluating correctly and (2) specific types of inadequacies in medical evidence that are most prevalent in incorrect decisions. This would provide a means for VA to develop corrective actions addressing the causes of errors in the evaluation of medical conditions and of failure to collect adequate medical evidence to make a supportable decision. We clarified the recommendation and our discussion of this issue in our report.

The second recommendation in our draft report was that VA "implement a claim processing accuracy review function that meets the government's internal control standard on separation of duties and the program performance audit standard on organizational independence." VA's primary concern about this recommendation was that current budget constraints make it impractical to adopt approaches that would fully satisfy these standards—for example, establishing a single, large centralized review unit to assess all quality issues, including individual RO quality. However, while current budget constraints may present problems in finding ways to fully meet the standards immediately, we believe meeting these standards as expeditiously as possible should be a continuing priority in VA's future planning process. Until the standards are met, the integrity of VA's claims-processing accuracy data will remain questionable. As VA stated in its comments, "Effective reviews require an organizational commitment to dedicate the necessary resources to the review process."

With regard to the second recommendation, VA also stated that while the STAR system is a compromise reflecting resource constraints, it has some distinct advantages compared with quality reviews performed by a consolidated, independent review unit. VA cited the value of having reviews performed by local staff in each RO. Our recommendation would not preclude local reviews, which we agree are important. Even if a single, central unit were established for the purpose of assessing the degree to which each RO processes claims accurately, it would still be critical for local RO management to gather detailed local data on claims processing to understand fully how to correct local processing problems. This function, however, is different from local reviewers conducting accuracy reviews of their own RO's decisions, which our recommendation is intended to eliminate.

VA also stated that it is concerned that a "permanent" independent review staff would become stagnant. We disagree because the staff who perform reviews would not have to be permanently assigned to the unit but could instead be rotated to avert staff stagnation. VA furthermore expressed

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concern about the cost and increased potential for losing active case files that would result from mailing many more thousands of case files from the 58 ROS to a central review site. This concern, however, does not negate the need to meet the standards for separation of duties and organizational independence. Also, the concern could potentially be lessened by other measures. For example, the Congressional Commission on Servicemembers and Veterans Transition Assistance in its January 1999 report applauded VBA for consolidating the administration of its education and loan programs into fewer than 10 ROS but pointed out that VBA has made no effort to make a similar consolidation of the adjudication of compensation claims.<sup>12</sup> If VBA were ever to consolidate the adjudication of claims into a few relatively large ROS, it would be more practical to locate an independent STAR unit in each of these ROS to review the accuracy of cases each one processed. Each RO STAR unit would then need to mail to a central review unit only a relatively small random sample of the cases it reviewed so that the central unit could ensure the reviews' appropriateness and consistency.

VA's comments are printed in appendix III.

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<sup>12</sup>The Commission was established by title VII of the Veterans' Benefits Improvement Act of 1996 (P.L. 104-275) to examine a broad range of federal programs that provide transition assistance and benefits to service members when they leave military service and to veterans.

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As agreed with your office, we plan no further distribution of this report until 7 days from its date of issue, unless you publicly announce its contents earlier. We will then send copies to the Chairman of the House Committee on Veterans' Affairs, the Secretary of the Department of Veterans Affairs, other congressional committees, and others who are interested. We will also make copies available to others upon request. If you have any questions about this report, please call me at (202) 512-7101 or Irene P. Chu, Assistant Director, at (202) 512-7102. Other major contributors to this report were Ira B. Spears, Mark Trapani, Connie D. Wilson, Paul C. Wright, and Deborah L. Edwards.

Sincerely yours,



Stephen P. Backhus  
Director, Veterans' Affairs and  
Military Health Care Issues

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**Abbreviations**

ICD	International Classification of Diseases
RO	regional office
SDN	service delivery network
SSA	Social Security Administration
STAR	Systematic Technical Accuracy Review
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration

## Appendix I

## Historical Data on VBA's Claims-Processing Accuracy Rates and on Award and Remand Rates of the Board of Veterans' Appeals

Before the Veterans Benefits Administration (VBA) implemented the Systematic Technical Accuracy Review (STAR) measurement system, it reported that regional offices (RO) accurately processed and adjudicated disability compensation and disability pension claims more than 95 percent of the time during fiscal years 1993-97 (see table I.1).

**Table I.1: RO National Accuracy Rates for Disability Compensation and Pension Claims, Fiscal Years 1993-97**

Fiscal year	Proper control and development of claims	Correctness of RO decisions	Proper notification to veterans	Overall RO accuracy rate
1993	97.5%	94.5%	93.4%	95.2 <sup>9</sup>
1994	97.7	95.6	95.2	96.2
1995	97.2	95.4	95.9	96.2
1996	97.5	96.5	96.8	96.9
1997	98.0	96.6	96.9	97.2

Source: VBA.

The validity of such high accuracy rates, however, seemed inconsistent with the results of decisions made by the Board of Veterans' Appeals when veterans appealed unfavorable RO decisions. The Board of Veterans' Appeals awarded benefits or remanded cases for further development more than 60 percent of the time when veterans appealed RO decisions during fiscal years 1993-97 (see table I.2).

**Table I.2: Decisions by Board of Veterans' Appeals Resulting in Awards or Remands of Appealed Disability Compensation and Pension Cases, Fiscal Years 1993-97**

Fiscal year	Total disability decisions made by Board	Total awards by Board		Total remands by Board	
		Number	Percent of total decisions	Number	Percent of total decisions
1993	22,924	4,026	17.6	10,350	45.1
1994	19,343	3,474	18.0	9,583	49.5
1995	24,834	4,921	19.8	12,073	48.6
1996	29,818	6,137	20.6	13,357	44.8
1997	37,936	6,827	17.5	17,783	46.9

Source: Annual reports of the Chairman of the Board of Veterans' Appeals, fiscal years 1993-97.

Only a small proportion of RO decisions are appealed to the Board. For example, in fiscal year 1997, veterans filed notices of disagreement in about 14 percent of the disability compensation claims processed by ROS

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**Appendix I**  
**Historical Data on VBA's Claims-Processing**  
**Accuracy Rates and on Award and Remand**  
**Rates of the Board of Veterans' Appeals**

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(see table I.3). The number of cases appealed, however, is less than the number of cases in which veterans file a notice of disagreement with VA. In some cases, after notices of disagreement are filed, ROs award the benefits sought, or some veterans decide not to continue with their appeals if the RO again denies benefits at this point.<sup>13</sup> In fiscal year 1997, the Board received initial substantive appeals equivalent to about 5 percent of all disability compensation claims processed by ROS.

**Table I.3: Disability Compensation**  
**Claim Decisions Appealed by**  
**Veterans, Fiscal Year 1997**

<b>Type of action</b>	<b>Number of cases</b>	<b>Percent of claims</b>
Disability compensation claims processed by ROs (original and reopened)	486,425	100.0
Notices of disagreement filed with ROs	66,566	13.7
Initial substantive appeals filed requesting Board of Veterans' Appeals review	26,033	5.4

Source: VBA.

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<sup>13</sup>VBA does not maintain data on the number of these cases for which benefits are awarded.

## Appendix II

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## Sample Sizes and Accuracy Rate Computation Methods for Compensation and Pension Cases

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### Sample Sizes

Under the pre-STAR accuracy measurement system, VBA annually reviewed approximately 5,700 compensation and pension cases, or approximately 100 cases randomly selected from the cases completed by each of 57 ROs.<sup>14</sup> These cases were selected from the entire universe of compensation and pension work products completed by the ROs. Using this procedure, VBA annually produced, with a reasonable level of statistical precision, a national accuracy rate for the entire body of compensation and pension work done by the ROs during the prior year. The sample of approximately 100 cases selected for each RO was too small to produce accuracy rates for each RO with a reasonable level of statistical precision. However, VBA required each RO to self-review a sample of 300 to 900 cases annually, depending on the size of the RO. These RO self-reviews were intended to provide the RO with information needed to improve quality, not to compute accuracy rates for VBA to measure performance.

Under STAR, VBA annually reviews 7,371 compensation and pension cases for the nine service delivery networks (SDN), and the 57 ROs self-review about 44,000 cases. These cases are made up of three separate samples: (1) rating-related work products; (2) authorization work products that require significant development, review, and administrative decision or award action but may not involve any rating-related action; and (3) principal guardianship files, referred to as fiduciary cases. (See table II.1 for SDN and RO sample sizes.) For rating-related work products and authorization work products that typically do not require rating-related action, the sampling methodology will allow VBA to produce accuracy rates with a reasonable level of statistical precision for the nation and each SDN. However, the sample of fiduciary cases is too small to provide accuracy rates with the same level of statistical precision. Similarly, for cases that are self-reviewed by ROs, the sampling methodology will allow each RO to produce accuracy rates with a reasonable level of statistical precision for rating-related work products and authorization work products typically not requiring ratings. Again, however, the sample of fiduciary cases is too small to provide accuracy rates with the same level of statistical precision.

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<sup>14</sup>Although 58 ROs receive and process claims, the RO in Cheyenne, Wyoming, reports administratively through the Denver RO; therefore, cases completed by the Cheyenne RO are included in the universe of cases from which the Denver RO sample is selected.

**Appendix II**  
**Sample Sizes and Accuracy Rate**  
**Computation Methods for Compensation**  
**and Pension Cases**

one case has an error (a 90-percent accuracy rate); under the decision element area, two cases have errors (an 80-percent accuracy rate); and under the notification area, one case has an error (a 90-percent accuracy rate). For this sample of 10 cases as a whole, the overall accuracy rate is the average of these three accuracy rates, or 86.6 percent.

**Table II.2: Hypothetical Computation of Accuracy Rates Under the Pre-STAR Accuracy Measurement System**

Hypothetical case	Errors found in accuracy review		
	Area 1: Control and development of claim	Area 2: Decision elements	Area 3: Notification to veteran
1	X	X	
2			
3			
4			
5			
6		X	
7			
8			
9			
10			X
<b>Total cases with errors</b>	<b>1</b>	<b>2</b>	<b>1</b>
Accuracy rate for sample of 10 cases*	9/10 = 90%	8/10 = 80%	9/10 = 90%

\*Overall average accuracy rate:  $(90\% + 80\% + 90\%) / 3 = 86.6\%$ .

For each case reviewed under STAR, however, VBA does not compute separate accuracy rates for the three areas of the claims adjudication process. If a case has any errors in any area of the claims adjudication process, the entire case is counted as incorrect for accuracy rate computation purposes. This approach tends to result in a lower accuracy rate than under the previous system. For example, in the hypothetical sample of 10 cases shown in table II.2, 3 cases would be counted as incorrect under STAR because they contain at least one processing error, and the resultant accuracy rate for the sample would be only 70 percent (7 out of 10 cases with no errors = 70-percent accuracy rate), compared with the overall accuracy rate of 86.6 percent calculated under the previous system.

Appendix II  
 Sample Sizes and Accuracy Rate  
 Computation Methods for Compensation  
 and Pension Cases

Table II.1: Annual Sample Sizes Under VBA's STAR Accuracy Measurement System

Types of cases reviewed	Samples reviewed by VBA headquarters for each of 9 SDNs		Samples self-reviewed by each of 57 ROs	
	Sample size	Statistical precision <sup>a</sup>	Sample size <sup>b</sup>	Statistical precision <sup>a</sup>
<b>Total for each<sup>c</sup></b>	<b>819</b>	<b>Not applicable</b>	<b>645-655</b>	<b>Not applicable</b>
Cases requiring a rating	354	+/-5 percentage points	300-352	+/-5 percentage points
Cases typically not requiring a rating	325	+/-5 percentage points	285-323	+/-5 percentage points
Fiduciary cases	140	+/-8 percentage points	60-180	+/-7 to +/-13 percentage points <sup>d</sup>
<b>National total<sup>e</sup></b>	<b>7,371</b>	<b>Not applicable</b>	<b>44,175</b>	<b>Not applicable</b>
Cases requiring a rating	3,186	+/-2 percentage points	19,388	Not applicable
Cases typically not requiring a rating	2,925	+/-2 percentage points	17,947	Not applicable
Fiduciary cases	1,260	+/-3 percentage points	6,840	Not applicable

<sup>a</sup>Statistical precision refers to the amount of uncertainty in an estimate that results from sampling variability at a given level of confidence. These precision levels were calculated at the 95-percent confidence level. For example, an estimated accuracy rate of 70 percent at a precision level of plus or minus 5 percentage points means that one is 95-percent confident that the true accuracy rate is between 65 percent and 75 percent.

<sup>b</sup>The range in sample sizes stems from the varying size of caseloads among ROs. The ROs with the smallest caseloads, for example, have the smallest sample size to review.

<sup>c</sup>The totals in this row represent total sample size for each SDN and each RO.

<sup>d</sup>Precision is dependent on sample size. Sampling errors range from plus or minus 7 percentage points for the sample of 180 cases to plus or minus 13 percentage points for the sample of 60.

<sup>e</sup>The totals in this row represent national total sample size for 9 SDNs and 57 ROs.

Source: VBA.

## Accuracy Rate Computation Methods

For each case reviewed under the previous accuracy measurement system, VBA categorized each error into one of three areas of the claims adjudication process: (1) control and development of the claim, (2) decision elements, and (3) notification to the veteran. Thus, for example, if a case had only one error, VBA would record this error under the appropriate area of the claims adjudication process and would show the two other areas as error-free for that case. After all cases were reviewed, VBA would compute an accuracy rate for each of the three areas in the claims adjudication process. To arrive at an overall accuracy rate for the three areas combined, VBA computed their arithmetic mean (or average). For example, table II.2 shows a hypothetical outcome for accuracy reviews of 10 cases. Under the control and development area,

Appendix III

# Comments From the Department of Veterans Affairs



DEPARTMENT OF VETERANS AFFAIRS  
ASSISTANT SECRETARY FOR POLICY AND PLANNING  
WASHINGTON DC 20420

JAN 13 1999

Mr. Stephen P. Backhus  
Director, Veterans' Affairs and Military  
Health Care Issues  
U. S. General Accounting Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Backhus:

We have reviewed your draft report, *VETERANS BENEFITS CLAIMS: Further Improvements Needed in Claim Processing Accuracy* (GAO/HEHS-98-35) and offer these comments. Overall, we found the report to be a fair and balanced appraisal. Indeed, we concur that this area is critical and that continued urgent action is required to meet our own and stakeholder expectations. While we generally find GAO's recommendations to be constructive, we have some concerns about two of them.

With respect to the first recommendation, the Veterans Benefits Administration (VBA) developed its Systematic Technical Accuracy Review (STAR) system to measure adjudication accuracy. While elements such as VA medical disability examinations feed into the evidence used to determine the merits of a veteran's claim, such information is outside the control of VBA adjudication staff and is not particularly useful in determining adjudicator performance. VBA will not be collecting information on medical disability evaluations within the context of STAR. Instead, VBA, VHA, and BVA are conducting a Congressionally sponsored comprehensive examination pilot project that will test the feasibility and impact of contracting with private providers for examinations for VA disability determination purposes. This effort should meet the intention of GAO's recommendation. The enclosure details the Department's efforts to address VA's medical disability examination process.

In the second recommendation, GAO has cited an important issue for VA regarding the government's internal control standard on separation of duties and the program performance audit standard on organizational independence. We recognize the inherent problems of using adjudication staff to review its work; however, VBA's resource constraints preclude establishing an independent quality review unit at the regional office level as well as the VACO level. Nevertheless, we have taken special steps to minimize conflicts of interest that may arise. VBA has created an oversight committee and a review process that should minimize the opportunity for performance data manipulation. The enclosure more fully describes the measures that VBA has taken to foster the integrity of the STAR effort.

We appreciate the opportunity to comment on your report.

Sincerely,

Dennis Duff

Enclosure

Enclosure

DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO  
GAO DRAFT REPORT, *VETERANS BENEFITS CLAIMS:  
Further Improvements Needed in Claim Processing Accuracy*  
(GAO/HEHS-99-35)

GAO recommends that the Secretary of Veterans Affairs direct the Under Secretary for Benefits to:

- **Revise STAR to include the collection of more detailed medical characteristics data on the human body systems and specific impairments involved in disability claims as well as data on specific deficiencies in medical evidence and examinations.**

**Concur in Principle** - We concur that STAR should continue to evolve. VBA will review regularly the STAR process and assess it for strengths and weaknesses. As part of that process we will seek areas where more detailed, stratified, or different data would be helpful.

However, within the recommendation there is a particular emphasis upon evaluation of the VA medical disability examination process. We do not concur that STAR is an appropriate vehicle for assessing the basic disability examination process. STAR is outcome oriented, assessing **completed** adjudication actions. An error only exists if action on a claim has been finalized. It is the responsibility of rating specialists to assess the adequacy of each VA examination report and to return it for clarification or completion if the report is inadequate. Therefore, what STAR captures are instances when a rating specialist accepts an inadequate examination report.

We do agree that the examination process is one critical element in the proper adjudication of a disability claim and that VA must aggressively review and assess procedures and performance in this area. That review, however, is best addressed outside of the STAR process. Examination issues include not only traditional quality concerns, but also significant policy issues that require the participation of the Veterans Health Administration (VHA) and the Board of Veterans Appeals as well as VBA.

To address examination quality and process issues, VBA is conducting a comprehensive examination pilot project. This project is a Congressionally sponsored test of the feasibility and impact of contracting from private providers for examinations for VA disability determination purposes. As a part of this project, over 80,000 examinations will be reviewed for quality. Examinations reviewed include both VHA and contract examinations. The results, including detailed information not only by body system, but also specific examination categories within each body system group, are being collected in a database. Data will also be captured based on specialist versus non-specialist examinations. A customer survey will also be conducted. A physician has been appointed medical director for this project with specific responsibility for

Enclosure

DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO  
 GAO DRAFT REPORT, *VETERANS BENEFITS CLAIMS:  
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 (GAO/HEHS-99-35)  
 (Continued)

reviewing quality issues. Consequently, we believe that this major effort meets the intent of GAO's recommendation

- Implement a claim processing accuracy review function that meets the government's internal control standard on separation of duties and the program performance audit standard on organizational independence.

**Do Not Concur** - We do not concur. The issue of performance measure integrity has been a major subject of discussion within VBA during the last year. There is a clear organizational consensus that all performance measures must be objective, fair, and accurate. In particular, methodology to ensure objective, consistent, accurate quality reviews was extensively discussed. The option of a single large centralized review unit to assess all quality issues including individual regional office quality was discussed, but considered not practical within current budget constraints. Instead, Compensation and Pension (C&P) Service established a dedicated staff to conduct sufficient reviews to establish statistically valid accuracy rates for each Service Delivery Network (SDN) and the nation, with local reviews required to assess individual regional office accuracy.

VBA formed a committee of regional office directors to consider methodology for implementation of the local reviews. The committee was particularly interested in all local reviews conforming to the same standard of rigorous, meaningful review, ensuring that all regional offices are measured on a level playing field. VBA leadership and field managers agreed upon a solution stipulating that C&P Service select cases for its review (to assess national and SDN accuracy) from cases that had previously been locally reviewed. They agreed that if the national review results varied significantly from the initial local review of the same cases, the entire local review would be deemed invalid and the SDN with the assistance of the C&P Service Review Staff would conduct a supplementary review to establish a valid accuracy rate for that regional office. In the interim, the regional office would receive a score of "0" for accuracy on its balanced scorecard. We believe this process will ensure the integrity of reviews and remove the self-interest of reviewers to under-report errors.

While this system is a compromise reflecting resource constraints, there are some distinct advantages compared to quality reviews performed by a consolidated, independent review unit.

- Local reviewers are a more flexible resource. Their experience and expertise can be used for other key projects or tasks. Local reviewers frequently serve as training coordinators. These functions are a natural fit and promote training directly targeted to identified local needs.

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Comments From the Department of  
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DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO  
GAO DRAFT REPORT, *VETERANS BENEFITS CLAIMS:  
Further Improvements Needed in Claim Processing Accuracy*  
(GAO/HEHS-99-35)  
(Continued)

- A major concern about a permanent independent review staff (projected at 55 - 60 FTEE) is stagnation. Reviewing cases for accuracy, while a vital function, is not particularly dynamic. To establish a permanent staff with no other function may promote a staleness not consistent with best practices. Variety of tasks helps keep reviewers current and fresh. (If a regional office chooses to have different reviewers for rating, authorization, and fiduciary reviews, typically each would spend 25% to 33% of their time reviewing cases.)
- Keeping as much of the review process local as possible has significant logistical advantages. Cases subject to review are by definition "active cases". Mailing an additional 44,000 cases to a central review site annually would be costly, result in folders not immediately available for claims processing, and even increase the (hopefully small) chance of lost folders.

The most important single element in quality assurance is the effectiveness of the individual reviews performed. This depends on the knowledge, ability, and commitment of each reviewer as well as management support. We believe we have established a framework to encourage and support quality reviews. However, only a review of actual practice will confirm our success. We will monitor the process to identify areas of strength and weakness. At the end of this fiscal year, C&P Service will prepare a formal report to the Under Secretary for Benefits to assess all aspects of the STAR program. While we believe that STAR represents a significant improvement over prior processes, we do not contend that it is a final product. We shall strive in this area, as in others, for continuous improvement.

Effective reviews require an organizational commitment to dedicate the necessary resources to the review process. VBA will meet that organizational commitment. The review staff in C&P Service will increase by 33% within the next two months. Regional offices are strongly encouraged to dedicate experienced, talented staff members to this task with sufficient dedicated time provided to conduct comprehensive reviews. The national review of local reviews will be used to ensure compliance. While not all of each reviewer's time will be required for the review process, this must be the primary responsibility for one staff member (or equivalent if the review is divided among several reviewers) for all but the smallest offices. This represents a major commitment during a time when regional offices are already challenged by heavy workloads, and significant backlogs; but it is a commitment to quality that VBA considers an absolute priority. If we want quality, we must pay for it.

- In the annual GPRA reports, inform the Congress on VBA's progress in (1) establishing stricter employee accountability for the achievement of

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(GAO/HEHS-99-35)  
(Continued)

performance goals and (2) developing more effective training for claim adjudicators.

**CONCUR** - In our annual GPRA report, we shall include the status of implementation of the balanced scorecard approach, including an assessment of its effectiveness in establishing clear and fair accountability at all organizational levels. In particular, we shall review the effectiveness of promoting desired organizational change. We concur that accountability is an essential element in our effort to improve accuracy. In response to the baseline STAR reviews, VBA issued a policy letter to all field managers informing them that our quality was unacceptable and needed immediate improvement. That letter also directed VBA regional office managers to develop a comprehensive plan to address identified categories of frequent errors, assess the feasibility of continued single signature authority for each decision maker based on demonstrated quality performance levels, and indicated that accountability for accuracy of claims processing should be reflected in expected performance requirements.

VBA is creating a variety of training packages to ensure more effective, standardized training of decision makers and clerical support staff. These packages will be used to train new hires, merit promotions entering a new position, and to improve skills for journeyman employees. Training packages consist of 1) lesson plans for instructors, 2) participant guides, and 3) benchmark and review exercises (issued to training coordinators). VBA is developing computer-based training modules to incorporate technical training in a co-operative learning environment. Results can be measured by criterion-referenced performance tests developed with validity and reliability assessments. For the future, VBA will continue to develop training packages and computer based training modules for every step of the decision making process. Finally, we have begun to develop a certification of skills package that will require our employees to demonstrate acquisition of skills and competencies prior to developmental and career ladder promotions. Employees selected as instructors will also be certified as subject matter experts prior to receiving instruction as teachers and facilitators.

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The Honorable Michael Bilirakis  
Subcommittee on Benefits

June 10, 1999

Thank you, Mr. Chairman. I appreciate the opportunity to testify before the Benefits Subcommittee in support of my bill, H.R. 784.

As you know, the Dependency and Indemnity Compensation (DIC) program provides monthly benefits to the survivors of veterans who die of service-connected conditions. Under current law, DIC payments may also be authorized for the survivors of veterans whose deaths were not the result of their service-connected disability. In this case, a spouse qualifies for DIC benefits if the veteran was rated totally disabled for a period of 10 years or more immediately preceding his death.

There are approximately 20 presumptive service-connected conditions for former prisoners-of-war who were detained or interned for at least 30 days. These conditions include malnutrition, peptic ulcer disease, frostbite and post traumatic stress disorder (PTSD).

Unfortunately, some of these presumptions have been in effect for less than 10 years. This means that a spouse of a former POW may not

qualify for DIC benefits if the veteran dies of a non-service-connected condition.

Even if a presumption has been in effect for 10 or more years, many ex-POWs will not have been rated as totally disabled for the minimum period required at the time of their deaths. This may occur for a variety of reasons. For example, the POW may not have filed a disability claim as soon as the presumption was enacted, or it may have taken a while for his claim to be adjudicated. Alternatively, the POW could have had a lower disability rating that worsened over time.

This issue was first brought to my attention by a very close friend of mine, Wayne Hitchcock. Wayne is the past National Commander of the American Ex-Prisoners of War.

After talking to Wayne, I introduced a bill to waive the 10-year time requirement for the surviving spouses of former POWs. Full Committee Chairman Bob Stump and the Ranking Minority Member Lane Evans are among the bill's original cosponsors.

My bill, H.R. 784, has received strong bipartisan support. The bill has approximately 90 cosponsors, including 22 members of the Veterans'

Affairs Committee. I am pleased to report that every member of the Benefits Subcommittee has cosponsored my legislation.

Both the American Ex-Prisoners of War and the Department of Veterans' Affairs POW Advisory Committee have recommended waiving the 10-year time requirement for the surviving spouses of ex-POWs. At their 1998 National Convention, the members of the American Ex-Prisoners of War voted to make this issue a legislative priority.

We all know that military service does not take place in a vacuum. Military life affects every member of the family, especially when U.S. troops are sent into battle. I cannot imagine what it is like to find out that your spouse has been taken prisoner and then living with the uncertainty of not knowing what is happening to him while he is in captivity.

Many POWs experienced horrors unimaginable in the annals of civilized existence. Today, many continue to experience prolonged battles with various illnesses and other disabilities. Consequently, their spouses have spent years caring for them after their release from prisoner-of-war camps. These women deserve DIC benefits.

According to the Congressional Budget Office (CBO), there are approximately 1,800 totally disabled former POWs receiving disability compensation for a presumptive condition. CBO estimates that about 30 spouses would receive benefits in Fiscal Year 2000 if H.R. 784 were enacted. By 2004, the total number of spouses receiving benefits under my proposal would increase to about 250.

CBO estimates that my bill will raise direct spending by less than \$500,000 in FY 2000 and by \$9 million over five years. I think this is a small price to pay for the surviving spouses of our ex-POWs.

I hope that our Committee can act expeditiously on my legislation. Mr. Chairman, I look forward to working with you and the other members of the Subcommittee on this important issue. I will be happy to answer any questions about my legislation.

TESTIMONY OF CONGRESSMAN CHRISTOPHER H. SMITH  
VETERANS' AFFAIRS SUBCOMMITTEE ON BENEFITS

THURSDAY, JUNE 10, 1999

H.R. 690, LEGISLATION ADDING BRONCHIOLO-ALVEOLAR CARCINOMA  
TO THE VA'S PRESUMPTIVE LIST OF CANCERS

Thank you Mr. Chairman, for this opportunity today to discuss my legislation, H.R. 690, which would add a rare form of lung cancer, bronchiolo-alveolar pulmonary carcinoma, to the list of cancers that are presumed to be service-connected for veterans who were exposed to radiation, in accordance with the provisions of Public Law 100-321. This will allow these veterans, and in many cases, their widows, to receive Disability and Indemnity Compensation (DIC) benefits since their cancer is a result of their military service.

The need for this legislation was brought to my attention in 1989 when I became acquainted with Joan McCarthy, a constituent from New Jersey. For many years, Mrs. McCarthy has been a tireless advocate for "atomic veterans" and their widows, and through the course of her work she founded the New Jersey Association of Atomic Veterans.

Joan's husband, Tom McCarthy, was a participant in Operation Wigwam, a nuclear test on May 14, 1955 which involved a deep underwater detonation of a 30-kiloton plutonium bomb in the Pacific Ocean, about 500 miles Southwest of San Diego, California.

Tom served as a navigator on the *U.S.S. McKinley*, one of the ships assigned to observe the Operation Wigwam test. The detonation of the nuclear weapon broke the surface of the water, creating a giant wave and bathing the area with a radioactive mist. Government reports produced by the Defense Nuclear Agency indicate that the entire test area was awash with the airborne toxins from the detonation. The spray from the explosion was described in the official government reports as an "insidious hazard which turned into an invisible radioactive aerosol." Tom spent four days in this environment while serving aboard the *U.S.S. McKinley*.

In April of 1981, at the age of 44, Tom McCarthy died of a rare form of lung cancer, bronchio-alveolar pulmonary carcinoma. This is an important point, because Tom was a non-smoker, and this illness is a non-smoking related lung cancer. Indeed, according to the American Cancer Society, 87% of all lung cancers are related to smoking. On his deathbed, Tom told Joan, his wife, about his involvement in Operation Wigwam and wondered about the fate of the other men who were also stationed on the *U.S.S. McKinley* and on the other ships in the area.

Mr. Chairman, it has been well documented in medical literature that exposure to ionizing radiation can cause this particular type of lethal lung cancer. The National Research Council cited Department of Energy studies in the BEIR V (Biological Effects of Ionizing Radiation) reports, stating that "Bronchiolo-Alveolar Carcinoma is the most common cause of delayed death from inhaled plutonium 239." The BEIR V report notes that this cancer is caused by the inhalation and

deposition of alpha-emitting plutonium particles in the lungs. The same particles that Tom McCarthy inhaled.

More recently, and more conclusively, I might add, is a 1996 paper entitled "Health Effects of Exposure to Low-Level Ionizing Radiation" which includes a chapter by Dr. John Boice Jr., the former Chief of the Radiation Epidemiology Branch of the National Cancer Institute. Dr. Boice concluded that "evidence" is "very strong" that lung cancer, which would include bronchiolo alveolar, is "induced following exposure to low levels of ionizing radiation." The 1996 study includes a table which classifies various cancers and the strength of evidence supporting whether or not they were induced following exposure to low levels of ionizing radiation. Some of the cancers on the non-presumptive list, such as lung and the brain and central nervous system were determined by the authors of the study to have "very strong" evidence of linkage to low levels of ionizing radiation. Ironically enough, Hodgkin's Disease is on the VA's presumptive list and yet according to the "Health Effects of Exposure to Low-Level Ionizing Radiation" paper, evidence is "not convincing" concerning the link to low-level radiation. So, at present, we have cancers on the presumption list which have less evidence than cancers on the non-presumption list. This needs to be corrected and enactment of my legislation will bring us one step closer to ensuring that all veterans diagnosed with cancers with evidence of linkage to radiation exposure are compensated.

Furthermore, the Department of Veterans' Affairs has also acknowledged the clear linkage between bronchiolo alveolar carcinoma and radiation exposure. In May of 1994, Secretary Jesse Brown wrote to then Chairman Sonny Montgomery of the Veterans Affairs Committee regarding this issue. Secretary Brown stated as follows:

The Veterans' Advisory Committee on Environmental Hazards considered the issue of the radiogenicity of bronchio-alveolar carcinoma and advised me that, in their opinion, **this form of lung cancer may be associated with exposure to ionizing radiation.** They commented that the association with exposure to ionizing radiation and lung cancer has been strengthened by such evidence as the 1988 report of the United Nations Scientific Committee on the Effects of Atomic Radiation, the 1990 report of the National Academy of Sciences' Committee the Biological Effects of Ionizing Radiations (the BEIR V Report), and the 1991 report of the International Committee on Radiation Protection. **The Advisory Committee went on to state that when it had recommended that lung cancer be accepted as a radiogenic cancer, it was intended to include most forms of lung cancer, including bronchio-alveolar carcinoma.** [emphasis added]

Nevertheless, while the VA agrees that this cancer is linked to radiation exposure, they have made it next to impossible for veterans to prove service-connection. Experts across the spectrum of the federal government agree that proving the linkage is problematic due to the difficulties in measuring radiation exposure. In 1994, the VA's own Environmental Epidemiology Service in an article stated the uncertainty in determining the dose exposure for veterans. In the same year, the GAO issued a report likewise stating that radiation dose reconstruction was uncertain. Finally, like Tom McCarthy, many of the atomic veterans are now deceased and their widows and children are not in a position to prove the level of their husband or father's radiation exposure.

Despite the assessments of the VA and the GAO, we still force veterans to go through daunting hoops in order to prove service connection. I believe the widows of our servicemen who participated in these nuclear tests deserve better than this. The VA has repeatedly denied Joan McCarthy's claims for survivor's benefits. The VA has claimed in the past that adjudication on a case-by-case basis is the appropriate means of resolving these claims. Unfortunately, the practical experiences of claimants reveal deep flaws in the process used by the VA.

In fact, in 1996, in response to Ranking Member Lane Evans as part of a post-hearing question, the VA states that the number of non-presumptive claims approved were "probably fewer than 50." These reflect a total of 18,515 claims filed related to radiation exposure as of April 1, 1996. Clearly, if a veteran or his or her survivor plans to file a claim with the VA, their chances of receiving DIC benefits are minimal if their cancer is not on the presumption list.

Our veterans should not be required to meet an impossible standard of proof in order to receive DIC benefits. Not only is enacting this legislation the right thing to do, but given the relatively low numbers of veterans exposed to ionizing radiation, it is also affordable. The Congressional Budget Office estimates that H.R. 690 will cost the government, on average, a mere ten thousand dollars a year for each affected widow. Clearly, this is a small price to pay in comparison to the ultimate sacrifice that veterans like Tom McCarthy made on our behalf.

As some of my colleagues will remember, this legislation passed on the floor of the House on October 14, 1998 by a vote of 400 to 0. Unfortunately, our colleagues in the Senate failed to take up this legislation before the adjournment of the 105<sup>th</sup> Congress. During the 104th Congress, the House passed H.R. 368, identical legislation to the bill we are considering today. It too added bronchiolo-alveolar pulmonary carcinoma to the list of cancers that are presumed to be service-connected for veterans who were exposed to radiation. H.R. 368 was later included as part of H.R. 3673, an omnibus veterans' package which passed the House on July 16, 1996. Unfortunately, this provision was not included in the final conference report.

This legislation is fair, balanced, affordable, and worthy of the Committee's full support. The latest analysis of this legislation by the Congressional Budget Office estimates that H.R. 690 will cost us \$15 million over five years. It would cost \$1 million in the first year, \$2 million in FY 2001, and \$4 million in subsequent years. While this is anecdotal, I believe that this bill will cost even less due to the fact that Mrs. McCarthy has only been able to locate approximately 10 veterans or their widows who would be eligible to receive DIC benefits under H.R. 690.

I contacted the Department of Veterans' Affairs to ascertain how many veterans have been treated within the VA health system over the last ten years for bronchiolo-alveolar carcinoma. Unfortunately, this type of lung cancer is too specific for the VA's diagnostic codes and for their purposes, the VA considers it within the "lower lobe, bronchus, or lung." Accordingly, the Office of the Deputy Assistant Secretary for Program and Data Analyses provided me with information on the number of veterans it treated for this type of lung cancer over the last ten years. Over the last two years, the VA has treated approximately 700 veterans with cancers of the lower lung, bronchus or lung. From 1989 to 1996, the VA treated between 1,000 and 1,200 veterans per year. However, it cannot be determined how many of these veterans have been diagnosed with bronchiolo-alveolar carcinoma.

I have been greatly encouraged that our former colleague and member of the House Veterans' Affairs Committee, Senator Tim Hutchinson, now a member of the Senate Veterans' Affairs Committee, has sponsored companion legislation, S. 1087, in the Senate. They say that the third time is the charm, so I remain hopeful and determined that today's hearing will result in its speedy consideration in the House and approval in the Senate.

Finally, I would like to thank Joan McCarthy for coming down to Washington, D.C. today to attend today's hearing. It is her dogged commitment to this legislation and the thousands of atomic veterans and their survivors that spurred me on over the years to achieve enactment of H.R. 690. Mrs. McCarthy lost her husband at an untimely stage of life. She was forced into the position of raising her children singlehandedly and suffered financial hardships. Yet, she has not given up on behalf of her husband the other men and women who have suffered in silence while the United States Government refuses to come to terms with its atomic veterans.

I thank the Chairman and the Ranking Member for their time today.

PREPARED STATEMENT OF HON. LANE EVANS, RANKING DEMOCRATIC  
MEMBER, HOUSE COMMITTEE ON VETERANS AFFAIRS

I would like to thank the Chairman of the Subcommittee, Mr. Quinn, the Chairman of this hearing Mr. LaHood and the Ranking Member, Mr. Filner, for holding this hearing on proposed legislation concerning wide ranging proposals to improve the benefits provided to veterans and their survivors and to provide for the orderly transition of Judges at the United States Court of Appeals for Veterans Claims.

I strongly support each bill which will come before the Subcommittee today. In particular I urge the Subcommittee to support H.R. 708 which would restore eligibility for CHAMP-VA medical care, education benefits and home loans to those former surviving spouses who lost eligibility for these would require VBA to have a quality assurance program which meets generally accepted governmental standards for independence and quality control deserves subcommittee support.

I appreciate VA's support for H.R. 708. I must dispute the VA's cost estimate for this bill over the next 5 years. Information, which I had requested by February 23 was not provided until noontime yesterday. VA wasn't able to reconcile its testimony with its data concerning the number of reinstated DIC beneficiaries who could be expected to enroll in CHAMP-VA prior to today's hearing. I expect VA to provide an explanation of the discrepancy between the information I have been provided by BVA and Undersecretary Thompson's written testimony. I am also disappointed that VA is not fully supporting H.R. 1214 which I introduced. The General Accounting Office has reported that VBA needs to implement a system for reviewing claims processing accuracy that meets the government's internal control standard.

Since H.R. 1214 specifically allows VBA to implement this program as a single quality assurance division OR under each of the separate services, I am puzzled by the Department's written testimony which contemplates legislation which would not allow the flexibility which is deliberately provided by H.R. 1214.

Thank you, Mr. Chairman. I look forward to this morning's testimony.

PREPARED STATEMENT OF HON. BOB FILNER

Thank you, Mr. Chairman. I am pleased that we are considering legislation which will improve the lives of our veterans and their survivors.

In the 105th Congress, I introduced legislation which was passed as part of Public Law 105-178 to provide reinstatement of Dependency and Indemnity Compensation (DIC) benefits for surviving spouses who had lost that benefit due to remarriage. It was not my intention that these reinstated spouses would receive anything less than the benefits they had lost by remarrying. I am pleased that we are considering H.R. 708 today to assure that full benefits will be reinstated to these deserving spouses.

While I appreciate the support of the Department of Veterans Affairs on most of the bills we are considering today, I remain extremely disappointed in the delays we constantly experience in receiving testimony prior to hearings, and in unacceptable delays in responding to the Committee's requests for views and estimates from the VA.

While the Department continually apologizes to the Committee for its tardiness, apologies which are not followed by a more timely response, eventually ring hollow. I hear that hollow ring. It is not a joyful noise.

Since this hearing was originally scheduled for June 3, 1999 and later rescheduled, I am requesting that the Department provide me at this hearing, or in writing following the hearing, a detailed description of the actions taken by the Department in preparing testimony for the hearing.

Such tardiness is particularly for problematic when the Department has not provided a timely response to requests for views and estimates on proposed legislation. It is my understanding that the Department's views and estimates were requested as long ago as last January on legislation we are considering today. This information was not provided until the Department's testimony was received less than 24 hours before the hearing. The testimony concerning H.R. 708 appears to contain a number of inaccuracies which could have been addressed had timely responses to the Committee's requests been received.

I would like the Department to provide me with specific information concerning the reasons for these untimely responses, including the amount of time taken by the Office of Management and Budget to review the testimony or views and estimates for the matters we are considering today.

I thank all of the witnesses who will be testifying today and look forward to your testimony.

Thank you, Mr. Chairman.

### PREPARED STATEMENT OF HON. SILVESTRE REYES

Mr. Chairman, I want to thank you for scheduling this hearing addressing a broad range of issues critical to our veterans and their families. I commend you for bringing these bills up for consideration. These bills will improve and enhance benefits for our veteran population.

With H.R. 605, we will assist in the structured succession of our judges serving on the Court of Appeals for Veterans Claims. This bill will provide for early retirement for members of the Court. These men and women administer justice for our veterans, and we should not shortchange our veterans by not providing for an orderly succession of Justices.

I am pleased also that through today's hearing, we are considering the damaging affects of radiation exposure. H.R. 690 addresses the exposure of veterans suffering from a rare form of lung cancer. With the passage of time, we have increasingly learned of the terrible consequences of radiation exposure. The presumptive service-connection of H.R. 690 for this cancer is a necessary and important recognition of the lack of earlier information regarding radiation exposure, and the current toll on the health of our atomic veterans. I want to thank our colleague on this committee, Mr. Smith, for his leadership and testimony on this bill.

I want to also thank Mr. Bilirakis for his leadership and testimony today with regard to H.R. 784. This bill which I have co-sponsored, will make sure that surviving spouses of our former POWs who are currently disqualified from receiving dependency and indemnity compensation will now be eligible. Also, I am pleased that we are considering H.R. 708, to restore to surviving spouses full benefits that formerly were lost as a result of remarriage if their subsequent marriage ends.

Moreover, I would like to say that an appropriate COLA for veterans receiving disability compensation is critical. We must remain steadfast in preserving the welfare of our disabled veterans and their surviving spouses and children. H.R. 1765 proposes cost-of-living adjustments that address this concern, and we must remain vigilant in keeping these benefits in line with increased cost-of-living.

Finally, let me say that with the millions of claims flowing through the Veterans Benefits Administration, we must make it a national priority that veterans' claims are reviewed quickly, accurately and with care. Poor quality and frustrating delays in this process are unacceptable, and I am pleased that we are considering H.R. 1214 to consider an enhanced quality assurance program based upon generally accepted standards for independence and internal control. Our veterans deserve the highest levels of service and this legislation provides an opportunity to raise these standards accordingly.

I therefore welcome the opportunity to hear from today's witnesses who will give additional insight into the necessity of these bills. I support these bills as they substantially improve the benefits of our veterans and their families. They have earned these benefits for the sacrifices made for all Americans.

Thank you, Mr. Chairman.

**Statement of  
Joseph Thompson  
Under Secretary for Benefits  
Department of Veterans Affairs  
Before the  
House Committee on Veterans' Affairs  
Subcommittee on Benefits  
June 10, 1999**

Mr. Chairman and Members of the Subcommittee, I am pleased to be here this morning to provide the views of the Department of Veterans Affairs (VA) on several bills that affect important programs for veterans and their dependents or survivors. Today's agenda includes the following bills: H.R. 1765 (compensation cost-of-living adjustment); H.R. 605 (retirement for judges of the U.S. Court of Appeals for Veterans Claims (CAVC); H.R. 690 (presumptive service connection for bronchiolo-alveolar carcinoma suffered by a radiation-exposed veteran); H.R. 708 (reinstatement of eligibility for certain benefits for remarried surviving spouses upon the termination of a remarriage by death or divorce); H.R. 784 (dependency and indemnity compensation (DIC) for the surviving spouses of certain veterans who were former prisoners of war); and H.R. 1214 (enhanced quality assurance program for the Veterans Benefits Administration). Accompanying me this morning are Ms. Nora Egan, Deputy

Under Secretary for Management, and Mr. Bob Epley, Director of the Compensation and Pension Service.

**H.R. 1765 – COMPENSATION COST-OF LIVING ADJUSTMENT**

Mr. Chairman, the most important bill on today's agenda is H.R. 1765.

This bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 1999. On May 17, 1999, the Secretary of Veterans Affairs transmitted to Congress draft legislation proposing a cost-of-living adjustment (COLA) for compensation and DIC recipients at the same rate of increase as the COLA that will be provided under current law to veterans' pension and Social Security recipients. We currently estimate that this year's Social Security adjustment will be 2.4 percent. We believe this proposed COLA is necessary and appropriate in order to protect the affected benefits from the eroding effects of inflation. Therefore, we strongly support this bill.

We estimate enactment of the COLA would cost \$293.3 million during FY 2000 and \$4.97 billion over the period FYs 2000 – 2004. This increase is not subject to the pay-as-you-go (PAYGO) requirements of the Omnibus Budget Reconciliation Act of 1990 (OBRA).

**H.R. 605 – IMPROVEMENTS IN COURT OF APPEALS FOR VETERANS  
CLAIMS RETIREMENT AND STAFFING**

H.R. 605 is intended to make improvements relating to the judicial staffing of the U.S. Court of Appeals for Veterans Claims.

We support, in principle, the staggered-retirement authority proposed in section 7 of the bill, although we defer to the Office of Personnel Management regarding the mechanics for accomplishing it. We understand the 15-year terms of six judges of the seven-member court will expire in either 2004 or 2005. It makes sense from our perspective to stagger these judges' authorized retirements over several years in order to minimize the operational disruptions that could result from their simultaneous departures.

VA also supports the principle that section 3 of the bill embodies which is to authorize the Chief Judge to recall retired judges as necessary to meet caseload demands. The Administration, however, objects to section 6 of the bill. Section 6 would require retired Court judges to forfeit their rights to retired pay for any period, plus one year, during which they represent a client making any veterans' benefits claim against the United States. The Office of Personnel Management (OPM) recommends that section 6 should not apply to earned retirement benefits under the OPM-administered retirement systems under title 5, United States Code, as current law imposes this harsh penalty on Federal employment retirement beneficiaries only for certain national security-related violations like treason and sabotage and for spousal homicide. In addition, we understand that the Office of Government Ethics (OGE) believes that this

provision is directed at controlling post-employment conduct and, as such, is not consistent with Executive branch post-employment policies, nor is it generally based upon Government ethics principles. Consequently, based upon the concerns of OPM and OGE, the Administration suggests that section 6 be stricken from the bill.

#### **H.R. 690 – PRESUMPTION OF SERVICE CONNECTION FOR BRONCHIOLO - ALVEOLAR CARCINOMA FOR RADIATION-EXPOSED VETERANS**

H.R. 690 would amend section 1112(c) of title 38, United States Code, to add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service connected if suffered by a radiation-exposed veteran. VA opposes this bill. VA has never advocated presumptions of service connection for radiation-related claims. The extent of exposure to ionizing radiation experienced by atomic test participants and Hiroshima/Nagasaki occupation forces has been thoroughly studied, and the study results peer reviewed. The military services have documented that individual exposures were, for the most part, so low as to pose little health risk to most former members -- as dose-responses are currently understood from decades of observations of exposed populations, primarily the Japanese atomic-bomb survivors. We are aware that these data are not without their critics, but if the doses were significantly higher than reported to VA or the health risks much greater from the reported doses, the effects would be observable when sizable populations of exposed veterans have been studied. Yet, studies such as the 1996 Institute of Medicine's "Mortality of Veteran

Participants in the CROSSROADS Nuclear Test," which analyzed causes of death among 40,000 test participants, have not borne this out. The authors of that report determined that exposure to ionizing radiation did not contribute to increased mortality among this sizable study population.

We have concluded that, under the circumstances, blanket presumptions of service connection for cancers suffered by atomic veterans would be vastly over-inclusive, and that the better policy is to afford claimants case-by-case determinations based on the individual merits of their unique cases. If evidence ever comes to light suggesting this approach poses substantial risks of causing injustice to claimants, we would, of course, rethink our position.

#### **H.R. 708 – REINSTATEMENT OF BENEFITS ELIGIBILITY FOR CERTAIN SURVIVING SPOUSES**

H.R. 708 would, under certain circumstances, reinstate the eligibility of a veteran's surviving spouse for certain VA benefits lost under current law upon the surviving spouse's remarriage. Current 38 U.S.C. § 101(3), which defines the term "surviving spouse" for title 38 purposes, excludes a person who has remarried or (in cases not involving remarriage) has lived with another person and held himself or herself out openly to the public to be such other person's spouse. However, current law (38 U.S.C. § 103(d)) provides that remarriage of a veteran's surviving spouse shall not bar benefits to such person as a surviving spouse if the remarriage is void or has been annulled by a court of competent

jurisdiction, unless the Secretary determines that the annulment was secured through fraud or collusion.

H.R. 708 would provide that remarriage of a veteran's surviving spouse shall not bar the provision of specified benefits to the surviving spouse if the remarriage has been terminated by death or divorce, unless the Secretary determines the divorce was secured through fraud or collusion. There would also be no bar to such benefits to a veteran's surviving spouse if the surviving spouse ceases living with another person and holding himself or herself out openly to the public as that person's spouse. The first month of reinstated eligibility for the surviving spouse would be the month of the termination of the remarriage in the former case and the month of cessation of living together in the latter case.

These new provisions would apply to a surviving spouse's eligibility for DIC under 38 U.S.C. § 1311, medical care for veterans' survivors and dependents under 38 U.S.C. § 1713 (CHAMPVA), educational assistance under 38 U.S.C. ch. 35, and housing loans under 38 U.S.C. ch. 37. (Similar provisions were already enacted with respect to DIC by section 8207 of the Transportation Equity Act for the 21<sup>st</sup> Century, Pub. L. No. 105-178, § 8207, 112 Stat. 107, 495 (1998).) We note, however, that a surviving spouse's eligibility for educational assistance, even if reinstated under the provisions of H.R. 708, would still be subject to the limitation periods provided by 38 U.S.C. § 3512.

By authorizing reinstatement of DIC for these survivors, Congress last year determined that the Government's special responsibility toward them

resumes upon termination of their subsequent remarriages. Given that policy, we see no reason why other service-connected-death benefits available to surviving spouses should be denied them.

Our preliminary estimates indicate that providing these benefits to those survivors would cost \$24 - 34 million over the period FYs 2000-2004, of which \$300,000 is subject to PAYGO requirements and would require offsets. Since the CHAMPVA benefits would have to be provided within discretionary resources, VA would have to make trade-offs between provision of these benefits and other medical care programs during a time of limited resources.

#### **H.R. 784 – DIC FOR SURVIVING SPOUSES OF CERTAIN FORMER PRISONERS OF WAR**

H.R. 784 would amend 38 U.S.C. § 1318(b) to authorize the payment of DIC to the surviving spouses of veterans dying after September 30, 1999, who were former prisoners of war, who were rated totally disabled for service-connected disability at the time of death, and who had been diagnosed as having a disease specified in 38 U.S.C. § 1112(b), which lists diseases that may be service connected on a presumptive basis when becoming manifest to a degree of disability of ten percent or more in a former prisoner of war.

The law currently provides for special presumptions in law and priority health-care eligibility for former prisoners of war in recognition of the unique hardships and privations they have endured. Most with 100% disabilities due to service-related injuries or diseases will die of those ailments, and their surviving

spouses will qualify for DIC on that basis. By virtue of all they have endured for their Nation, the relatively few others with 100% disabilities are entitled to the assurance that, should their deaths be ruled nonservice-connected, their survivors will nevertheless be provided for. We thus support enactment of H.R. 784.

Our preliminary estimates indicate that the one-year benefit cost associated with the enactment of H.R. 784 would be \$764,769 for Fiscal Year 2000, and the cumulative benefit cost through Fiscal Year 2004 would be just over \$10 million. This bill is subject to the PAYGO requirements of OBRA. We do not currently have offsets within other VA programs to pay for these provisions, in accordance with PAYGO rules.

#### **H.R. 1214 – QUALITY ASSURANCE PROGRAM FOR VBA PROGRAM ELEMENTS**

H.R. 1214 would require VA to carry out a quality assurance program in the Veterans Benefits Administration (VBA), either through a single quality assurance division in VBA or through separate quality assurance entities for each of VBA's principal organizational elements. The bill would require the Under Secretary for Benefits, acting through the quality assurance "entities," to "perform and oversee" ongoing quality reviews of each principal organizational element's functions.

The Secretary would be required to ensure two things with respect to the quality assurance program. First, the establishment and operation of any quality

assurance "entity" must meet generally applicable governmental standards for independence and internal controls for the performance of quality reviews of Government performance and results. Second, the number of full-time VBA employees assigned to quality assurance functions under the bill's provisions must be adequate to perform those functions.

H.R. 1214 would also require the Secretary to include in the annual report to Congress required by 38 U.S.C. § 529, a report on the quality assurance activities carried out under the bill's provisions. Each such report would be required to include an appraisal of the quality of services provided by VBA, including the number of decisions reviewed, a summary of the findings on the decisions reviewed, the number of full-time equivalent employees assigned to quality assurance in each division or entity, specific documentation of compliance with the standards for independence and internal control for the performance of quality reviews, and actions taken to improve the quality of services provided and the results obtained. Each report would also be required to include information about the accuracy of decisions, including trends in that information.

The ultimate objective of H.R. 1214 appears to be to improve the quality of VBA's service to veterans by improving the quality and accuracy of claim adjudications. Although we fully support this objective, we believe that the enactment of H.R. 1214 is unnecessary to achieve it. We believe that this objective can be achieved through quality control programs already extant in each of VBA's principal organizational elements.

In October 1988, the Compensation and Pension (C&P) Service implemented a review process called the Systematic Technical Accuracy Review (STAR) program, which includes checks and balances to ensure objectivity of review. Reviews under this program are conducted by individuals recruited from C&P program staff based on their program experience and demonstrated expertise in the area being reviewed. From the review results, we identify error patterns and focus training where it is needed most.

A "feedback loop" promotes consistent, incremental, and continuous improvement in the quality of claims processing. Reviewers thoroughly write up cases to document errors and show what action would have been correct. The case write-ups are sent to the regional office where the case originated, where typically the errors and corrections are shown to the employee who made the errors. STAR staff issues periodic reports summarizing findings and trends, discussing examples of problems, and instructing how to address them. The reports are to be issued periodically to all adjudication employees. In addition, STAR staff communicates with training staff to help target training on problem areas.

The Education Service has an effective quality review system, as reflected by a November 1998 report by the Office of Inspector General. The report, entitled "Review of Education Service's Quality Review System," made no recommendations to improve the system. It found that the Education Service had enhanced its oversight of compliance surveys and had guided Regional Processing Office staff to help them detect and prevent benefit fraud.

VBA's Loan Guaranty Service has had a statistical quality control program for over thirty years. Regularly, field station supervisors randomly select completed cases and evaluate the work quality based on an established set of requirements. There is a second line of review, also based on random selection. The results of the statistical quality review provide a basis for any necessary corrective action.

The Vocational Rehabilitation and Counseling Service quality assurance program, instituted in fiscal year 1999, is a joint headquarters and field management team program and is supervised by headquarters management. It fosters an outcomes-oriented approach to service delivery and program management.

Finally, VBA's Insurance Service's current quality assurance program is used to identify areas where training efforts should be directed. In its Statistical Quality Control program, which covers ten separate entities, the Insurance Program Management staff reviews decisions and actions taken by Insurance Service operating divisions. Although both the operating divisions and Program Management staff are located in Philadelphia, their duties are sufficiently independent to meet governmental standards for program performance audits.

If H.R. 1214 were to require the establishment of quality review entities separate from VBA's services, it could have several adverse effects. It could fragment accountability for maintaining program integrity by subjecting policy questions to resolution by reviewers who are separate from the affected service, rather than by the service which is responsible for its own program integrity. It

could impair our ability to timely address demonstrated training needs. Activities necessary to create review entities separate from VBA services could delay the urgently needed pursuit of improvements. Staffing separate review entities with employees qualified to accurately review decisions would require removing the highest caliber employees from the program offices, where they are needed to better serve veterans.

We estimate that enactment of H.R. 1214 would result in annual costs of \$1.5 million based on a need for 14 additional full-time employee equivalents, including nine positions at the GS-12 level and five positions at the GS-13 level. This estimate also includes relocation expenses for four positions.

Mr. Chairman, this concludes my statement.

**STATEMENT OF  
RICK Surratt  
DEPUTY NATIONAL LEGISLATIVE DIRECTOR  
OF THE  
DISABLED AMERICAN VETERANS  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON BENEFITS  
JUNE 10, 1999**

Mr. Chairman and Members of the Subcommittee:

I am pleased to present the views of the Disabled American Veterans (DAV) regarding several bills on which the Subcommittee invited testimony and on proposed legislation to increase the rates of disability compensation and dependency and indemnity compensation (DIC). These bills would make important changes in the laws pertaining to veterans, and congressional actions on them are of great importance to the DAV's more than one million members and their families.

**H.R. 605**

This bill, introduced by House Veterans' Affairs Committee Chairman, Bob Stump, and Ranking Minority Member, Lane Evans, would amend certain sections of chapter 72 of title 38, United States Code, pertaining to judges of the United States Court of Appeals for Veterans Claims. The major provisions of H.R. 605 would authorize recall of retired judges when the work of the Court warrants and would authorize retirement of judges before the normal expiration of their terms to avoid an exodus of most of the Court's experienced judges near the same time. Other amendments involve the calculation of years of creditable service and rates of retired pay, and limitations on the activities of retired judges.

The DAV has no position on provisions of the bill that authorize recall of judges and pertain to the calculation of years of service and retirement pay. The DAV supports the provisions for early retirement of the Court's judges. Because most of the Court's judges were appointed approximately within 1 year of each other to serve fixed, 15-year terms, they will become eligible for retirement near the same time. Staggered retirement of the Court's current judges, as authorized by H.R. 605, would avoid the consequences of replacement of most of the Court's judges, who are experienced in veterans' law, at approximately the same time.

While revision of the provisions governing retirement of judges is an issue warranting action by Congress, the DAV is disappointed at the lack of any action on the more important issues pertaining to the Court and judicial review as presented in the *Independent Budget*. These issues more immediately, directly, and pervasively impact on the rights of veterans and the claims and appellate processes. Most important among them is the need for legislation to restore the VA's duty to assist veterans in developing their claims. This duty existed throughout VA's history until the Court gave the law an entirely new meaning and thereby essentially nullified the duty and unduly complicated the claims process for veterans and VA alike. Background information and explanation of the necessity for remedial legislation are provided in the "General Operating Expenses" section of the *Independent Budget*. The section of the *Independent Budget* pertaining to the Court discusses other serious problems related to the judicial review process and recommends specific legislative remedies. Any legislation on the Court should include provisions to correct these more pressing problems.

**H.R. 690**

Congressman Christopher Smith introduced this bill for himself and Congressman Evans to add bronchiolo-alveolar carcinoma to the list of diseases for which service connection is presumed when the affected veteran was exposed to radiation during military service. The DAV supports H.R. 690.

Although scientific information suggests a relationship between exposure to radiation and certain diseases, Congress recognized that proof of causation in individual veterans' cases is practically impossible. For that reason, Congress enacted legislation to presume service connection for certain diseases likely related to veterans' exposure to radiation during military service. The Veterans' Advisory Committee on Environmental Hazards, which was established by Public Law 98-542 to evaluate and report its findings from scientific studies on the health effects of exposure to radiation and dioxin, concluded that bronchiolo-alveolar carcinoma may be associated with exposure to ionizing radiation. In support of that conclusion, the Committee cited several prominent scientific studies that showed an association between lung cancer and radiation exposure. In accordance with the Committee's recommendation, VA recognizes lung cancer, which includes bronchiolo-alveolar carcinoma, as a "radiogenic cancer." Veterans must still prove that radiation is the cause for their cancer to establish service connection, however, because neither lung cancer nor bronchiolo-alveolar carcinoma have been included in the list of diseases subject to presumptive service connection under section 1112(c), of title 38, United States Code.

By Public Law 102-578, Congress expanded the list of cancers subject to the presumption of service connection based on radiation exposure. Congress added 2 additional types of cancer to the 13 cancers originally included in the list, although scientific studies indicated that more types of cancer could be radiogenic. Other cancers were not included because the association with radiation exposure was lower or because the particular cancer was also strongly associated with other risk factors, such as smoking. Studies of bronchiolo-alveolar cancer indicate that it is not correlated with smoking but that it has a relatively strong association with radiation exposure.

In the 104th and 105th Congresses, the House passed legislation to make bronchiolo-alveolar carcinoma a presumptive disability, but the Senate did not act favorably upon it. The DAV believes that this legislation is meritorious and again supports it.

In accordance with a resolution adopted by the delegates at DAV's annual national convention, the DAV supports legislation to authorize the presumption of service connection for all the named disabilities VA recognizes as radiogenic under section 3.311 of title 38, Code of Federal Regulations, that are not currently included in section 1112(c). The *Independent Budget* also recommends legislation to include these radiogenic diseases in the list of conditions subject to presumptive service connection under section 1112. The DAV therefore supports H.R. 1286, a bill introduced by Congressman Evans which would expand the list of diseases presumed service connected with respect to radiation-exposed veterans.

#### H.R. 708

Congressman Evans and several cosponsors introduced this bill to provide for reinstatement of eligibility for certain benefits when a veteran's surviving spouse, who has remarried, terminates that marriage.

A surviving spouse's eligibility to veterans' benefits terminates upon remarriage, unless the marriage is voided or annulled. Prior to enactment of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, a surviving spouse's eligibility for benefits revived with termination of the subsequent marriage by death or divorce. Section 8004(a)(1)(B) of Public Law 101-508 repealed the provisions for revived eligibility upon termination of the marriage by death or divorce. In Public Law 105-178, Congress removed this bar to reinstatement of eligibility for DIC. The bar to revived eligibility for other benefits for survivors remains, however. H.R. 708 would restore provisions for revived eligibility for medical care, educational assistance, and home loan guaranty. Restoration of eligibility for survivors' benefits under these circumstances is warranted, and the DAV therefore supports H.R. 708.

H.R. 784

Congressman Bilirakis introduced H.R. 784 for himself and Congressmen Stump, Evans, Shows, and Filner. This bill would extend DIC entitlement to surviving spouses of former prisoners of war who were rated totally disabled at time of death for service-connected disability and who had been diagnosed as having one of the diseases subject to presumption of service connection for former prisoners of war. The DAV supports H.R. 784.

Incidentally, it is noted that H.R. 784 contains a drafting error which, though minor, necessitates correction. The word "and" at the end of paragraph (2) of section 1318(b) must be changed to "or" to avoid the effect of a conjunctive requirement that a surviving spouse must meet all the provisions in paragraphs (1), (2), and (3) to be eligible for DIC under this section.

R. 1214

Congressman Evans introduced H.R. 1214 for himself and several cosponsors. This bill would require the Secretary of Veterans Affairs to establish a comprehensive quality assurance program for the benefit lines under the VA's Veterans Benefits Administration.

Poor quality is at the heart of widespread and serious difficulties plaguing VA's claims processing system. Erroneous denials and unduly delayed claims decisions have deprived deserving veterans of the benefits they desperately needed to relieve the adverse economic effects of disability. The effectiveness of these programs has been diminished by a poorly functioning delivery system. While VA now acknowledges and has taken some steps to correct its pervasive quality problems, many doubt whether VA can achieve sufficient improvements in the quality of its claims decisions and the administration of other benefits programs without a more effective program to monitor, measure, and assure that quality standards are being met by every VA employee. While VA's current quality control program probes more deeply into the technical accuracy of claims decisions than the prior program, it only "spot checks" decisionmaking because of the small number of people dedicated to this function and because of the small sample of claims actions reviewed.

This bill provides that the Secretary will establish a quality assurance activity that would systematically oversee quality in a manner that comports with "generally applicable governmental standards for independence and internal controls." The bill requires that the Secretary devote sufficient staffing to this function to ensure that it is effectively carried out and to report the activities, findings, and initiatives of the quality program to Congress each year.

The DAV supports H.R. 1214 and applauds Congressman Evans and the other cosponsors' efforts to address this most important problem.

H.R. 1765

Committee Chairman Stump introduced H.R. 1765, with Congressmen Evans, Quinn, and Filner cosponsoring this bill to increase the rates of disability compensation, DIC, and the clothing allowance. The bill would adjust these benefit rates effective December 1, 1999, to reflect the rise in the cost of living. To fulfill their purpose, veterans' benefits must be adjusted periodically to keep pace with increases in the cost of living. The DAV supports H.R. 1765 and is appreciative of the annual increases Congress provides.

However, as recommended by the *Independent Budget*, ancillary benefits for severely disabled veterans and their dependents should also be included for annual raises. The value—and thus, effectiveness—of benefits such as the special grants for adapted housing and automobiles and educational assistance for dependents and survivors also erodes to the extent these benefits are not adjusted every year to offset inflation. For the same reasons that annual increases are warranted for compensation, DIC, and the clothing allowance, they are warranted for these ancillary benefits. The DAV therefore urges the Subcommittee to consider instituting a

process to include all of these benefits for service-connected disabled veterans and their dependents or survivors in an annual cost-of-living bill.

**CONCLUSION**

These several bills all have beneficial provisions that would improve benefits and services for disabled veterans and their eligible dependents and survivors. The DAV sincerely appreciates the efforts of this Subcommittee to make these improvements to better serve our Nation's veterans.



**DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS**

The Disabled American Veterans (DAV) does not currently receive any money from any federal grant or contract.

During fiscal year (FY) 1995, DAV received \$55,252.56 from Court of Veterans Appeals appropriated funds provided to the Legal Service Corporation for services provided by DAV to the Veterans Consortium Pro Bono Program. In FY 1996, DAV received \$8,448.12 for services provided to the Consortium. Since June 1996, DAV has provided its services to the Consortium at no cost to the Consortium.



**Non Commissioned Officers Association of the United States of America**

225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

**STATEMENT OF**

**LARRY D. RHEA  
DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS**

**BEFORE THE**

**SUBCOMMITTEE ON BENEFITS  
COMMITTEE ON VETERANS AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES**

**ON**

**H.R. 605, H.R. 690, H.R. 708, H.R. 784, H.R. 1214  
AND  
H.R. 1765**

**JUNE 10, 1999**

**DISCLOSURE OF FEDERAL GRANTS AND CONTRACTS**

**The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts.**

**Thank you and good morning Mr. Chairman and Distinguished Members of the Subcommittee on Benefits.**

**The Non Commissioned Officers Association of the USA (NCOA) appreciates the opportunity to express our thoughts on the several legislative initiatives under consideration by the Subcommittee this morning. The willingness and desire to the Distinguished Members of the Subcommittee to improve important veteran's programs and benefits is commendable and the members of NCOA salute you for that effort. The Association sincerely hopes that our testimony will be helpful to the important deliberations you have undertaken on these issues.**

### **H.R. 605 Court of Appeals for Veterans Claims Act of 1999**

**H.R. 605 proposes to improve retirement authorities of Title 38 applicable to judges of the United States Court of Appeals for Veterans Claims. Among the several changes proposed by the legislation, the bill would establish a new authority to permit a retired judge to be recalled for further service on and to meet the needs of the Court. Recall, however, would be contingent upon a retired judge providing written consent to the Court that he or she is available for further service and is willing to be recalled. Additionally, H.R. 605 would set specific limitations on the duration of recall and make modifications in the calculation of years of service, retired pay, and cost-of-living adjustments. Further, the bill would provide an authority for early retirement for current judges in order to provide for staggered terms of appointment.**

**NCOA has no objections to H.R. 605; however, the Association is inclined to defer to the Court on this particular bill. If in the Court's opinion, modifications or improvements to H.R. 605 are needed, NCOA asks that the Subcommittee carefully consider the Court's recommendations before this bill is advanced.**

**The fact that H.R. 605 is proposing to make changes in the retirement authorities for judges on the Court of Appeals for Veterans Claims raises several fundamental questions for this Association.**

- \* Why are these judges not treated like other federal judges?**
- \* Why are terms of appointment different?**
- \* Why are the compensation and retirement systems for judges on the Veterans' Claims Court different from other federal judges?**

**As long as judges on the Court of Appeals for Veterans Claims are subject to reappoint and removal by the President of the United States, political influence will always be present in the Court. A judge wishing to serve more than 15 years will be subject to the favor of the incumbent President and the separate, independent nature of the Veterans' Claims Court will never be achieved. In short, NCOA does not believe that the current system serves either the best interests of the Court or veterans. In NCOA's view, the Court and veterans would be better served if the rules governing appointment, compensation and retirement were brought in line with the rules that govern other federal judges. In our view, judges on the United States Court of Appeals for Veterans Claims should, in all respects, be treated equally with other federal judges.**

### **H.R. 690 Relating to Bronchiolo-alveolar Carcinoma**

**H.R. 690 is a simple, straightforward bill that would add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service-connected for certain radiation-exposed veterans. NCOA supports H.R. 690 and urges the Subcommittee to favorably report the bill to the full Committee.**

**H.R. 708**  
**Regarding Reinstatement of VA Benefits**  
**To**  
**Certain Remarried Surviving Spouses**

H.R. 708 would provide for the reinstatement of certain benefits for the remarried surviving spouse of a veteran, if the remarriage of the spouse was terminated by death or divorce, unless the divorce was obtained through fraud or collusion. NCOA supports H.R. 708.

**H.R. 784**  
**Regarding**  
**Dependency and Indemnity Compensation**  
**For Surviving Spouses of**  
**Certain Former Prisoners of War**

H.R. 784 would authorize the payment of Dependency and Indemnity Compensation (DIC) to the surviving spouse of a former prisoner-of-war who died after September 30, 1999, with a service-connected disability rated totally disabling at the time of death.

NCOA supports H.R. 784 and strongly recommends that the bill be modified to authorize identical eligibility for the surviving spouses of all veterans. This Association strongly believes in equity for all veterans -- let us do it now and not start down a path of carving out special eligibility for some veterans and denying eligibility and benefits to others.

**H.R. 1214**  
**Veterans' Claims Adjudication Improvement Act of 1999**

The Veterans' Claims Adjudication Improvement Act of 1999 would require the Secretary of Veterans Affairs to establish a quality assurance entity and carry out a quality assurance program in the Veterans Benefits Administration. The Act would require the Secretary to assess and report to Congress on: quality of services provided by VBA; the number of and summary of findings of claims decisions reviewed; the number of full-time equivalent employees assigned to quality assurance duties; and, actions taken to improve the quality, accuracy and timeliness of the claims decision process.

NCOA does not have any objections to this proposal but it appears to this Association that the legislation is akin to circles traveled previously, namely the Blue Ribbon Panel and the Melidosian Commission on Veterans Claims Adjudication. It seems to NCOA that we already know the nature of the problems and where those problems lie in a process that relies solely on people to do it right and on time. The Association must also note that this proposal does not provide the one ingredient that is sorely needed within the entire Veterans Benefits Administration - accountability. Until we are willing to demand some measure of accountability, the proposed Act may not achieve the intended results in NCOA's view. The Association is hopeful, however, that it will lead to improvements in the quality and timeliness of benefits claims.

**H.R. 1765  
Veterans' Compensation Cost-of-Living Adjustment Act  
Of 1999**

**H.R. 1765 would authorize, effective December 1, 1999, an increase in the rates of VA disability compensation for veterans with service-connected disabilities and in the rate of dependency and indemnity compensation (DIC) for survivors of certain service-connected disabled veterans. The rate of the increase would be the same percentage as the percentage by which benefits payable under the Social Security Act are increased. NCOA supports H.R. 1765.**

**Conclusion**

**The noncommissioned and petty officers of NCOA extend sincere thanks to the Distinguished Chairman and Members of the Subcommittee for the outstanding work you have done, and continue to do, to improve important veterans' benefits and programs. Your consideration of the Association's comments relative to each of the bills under consideration today is sincerely appreciated also.**

**Thank you.**



***Vietnam Veterans of America***

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1224 M Street, NW • Washington, DC 20005-5183 • Telephone (202) 628-2700  
Faxes: Main (202) 628-5880 • Advocacy (202) 628-6997 • Communications (202) 783-4942 • Finance (202) 628-5881  
World Wide Web: <http://www.vva.org>

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*A Not-For-Profit Veterans Service Organization Chartered by the United States Congress*

Statement of

**VIETNAM VETERANS OF AMERICA**

Presented by

Bill Russo, Esq.  
Director, Veterans Benefits Program  
Vietnam Veterans of America

Before The

Subcommittee on Benefits  
Committee on Veterans' Affairs  
United States House of Representatives  
The Honorable Jack Quinn, Chairman

Regarding

Pending Veterans Benefits Legislation

June 10, 1999

Attachments:

Biography -- Bill Russo, Director, Veterans Benefits Program

Funding Statement -- June 10, 1999

## **INTRODUCTION**

Chairman Quinn and other distinguished members of the Subcommittee, on behalf of Vietnam Veterans of America (VVA), I am pleased to have this opportunity to present our views in regard to several pieces of legislation now pending before the House Veterans Affairs Committee.

### **H.R. 605 Improving Retirement for Judges of the U.S. Court of Appeals for Veterans Claims**

VVA supports this proposed legislation as a means of fairly providing retirement benefits for the Court's judges, and ensuring the orderly transition/replacement process for installing new judges. Specifically, VVA notes that the terms of all but one of the judges will expire in the 2004-2005 time frame. Unless all the current judges are renominated, this could lead to several vacancies simultaneously. This in turn would cause unfair delays in the processing of cases for disabled veterans and their families. This legislation will allow early retirement of one or more judges over the next few years, so that their replacements may be installed prior to 2004, helping prevent multiple simultaneous vacancies on the Court.

### **H. R. 690 Adding Bronchio-alveolar Carcinoma to the List of Radiogenic Diseases for Presumptive Service Connection**

VVA supports this proposed legislation which will provide presumptive service connection bronchio-alveolar carcinoma for veterans exposed to radiation in service. The premise behind presumptive service connection is that in certain claims, often involving complex, technical scientific issues (such as radiation or dioxin exposure), or certain types of service (such as prisoner of war service), it would be unfair to burden the sick veteran with proving all the elements of service connection. Medical science supports the link between radiation exposure and this type of cancer, so it is fair and logical to add it to the presumptive disease list. VVA further urges Congress to consider adding other radiogenic diseases to the list, as medical studies so warrant. Specifically, the Independent Budget recommended adding 10 particular diseases to the list.

### **H.R. 708 Reinstatement of Benefits for Remarried Surviving Spouses**

VVA supports this proposed legislation which will provide for reinstatement of all relevant VA benefits for remarried surviving spouses of veterans. This bill completes the reinstatement of benefits begun last year in the Veterans Benefits Act of 1998, by ensuring that medical care, educational assistance and home loan benefits will be restored, as well as dependency and indemnity compensation (DIC). VVA believes this legislation is entirely appropriate, and is consistent with most other federal benefit programs for surviving spouses. (In fact, some federal programs are more generous, in that they all even currently remarried surviving spouses to receive full survivors benefits after they reach a certain age).

**H.R. 784 DIC Benefits for Surviving Spouses of Certain POW's**

VVA supports this proposed legislation which will provide DIC benefits for surviving spouses of certain prisoners of war (POW). Specifically, this legislation will entitle surviving spouses to DIC benefits if the former POW is rated totally, service connected disabled at the time of his death. This is fair, since in many instances it is the service connected condition which is the cause of death. Requiring surviving spouses, many of whom are aged and poor, to obtain medical proof that the service connected condition was a cause of death, is unduly burdensome. Former POW's, and their families, have clearly sacrificed greatly for our nation. Easing the financial burdens of their surviving spouses is a very appropriate means of trying to repay this debt.

**H.R. 1214 Enhanced Quality Assurance Program Within VBA**

VVA supports this proposed legislation which will create an enhanced quality assurance program within the VA's Veterans Benefits Administration (VBA). While VVA has great confidence in the VBA's current Systemic Technical Accuracy Review (STAR), we see the utility of having VBA's quality assurance program comply with generally applicable governmental standards for independence and internal controls for the performance of quality reviews of Government performance and results. First, this was recommended by the General Accounting Office in their recent report on VBA's quality assurance. Second, while the current leadership of VBA is placing great emphasis on quality assurance, future leaders may not. Requiring integrity and uniformity by statute is therefore quite logical. VVA also hopes that Congress will ensure that sufficient funding is provided to allow VBA to carry out its responsibilities under this legislation.

**CONCLUSION**

Vietnam Veterans of America appreciates this opportunity to present our views on these important pieces of legislation.

**BIOGRAPHY OF BILL RUSSO, ESQ.**

Since 1994, Bill Russo has served as Director of the Veterans Benefits Program of Vietnam Veterans of America (VVA). In this position, he is responsible for the training and management of more than 300 accredited Service Representatives nationwide, and supervises VVA's representation at the Board of Veterans' Appeals (BVA) and the federal courts. Under his leadership, VVA has increased its caseload at the BVA by over 400%, while continuing to win the highest percentage of cases of veterans service organization. In addition, Bill oversees production of VVA's renowned publications on VA benefits, which are provided to veterans and their representatives nationwide.

Previously, Bill worked from 1987 to 1990 as a law clerk and attorney for VVA Legal Services, advising VVA Service Representatives and representing claimants at the BVA. From 1990 to 1991, he then served as a staff attorney with the U.S. Court of Veterans Appeals Central Legal Members, analyzing veterans' cases for the Court's judges. From 1991 to 1994, he practiced civil litigation for a private law firm and spent his spare time representing a number of veterans on a *pro bono* basis.

In 1991, Bill received a Special Service Award from the U.S. Court of Veterans Appeals, for his work on the American Bar Association's study on pro se appellants at the Court. In 1994, he was selected by the American Bar Association's Young Lawyers Division for the "Profiles of the Profession" issue of *Barrister* magazine, for his pro bono work on behalf of veterans. In 1997, he received the VVA Government Affairs Distinguished Service Award for his legislative advocacy on veterans issues.

Bill serves on the Boards of the National Gulf War Resource Center and the Veterans Assistance Foundation, which runs transitional centers for homeless veterans. He also serves on the Advisory Committee for the ongoing American Legion/Columbia University Advisory Committee on Characterizing Herbicide Exposure.

During his career, Bill has argued before the U.S. Court of Veterans Appeals, testified to the U.S. Senate and U.S. House of Representatives Committees on Veterans Affairs, and published numerous articles regarding veterans law. In addition, he has been interviewed on *National Public Radio* and *BBC Radio*, and been quoted in *The Wall Street Journal*, *USA Today* and many other newspapers, on veterans issues.

Bill has trained state and county veterans service officers in Indiana, New York, Washington state and Wisconsin, the National Association of County Veterans Service Officers, the National Organization of Veterans Advocates (private attorneys) and numerous VVA service representatives.

Bill graduated with honors from the University of Maryland in 1985 and graduated from The George Washington University Law School in 1989. He is admitted to practice law in the District of Columbia, Maryland and Pennsylvania.

**VIETNAM VETERANS OF AMERICA**  
**Funding Statement**  
**June 10, 1999**

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans membership organization registered as a 501(c)(19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

**For Further Information, Contact:**

**Rick Weidman**  
**Director of Government Relations**  
**Vietnam Veterans of America.**  
**(202) 628-2700, extension 127**

**STATEMENT OF  
HARLEY THOMAS, ASSOCIATE LEGISLATIVE DIRECTOR  
PARALYZED VETERANS OF AMERICA  
BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
OF THE  
HOUSE COMMITTEE ON VETERANS' AFFAIRS  
CONCERNING  
H.R. 605 H.R. 690 H.R. 708 H.R. 784 H.R. 1214 H.R. 1765  
JUNE 10, 1999**

Chairman Quinn, Ranking Democratic Member Filner, Members of the Subcommittee, on behalf of the Paralyzed Veterans of America (PVA), I appreciate this opportunity to testify regarding H.R. 605, the "Court of Appeals for Veterans Claims Act of 1999"; H.R. 690, adding "Bronchiolo-alveolar Carcinoma" to the list of diseases presumed to be service connected for certain radiation-exposed veterans; H.R. 708, providing for the reinstatement of certain benefits administered by the Secretary of Veterans Affairs for remarried surviving spouses of veterans; H.R. 784, authorizing the payment of Dependency and Indemnity Compensation to the surviving spouses of certain former prisoners of war; H.R. 1214, providing for an enhanced quality assurance program within the Veterans Benefits Administration; and H.R. 1765, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1999".

**COURT OF APPEALS FOR VETERANS CLAIMS ACT OF 1999 - H.R. 605**

PVA agrees with the general provisions of this bill. However, we would like to address specific language in section 6. In § 7299. "Limitation on activities of retired judges", PVA would recommend the following changes: page 8, line 19, after the word "thereof"

insert "or is employed by or associated with the Department of Veterans Affairs";  
 page 8, line 23 after the word "representation" insert ", employment or association";  
 page 8, line 24 after the word "representation" insert ", employment or association".

Rationale for these changes: The same rationale for placing a limitation on a retired judge for undertaking representation of a claimant is equally, if not more, applicable to a retired judge who is employed by or associated with the Department of Veterans Affairs after retirement. Indeed, since the DVA is a party to every appeal heard by the Court, there is an even greater appearance of impropriety created by a retired judge seeking employment with or otherwise providing services to the DVA. For example, there would always be a question whether a retired judge's decisions were influenced by his or her opportunities with the DVA upon retirement.

Additionally, PVA is disappointed in the bill's absence of language addressing important issues pertaining to the Court and judicial review as presented in the *Independent Budget*. These issues directly impact the rights of veterans and the claims and appellate process. Most important among them is the need for legislation to restore the VA's duty to assist veterans in developing their claims. This duty existed throughout VA's history until the Court gave the law an entirely new meaning and thereby essentially nullified the duty and subsequently complicated the claims process for veterans and VA alike. Background information and explanation of the necessity for remedial legislation are provided in the "General Operating Expenses" section of the *Independent Budget*. PVA believes any legislation on the Court should include the provisions contained in this section of the *Independent Budget* to correct these more pressing problems.

#### **H.R. 690**

PVA would like to thank Mr. Smith and Mr. Evans for the introduction of this legislation which adds "Bronchiolo-alveolar Carcinoma" to the list of diseases presumed to be service connected for certain radiation-exposed veterans. PVA fully supports H.R. 690.

#### **H.R. 708**

The restoration of prior eligibility to surviving spouses of a veteran in which remarriage of the surviving spouse was terminated by death or divorce, is fully supported by PVA.

**H.R. 1765**

PVA supports the general provisions included in the Veterans' Compensation Cost-of-Living Adjustment Act of 1999. We note, however, that the bill does not include an increase in the so-called "K Award" for "loss or loss of use" of certain body parts or functions. This part of a veteran's service-connected compensation should be adjusted along with the rest of the award. As in the past, PVA believes that the provision to round down to the next lower whole dollar amount should be stricken from the language of H.R. 1765

**H.R. 784**

PVA would like to thank Mr. Bilirakis for his dedication to veterans' issues and the introduction of H.R. 784. While we agree with and support the provisions of this bill, PVA suggest that the reference to 38 U.S.C. § 1112(b) that limits the types of qualifying service-connected conditions be stricken from the bill. If a veteran is a former POW who also has a 100% service-connected disability for any condition, we believe his or her survivors should receive DIC benefits regardless of how long the veteran was rated 100% service connected. The reasons and duration he or she was rated 100% service connected, or what caused his or her death should not be conditional in the receipt of DIC benefits. Additionally, by making this adjustment in the DIC program, the Committee should, as well, look into adjusting the DIC rate for the survivors of catastrophically disabled veterans. Savings to the VA accrued over the lifetime of a veteran with a catastrophic disability through the care provided by a spouse, intern creates a severe loss of saving capability for the survivor. PVA believes higher rates for these survivors, is fully justified.

**H.R. 1214 - Veterans' Claims Adjudication Improvement Act of 1999**

The provisions contained in H.R. 1214 are of concern to PVA. While we agree with the concept of strong quality assurance for VBA programs, we have concerns with the complete separation of the proposed quality assurance program from the actual VBA program elements. Quality assurance is a vehicle for assuring consistency in policy implementation, formation, and revision. It is also a tool for identifying training needs. Program elements must be key players in any sound quality assurance program and to

remove them entirely from the process and create a separate and independent entity will only serve to defuse VBA policy and procedures further. One vivid example of how this might occur lies with the Secretary's arguments before the Court for Veterans Appeals. VA's Office of General Counsel has asked the Court on more than one occasion (*Stuckey v. West* is the latest example) to invalidate VBA's rules and internal policies (M21-1), which provide guidance to VBA employees. We foresee that similar counterproductive infighting would occur if the proposed quality assurance program had no ownership or responsibility to the program for which it was reviewing.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or members of the committee may have.

## STATEMENT OF

JOHN J. McNEILL, ASSISTANT DIRECTOR FOR VETERANS BENEFITS POLICY  
NATIONAL VETERANS SERVICE  
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
COMMITTEE ON VETERANS AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

- H.R. 605, the *Court of Appeals for Veterans Claims Act of 1999*.  
H.R. 690, to add bronchiolo-alveolar carcinoma as a radiation presumptive disability.  
H.R. 708, to provide for reinstatement of certain benefits for remarried spouses.  
H.R. 784, to authorize Dependency and Indemnity Compensation for spouses of POWs.  
H.R. 1214, the *Veterans' Claims Adjudication Improvement Act of 1999*.  
H.R. 1765, the *Veterans' Compensation Cost-of-Living Adjustment Act of 1999*.

WASHINGTON, DC

JUNE 10, 1999

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you, Mr. Chairman, for inviting the Veterans of Foreign Wars of the United States (VFW) to participate in this hearing to discuss legislation on six different bills. On three of the bills, we fully support and have no further comment. They are H.R. 605, the "Court of Appeals for Veterans Claims Act of 1999"; H.R. 784, which will authorize the payment of Dependency and Indemnity Compensation to the surviving spouses of certain prisoners of war; and, H.R. 1765, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1999".

We appreciate very much Congress' recommendation to add Bronchiolo-alveolar carcinoma to the list of presumptive disorders for our radiation-exposed veterans, as indicated in H.R. 690. However, there is more to be done in assistance to our veterans who, in the performance of their duty, were experimentally exposed to the then-unknown hazards of radiation. We believe there is present justification to also amend title 38, United States Code section 1112(c)(2) to include the following: lung cancer; bone cancer; skin cancer; colon cancer; posterior subcapsular cataracts; non-malignant thyroid nodular disease; ovarian cancer; parathyroid adenoma; tumors of the brain and central nervous system; and, rectal cancer.

These are disabilities now classified in title 38, Code of Federal Regulations section 3.311(b)(2) as requiring dose assessment and determination of exposure in order to obtain service connection. The current procedures for doing so, as central to the adjudication of such claims for service connection, have resulted in very few (indeed, hardly any) veterans obtaining service connection. In addition, it is a process that is extremely time- and labor-intensive in the adjudication of such claims with reasonable estimates of an average processing time of two years. Just alone, the minimization of this tremendous administrative workload would seem to at least offset any increased compensation "cost" to the government (or actually result in overall "savings"), once the recommended additional radiation disabilities are listed in 38 U.S.C. § 1112(c)(2).

This is not something new to this Subcommittee. On April 30, 1996, hearings were conducted on this very issue of service connection for radiation-exposed veterans. At that time, then Chairman Terry Everett stated that "[o]nly about 10 percent of those applying for radiation-compensation have been approved . . . there is significant disagreement within the scientific community as to the dangers associated with exposure to radiation." 142 Cong. Rec. D393-01 (daily ed. April 30, 1996). Congressman Lane Evans also stated, during the same hearing, that "[t]here can be no question that atomic veterans were not adequately informed of the dangers of ionizing radiation" and "[t]he list of presenting disabilities

contained in the law is inadequate and the standard of proof to meet administrative claims is often impossible to meet and that these statutes are limited and inequitable in their coverage.” *Ibid.* (Emphasis added.) Congressman Evans further stated that “[c]urrently, Marshall Islanders receive compensation if they exhibit one or more of the 27 illnesses presumed radiogenic in nature . . . legislation would ensure that all of the radiogenic illnesses that the Marshall Islanders are compensated for are also on the presumptive list for our Nation’s veterans.” *Ibid.* (Emphasis added.) We feel Congressman Everett’s statement of reasonable doubt on the medical evidence and Congressman Evans’ profession of inequity for our veterans in comparison to the Marshall Islanders are both still pertinent today.

Last year, as part of Public Law 105-178, the *Transportation Equity Act for the 21<sup>st</sup> Century*, Congress directed that a remarriage of a surviving spouse will not bar that spouse’s eligibility for Dependency and Indemnity Compensation (DIC) if the remarriage is eventually terminated. (Pub.L. No. 105-178, § 8207, 112 Stat. 107, 495 (1998) now codified as 38 U.S.C. § 1311(e).) Subsequently, the Department of Veterans Affairs Acting General Counsel issued an opinion that “[s]ection 8207 did not amend any statute governing benefits other than [strictly] DIC . . .” (VAOPGCPREC 13-98, *Surviving Spouse’s Eligibility for Benefits – 38 U.S.C. § 1311(e) – Pub. L. No. 105-178, § 8207* (September 23, 1998)). That opinion, while legally sound at the time it was rendered, was based on an interpretation of Congressional intent. With the introduction now of H.R. 708, Congress is saying that it is not necessarily the situation that reinstated DIC spouses should be excluded for the other ancillary benefits normally granted as part of DIC – CHAMPVA eligibility, dependents’ educational assistance, and loan guaranty. We commend Congress for the taking this step to clarify the intent behind the language in section 8207 of last year’s *Transportation Equity Act for the 21<sup>st</sup> Century* through the introduction of H.R. 708 and highly recommend its eventual passage into law. (However, we need to note that the *Transportation Equity Act for the 21<sup>st</sup> Century* did not include surviving spouses with terminated remarriages who were in previous receipt of death pension. This is another inequity to that legislation and we request Congress’ intervention on this issue.)

This provides us the opportunity to discuss another inequity concerning Dependency and Indemnity Compensation. Public Law 105-178, specifically that section that resulted in the establishment of 38 U.S.C. § 1103, is being used as a reference to deny any surviving spouse’s claim for DIC if that claim is based on the veteran’s service connection for a tobacco-related condition and the DIC claim has been filed after the delimiting date of June 10, 1998. That reasoning is through interpretation of the intent of Congress to allow no compensation for tobacco-related disabilities after June 10, 1998. We are not sure that it is the true intent of Congress to create such an inequity and penalize a few surviving spouses even though the veteran has actually died from a service-connected condition. If anything, that would seem to make it *ex post facto* legislation. We request that the Committee research its past intentions to determine whether the preclusion of compensation for tobacco-related disabilities on claims filed after June 10, 1998 also extends to the actual elimination of DIC for any such claim also filed after that date.

The one bill that has really attracted our interest is H.R. 1214, the *Veterans’ Claims Adjudication Improvement Act of 1999*. If enacted, we believe it has significant potential to positively impact on the core problem in the Veterans Benefits Administration – the lack of quality decision-making on veterans’ claims for compensation. Accordingly, we would like to strongly support this bill. However, there are some serious concerns, particularly in the ability of the department to implement such a mission.

The first is that the proposed section 7733 to the United States Code requires that “[t]he Secretary shall ensure that the number of full-time employees of the [VBA] assigned . . . is adequate to perform the quality assurance functions . . .” With the tremendous down-sizing the VBA has suffered over the past six years (approximately a 21 percent reduction in FTE), the Under Secretary for Benefits must concentrate any and all available personnel resources to the vital mission of adjudication and the rating of claims.

The Fiscal Year 2000 budget proposal by the Administration allows no flexibility in providing the necessary FTE to adequately implement the program of quality assurance, as defined in H.R. 1214. Even though we have stressed for the past two years that the VBA is facing a monumental crisis in personnel, there is only a 164 FTE increase proposed in this year’s budget for the VBA. (We realize that there is a recommended 440 FTE increase for the Compensation and Pension Service but the bulk of that increase only occurs after offsets

and transfers from other VBA business lines. That up-front "paying" must first happen, and it may or may not fully occur. It further will push back, later in the fiscal year, the ability of the Compensation and Pension Service to "recruit" and train those new accessions.) Indeed, that FTE increase will be fully taken just through the Under Secretary for Benefits' recent decision to expand the highly successful Decision Review Officer pilot program to all regional offices (full implementation of that program will require an estimated 170 FTE increase).

The real answer, and the best one we believe, is for Congress to fund for the additional FTE necessary to perform this critical mandate for quality assurance. We project that 50 FTE would be sufficient, five personnel responsible for monitoring quality assurance at each of the nine service delivery networks and all monitored by a staff of five under the Under Secretary for Benefits' direct supervision.

A second concern is that we believe there needs to be added a training mission as part of the quality assurance program. In other words, when there are certain deficiencies identified as a result of the quality reviews, there should concurrently be identified a program for the effective instruction to rectify those deficiencies.

We are absolutely convinced that inadequate staffing is the root cause of the VBA's quality problems. This has been forcefully stated by us in two previous testimonies on June 10, 1998 and March 25, 1999. In the recent testimony, we made the recommendation that Congress must step in and unilaterally take the initiative to reverse the past deleterious FTE reductions in the VBA, if there is to be any hope of success toward the VBA achieving their Business Process Reengineering goals of improved rating decision quality, lower Board of Veterans' Appeals remand rate, and reduced claims timeliness. The VFW continues to feel that Congress could start that process by providing an additional increase of 250 FTE above that of the Administration's suggestion of a 164 increase for Fiscal Year 2000. Accordingly, we now reiterate that recommendation.

Thank you, Mr. Chairman. This concludes my statement and I will be happy to address any of your questions.



*Gold Star Wives of America, Inc.*

5510 Columbia Pike, Suite 205 \* Arlington, VA 22204  
(703)998-0064 \* Toll Free 1-888-GSW-9788 \* Fax (703) 998-5913

**Statement of**

**Margaret Murphy Peterson, Legislative Committee Director  
Gold Star Wives of America, Inc.**

**Before the**

**Sub-Committee on Benefits  
Committee on Veterans' Affairs  
United State House of Representatives**

**Concerning**

**H.R. 708**

**June 10, 1999**

**Mr. Chairman and Distinguished Members of the Sub-Committee:**

Gold Star Wives of America, Inc. is a federally chartered veterans service organization comprised of the widowed spouses of military service members who died while on active duty or who died as a result of service-connected disabilities. Our membership of 12,000 is almost exclusively female - as is the population of surviving spouses we represent.

Just a year ago yesterday, the Dependency and indemnity Compensation (DIC) remarriage reinstatement program was signed into law. We cannot thank this Sub-Committee enough for working so hard to restore such a significant benefit.

In our euphoria of getting DIC reinstated last year, however, we did not realize that the remainder of the VA benefits which a widow loses when she remarries, were not also reinstated. The other VA benefits a widow loses on remarriage include CHAMPVA, housing loans, and educational assistance.

On February 11, 1999, Representative Lane Evans introduced H.R. 708 to complete the remarriage reinstatement program for the widows of those who gave their lives for our country. More importantly, the bill fully restores the benefits that our husbands earned as part of their death benefit package for having made the ultimate sacrifice. H.R. 708 is a small bill, but because it seeks to restore the remaining benefits stripped from us as a result of OBRA of 1990, it has monumental symbolic value. **Gold Star Wives of America Inc. fully supports H.R. 708 which would restore CHAMPVA, housing loans and educational assistance to all DIC widows upon termination of their remarriages.**

The cost of the educational assistance and home loan provisions of H.R. 708 will be minimal. The education benefit has a ten year delimitation date. Not many reinstated widows will continue to be within the delimitation period after the termination of a remarriage. The number of reinstated widows who would use the home loan benefit is also expected to be quite negligible. The benefit that will have the most impact on reinstated widows will be the CHAMPVA benefit.

CHAMPVA is available only to widows who are under age 65, or otherwise not Medicare-eligible. Of the 946 widows who have been reinstated (as of April 30, 1999), the average age is 69, and only 31% are under age 65, and potentially eligible for CHAMPVA. Most reinstated widows under the age of 65 are not expected to use their CHAMPVA benefit, however, because they have their own insurance coverage. (Only 6.7% of all DIC widows use CHAMPVA benefits.) The widows most in need of the CHAMPVA benefit will be those who were homemakers during their remarriages. These widows should not have to sacrifice their health simply because they lived according to the societal rules which claimed to value homemaking. Reinstating the CHAMPVA benefit will also encourage younger widows with health problems to remarry. This bill will provide the much needed safety net for the relatively few widows, mainly homemakers, who are not Medicare-eligible.

Last year, Congress acknowledged that our husbands had earned the death benefits, including the DIC remarriage reinstatement program, they had been statutorily promised in exchange for giving their lives. This year, we are hoping this Sub-Committee will lead Congress to rectify the remaining broken promises contained in OBRA of 1990.

Thank you for the opportunity to present our views.

**CURRICULUM VITAE**

**Margaret Murphy Peterson is the unmarried widow of Cpt. James W. Peterson, U.S. Army, who was killed in Vietnam in 1971. Their son, OS2 Eric J. Peterson, has made the U.S. Navy his career. Margaret has been a member of the Gold Star Wives of America, Inc., since 1991. She is a lifetime member, serves on its Board of Directors and holds the position of National Legislative Director. She also is a member of the Department of Veterans Affairs National Cemetery Administration's Advisory Committee.**

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**DISCLOSURE STATEMENT**

**Neither Ms. Peterson nor the Gold Star Wives of America, Inc., has received any Federal Grant or contract during the current or previous two fiscal years relative to the subject matter of the testimony.**

STATEMENT OF PHILIP R. WILKERSON, DEPUTY DIRECTOR  
THE AMERICAN LEGION  
BEFORE  
COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON BENEFITS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
VARIOUS VETERANS' LEGISLATIVE PROPOSALS  
(HR 605, HR 690, HR 708, HR 784, HR 1214, and HR 1765)

JUNE 10, 1999

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates this opportunity to testify on several legislative proposals to improve certain veterans' benefits and the operations of the Veterans Benefits Administration and the United States Court of Appeals for Veterans Claims.

**HR 605**

This measure proposes several amendments to title 38, United States Code, Chapter 72, United States Court of Veterans Appeals.

Section 3 provides authority to recall judges who have retired from the Court for a period, not to exceed ninety days, as determined by the chief judge to be necessary to meet the needs of the Court. A recall-eligible judge may not be recalled for more than ninety days during any calendar year without the judge's consent or more than a total of 180 days during any calendar year. This section also specifies how judges are to be paid while performing recalled service on the Court.

Section 4 sets forth the basis for calculating the judges' years of creditable service for retirement purposes.

Section 5 includes provisions affecting the pay of retired judges, depending on their recall status. It also would provide for cost-of-living adjustments.

Section 6 proposes certain restrictions on the retirement pay of retired judges of the Court who become engaged in the representation in a claim involving VA benefits.

Section 7 provides for the early retirement for current judges of the Court beginning in 1999 and ending in 2003.

Mr. Chairman, The American Legion is supportive of the proposed changes to the current statute governing the operations of the Court. We believe these will address certain issues which have arisen in the last several years. One of the most significant problems facing the Court is that the fifteen year term of office for five of the seven judges will all expire in the period 2004-2005. If this occurs, it will have a very disruptive effect on the Court. It is, therefore, essential that legislative action be taken to provide for early retirement of judges, thus avoiding this type of situation and provide for the orderly appointment of new judges to the Court in the future. HR 605 proposes the staggered early retirement over the next five years for these judges. We believe this will enable the Court to continue its important work.

**HR 690**

This measure proposes to add bronchiolo-alveolar carcinoma to the current list of presumptive diseases for certain radiation-exposed veterans which is set forth in title 38, United States Code, 1112(c).

Mr. Chairman, The National Research Council's report, **BEIR V (Biological Effects of Ionizing Radiation)** released in 1994, noted an increased incidence among individuals exposed to ionizing radiation and this particular type of lung cancer.

Despite the scientific evidence, VA never added it to the list of presumptive diseases specific to radiation-exposed veterans set forth in title 38, Code of Federal Regulations, 3.311(b)(2)(i). In the absence of such action, The American Legion supports this much needed, long overdue change in the law. Justice delayed is justice denied.

Currently, a claim by an atomic veteran for bronchiolo-alveolar cancer would be considered under title 38, Code of Federal Regulations, 3.311 which lists lung cancer as a radiogenic disease. This regulation requires the veteran to not only prove exposure to ionizing radiation, but that the level of exposure, according to a dose estimate by the Defense Nuclear Agency (DNA), was sufficient to cause their current cancer. This involves a complicated process of dose reconstructions and VA medical opinions. From our experience, rather than ensuring fair and proper decisions on radiation claims, this procedure results in the arbitrary denial of a claim for service-connected disability or death, due to flawed factual assumptions, inaccurate and unreliable exposure data, and/or missing personnel and historical records. Moreover, the average veteran generally lacks the personal finances and access to the scientific resources necessary to effectively challenge DNA dose estimates and the resulting unfavorable, negative VA medical opinion. In reality, these regulations work against veterans with any of the radiogenic diseases listed in section 3.311(b)(2)(i) in their efforts to link such disease to their period of military service and exposure to ionizing radiation.

In the case of veterans with bronchiolo-alveolar cancer, the establishment of a statutory presumption of service connection will relieve them of this heavy and oftentimes impossible burden of proof. It will help ensure this group of service disabled veterans receive the benefits and services to which they are rightfully entitled without undue hardship and delay.

However, The American Legion urges Congress to address the larger troubling question of whether VA's current statute and regulations treat all radiation-exposed veterans fairly and equitably. In addition to the problem of presumptive versus nonpresumptive diseases, we are concerned by the limited definition of a "radiation-risk activity," as set forth in title 38, United States Code, section 1112(c)(3)(B) and title 38, Code of Federal Regulations, 3.309(d)(3)(ii). It does not currently cover individuals who served on active duty at nuclear weapons development, manufacturing, and testing program facilities and sites, such as the Manhattan Project: Alamogordo, New Mexico; and Hanford, Washington. There were documented instances of radiation exposure to workers at these facilities as well as local residents. Efforts to investigate and study these incidents have been largely hampered by the difficulty in identifying and locating individuals who were stationed at these facilities or programs. The American Legion is concerned by the absence of any specific statutory requirement for an epidemiological study and periodic follow-up reports on the long-term health effects on veterans who may have been exposed during a radiation activity, as currently defined, or while working at a nuclear weapons development or manufacturing facility, similar to that authorized by the Agent Orange Act of 1991. We believe action is needed to more fully address the problems and needs of all atomic veterans.

#### HR 708

This bill would provide for the reinstatement of certain benefits for remarried surviving spouses previously in receipt of Dependency and Indemnity Compensation (DIC) upon the termination of the remarriage through death or divorce. Reinstatement would also apply to an otherwise eligible surviving spouse who ceases living with another person and holding themselves out openly to the public as that person's spouse. These provisions would become effective on the first day of the month following enactment or October 1, 1999, or which ever is later.

Mr. Chairman, last year, PL 105-178 authorized the reinstatement of benefit eligibility to remarried surviving spouses following the termination of a remarriage. This legislation,

however, lacked the necessary provisions restoring specific entitlement to benefits to Dependency and Indemnity Compensation under Chapter 13, medical care for survivors and dependents under Chapter 17, education assistance under Chapter 35, and housing loans under Chapter 37. HR 708 would remedy this defect and ensure that all eligible surviving spouses receive the benefits and services which Congress intended. The American Legion supports HR 708.

#### HR 784

This bill would authorize the payment of Dependency and Indemnity Compensation (DIC) to the surviving spouse of a former prisoner-of-war (POW) who at the time of death was rated totally disabled for a service-connected disability and who had been diagnosed as having one of the presumptive POW diseases listed in title 38, United States Code, section 1112(b).

Currently, entitlement to DIC requires the veteran to have been rated totally disabled for a period of ten years prior to death. Under this proposal, the time requirement would not apply, providing the veteran met the definition of a former prisoner-of-war, was rated totally disabled from a service-connected disability or disabilities, and had been diagnosed as having one of the POW presumptive diseases.

Mr. Chairman, through the years, The American Legion has supported the expansion of the presumptions which apply to veterans who are former prisoners-of-war. We believe this legislation recognizes the psychological and physical trauma experienced by this unique category of veterans during their incarceration. The American Legion supports HR 784.

#### HR 1214

This bill, also known as the "Veterans Claims Adjudication Improvement Act of 1999," would amend title 38, United States Code, Chapter 77, to formally require the establishment of a quality assurance program within the Veterans Benefits Administration (VBA). This program would perform and oversee the ongoing review of the functioning of each of the principal organizational elements in VBA, i.e., compensation and pension, education, vocational rehabilitation, and home loan guaranty.

Moreover, the Secretary would be required to assign an adequate number of full-time personnel to this program and submit an annual report to Congress on the quality assurance activities conducted under this program. The annual report would include an appraisal of the quality of services provided, information on the accuracy of decisions, and actions taken to improve the quality of service provided and the results obtained.

Mr. Chairman, The American Legion has appeared many times before this Subcommittee advocating the need for aggressive action by VBA in remedying the core problems contributing to poor quality decisionmaking on claims. Under Secretary for Benefits Thompson has publicly acknowledged the seriousness of VBA's problems and the fact that quality of claims adjudication and service to veterans has suffered in recent years. We applaud Under Secretary Thompson for his candor and commitment to these goals.

VBA has proceeded to develop a wide range of initiatives that are intended to improve overall performance and service. Many of the efforts planned and underway are specifically focused on improving the quality of claims adjudication. One of these is the implementation of the Strategic Technical Accuracy Review (STAR) program in 1998. This program now enables VBA to more accurately assess the quality of claims processing and adjudication than in the past. Initial reviews reported an error rate of about thirty-six percent. At a minimum, such disturbing findings indicate the critical need for a better training program for claims adjudicators and rating board members and better supervision.

Mr. Chairman, clearly VBA is continuing to make a very determined effort to improve the quality of claims adjudication and the STAR program is a step in the right direction. However, the program, as currently structured and staffed, does not and cannot provide the necessary level of formal, quality assurance that is needed today and in the future. Because of

these limitations, it is not providing the type of in-depth information needed for management decision purposes. In our view, VBA has not, thus far, on its own taken the steps necessary to fully implement a comprehensive, independent quality assurance program. It appears that legislative action is necessary to ensure that quality assurance becomes a top priority for VBA. The American Legion supports the enactment of HR 1214. We believe it will enable VA to make appropriate organizational changes and ensure that adequate staffing and other resources are made available to this program.

Unless and until quality is made the number one priority for VBA managers and workers, the various efforts underway and planned to improve overall performance and service to veterans will be seriously undermined and critically short resources wasted. This must also be backed up by an effective, coordinated quality assurance program. While this legislation is focused on helping VBA achieve its performance and service improvements goals, we also believe VBA must act to make managers and staff personally accountable for the quality of their work. There must be incentives to do good quality work and disincentives to doing poor quality work. Claims adjudication is becoming an increasing complex process. VBA has to ensure that veterans are receiving the benefits to which they are entitled by law in a proper and timely manner. It is, therefore, absolutely essential that VBA have in place a quality assurance program that veterans will have confidence in, regardless of whether by executive decision or legislative mandate.

#### HR 1765

This legislation proposes a cost-of-living adjustment (COLA) in the monthly rates of compensation for service disabled veterans, including the annual clothing allowance, and Dependency and Indemnity Compensation (DIC) to surviving spouses and dependent children of veterans who died of a service-connected disability. The percentage of increase in these benefits would be the same as the COLA authorized for beneficiaries under Social Security and would be effective December 1, 1999. The President's proposed budget for the Department of Veterans Affairs for FY 2000 included a cost-of-living adjustment of 2.4 percent, based on the projected increase in Social Security benefits in FY 2000.

Mr. Chairman, The American Legion supports the proposal to provide an appropriate COLA for veterans receiving disability compensation and for individuals in receipt of DIC benefits. We believe it is important that this Subcommittee take the required action to ensure the continued welfare and well-being of disabled veterans and their families by enacting periodic adjustments in their benefits which reflect the increased cost-of-living. The American Legion also believes that annual hearings on such legislation provide an important forum to discuss issues of concern relating to the compensation and DIC programs which might not otherwise be available.

Mr. Chairman, that concludes our testimony.



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**A M V E T S**

**NATIONAL  
HEADQUARTERS  
4647 Forbes Boulevard  
Lanham, Maryland  
20706-4380  
TELEPHONE: 301-450-9600  
FAX: 301-450-7924  
E-MAIL: amvets@amvets.org**

**Statement of**

**Peter Gaytan  
AMVETS Legislative Director**

**for the  
House Veterans Affairs  
Subcommittee on Benefits**

**Thursday, June 10, 1999  
10:00 AM  
334 Cannon**

Mr. Chairman and members of the subcommittee; I am Peter Gaytan, legislative director for AMVETS. I appreciate the opportunity to provide testimony to the House Veterans Affairs Subcommittee on Benefits.

Neither AMVETS nor myself have been the recipient of any federal grants or contracts during FY-99 or the previous two years. AMVETS commends this committee on its continued efforts to secure the entitled benefits of America's veterans.

#### H.R.605 Court of Appeals for Veterans Claims Act 1999

The provisions in H.R. 605 would authorize the recall of retired judges of the United States Court of Appeals for Veterans Claims and would allow early retirement for those still serving. Additional provisions outlined in the bill highlight the calculation of years of creditable service by Court of Appeals judges, rates of retired pay, and limitations on the activities of retired judges.

AMVETS supports H.R. 605. Maintaining an experienced, qualified staff of judges in the United States Court of Appeals for Veterans Claims would help to ensure that cases before the court are reviewed in a fair and timely manner. Also, the authorization of early retirement for judges will contribute to preventing a sudden departure of the most experienced judges from the Court. AMVETS, along with the Disabled American Veterans, the Paralyzed Veterans of America and the Veterans of Foreign Wars have outlined our concerns regarding the United States Court of Appeals for Veterans Claims in the Independent Budget (IB). Although the recommendations listed in the IB are not directly addressed in H.R. 605, AMVETS recognizes the efforts of this committee to create a fair and just system for veterans to process their claims. We hope that this committee will, in the future, consider the recommendations listed in the IB regarding changes in the procedures of the United States Court of Appeals for Veterans Claims.

#### H.R.690

AMVETS supports H.R. 690, which seeks to add bronchiolo-alveolar carcinoma to the list of diseases presumed to be service-connected for certain radiation-exposed veterans. The Veterans' Advisory Committee on Environmental Hazards concluded through a series of scientific studies, that indeed, bronchiolo-alveolar carcinoma may be associated with exposure to ionizing radiation. As a result of the committee's findings, the VA recognizes bronchiolo-alveolar carcinoma as a "radiogenic cancer." Although the VA has recognized this disease, it has not been included in the list of diseases subject to presumptive service connection under section 1112 (c), of title 38. As long as this condition, is excluded from the list of diseases recognized by VA, veterans must continue to prove that their cancer has been caused by radiation during military service.

#### H.R.708

H.R. 708 seeks to amend title 38, United States Code, to provide for reinstatement of certain benefits administered by the Secretary of Veterans Affairs for remarried surviving spouses of veterans upon termination of their remarriage. The provisions of this bill would revive eligibility for medical care, educational assistance, and home loan guaranty. AMVETS supports the provisions of H.R. 708.

H.R.784

This bill will authorize the payment of dependency and indemnity compensation to the surviving spouses of certain former prisoners of war dying with a service connected disability rated totally disabling at the time of death. POW/MIA affairs have always been a key concern of AMVETS members. We have consistently adopted resolutions during AMVETS' national conventions that keep POW/MIA affairs at the forefront of our organizational priorities. We acknowledge the importance of serving the spouses of former prisoners of war and commend the actions of this committee to secure benefits for their spouses. AMVETS supports the provisions of H.R.784.

H.R.1214 Veterans Claims Adjudication Improvement Act of 1999

H.R. 1214 would provide for an enhanced quality assurance program within the (VBA) Veterans Benefits Administration. This bill would establish an entity that would "perform and oversee quality reviews of the functions of each of the principal organizational elements of the Veterans Benefits Administration." AMVETS supports the creation of a quality assurance division within the Veterans Benefits Administration as outlined in H.R. 1214. It is our hope that the creation of a quality assurance division will help to correct the existing difficulties experienced by veterans when filing claims with the VA.

H.R.1765 Veterans Compensation Cost-of-Living Adjustment Act of 1999

This legislation will increase the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. This bill would also increase the amounts to be paid for disability compensation, clothing allowance and disability and indemnity compensation to reflect the increases in the cost of living. Increasing benefits for disabled veterans has long been an initiative of AMVETS. During our 54<sup>th</sup> Annual Convention in 1998, AMVETS members adopted a resolution which called for organizational support for increased funding of veterans' benefits. AMVETS commends Committee Chairman Stump for introducing H.R. 1765, and we support the initiatives of this bill.

Mr. Chairman, that concludes my testimony on behalf of the members of AMVETS. We commend the committee on their continuing efforts to secure the entitlements of our nation's veterans, and we look forward to working with you in the future. Thank you.



STATEMENT BY

CHARLES A. STENGER, PH.D.  
VETERANS AFFAIRS & LEGISLATIVE CONSULTANT  
AMERICAN EX-PRISONERS OF WAR

BEFORE THE

HOUSE BENEFITS SUBCOMMITTEE  
COMMITTEE ON VETERANS' AFFAIRS

ON

H.R. 784, AUTHORIZING THE PAYMENT OF DEPENDENCY  
AND INDEMNITY COMPENSATION TO THE SURVIVING SPOUSES  
OF CERTAIN FORMER PRISONERS OF WAR

ALSO

H.R. 605      H.R. 690  
H.R. 708      H.R. 1214

JUNE 10, 1999

Mr. Chairman and Ranking Minority and Members of the Subcommittee:

On behalf of the American Ex-Prisoners of War, I thank you for inviting us to participate in today's important legislative hearing.

Written testimony was originally provided by Richard M. Throckmorton, National Commander, American Ex-Prisoners of War, at the Joint House & Senate Veterans Committee on March 24, 1999, concerning DIC benefits for widows of POWs, H.R. 784.

Since those hearings, the VA Advisory Committee on POWs met on April 12-14, 1999, and again unanimously recommended favorable action on this issue. It was this committee which originally alerted the VA to the inequity in 1996.

Officials of VA Benefits Administration have acknowledged the inequity and indicated their support for corrective action.

Currently, at least 89 members of the House of Representatives, including Chairman Stump and Ranking Minority Lane Evans, have become co-sponsors of this bill introduced by Congressman Bilirakis on February 23, 1999.

H.R. 784 simply corrects the inequity in DIC regulations that unintentionally penalized many widows of former POWs who were 100% service-connected at the time of their death but died of a non-service connected condition before the 10 year minimum period of time required could be met.

The inequity stems from the following factors:

- a) Although the clear meaning of a presumptive condition is that the condition result from service experiences occurring many years earlier, the legislation belatedly establishing the causal relationship is comparatively recent and, in some instances, less than 10 years.
- b) Even where legally established for the minimum period, adjudication action in regard to individual POW claims, was not usually completed so that the condition could have been rated 100% for ten years at the time of death. Lack of awareness by the POW of the new benefit has also been an important factor.
- c) Furthermore, not all conditions caused by service experiences have yet been established as presumptives. The process still continues. Thus, if a POW dies of a condition that subsequently becomes a presumptive, the widow would not be found eligible on the basis of the service related status. Her eligibility would unfortunately be evaluated under the 10-year standard.

d) Only one-third of all POWs have sought VA benefits primarily due to lack of knowledge such benefits were available. Currently, VBA and VHA are jointly involved in a major OUTREACH effort to locate and inform all POWs, many of whom have conditions for which presumptives service-connected regulations would apply.

In addition to the above technical factors, there is recognition that wives and families were typically confronted with the far more difficult post-repatriation adjustment problems of POWs. Despite this, most POW marriages have been of long duration, indicating the sacrifices of wives and family members have been far greater than required for most returning veterans.

The changes proposed in H.R. 784 simply remove the unfair restrictions and make it possible for the widows of POWs to be eligible for DIC benefits which they so richly deserve.

While the American Ex-Prisoners of War support the proposed changes in H.R. 605, H.R. 609, H.R. 708, and H.R. 1214, we have no specific comments at this time.

See enclosed Attachment I.

Special Circumstances that Should be Considered on Behalf of POWs with Respect to the 10-Year Minimum Requirement for Basic Eligibility of the Widows for DIC Benefits when the POW is Service Connected under the Presumptive Conditions.

Charles A. Stenger, PhD  
American Ex-Prisoners of War  
VETERANS AFFAIRS CONSULTANT

- The Regulation** DIC payments may be authorized for survivors of veterans who were totally disabled at the time of death but whose deaths not the result of their service-connected disability if rated totally disabled for a period of ten years or more immediately preceding death. (Federal Benefits for Veterans and Dependents, 1997, page 31)
- The Problem** Many authorized presumptives for POWs have been established for less than 10 years. Even if established for that minimum period or longer, many POWs had not been rated for that minimum period.
- Proposal** Both American Ex-Prisoners of War and the DVA POW Advisory Committee have strongly recommended this provision be either waived for POWs or presumed to have been met. It is also understood that this proposal is favorably considered, at least in principle, by DVA.
- Rationale** A presumptive condition, by definition, means that the condition was due to and caused by in-service experiences. Thus, for all POWs, the condition has existed for more than 10 years even though technically not recognized by DVA for the two reasons listed above.
- Consequence** The widow is ineligible for DIC benefits as identified above even though the condition, under the presumptive provisions, has, in fact, existed for more than 10 years. The widow of a POW, unlike widows of other veterans, is unfairly penalized by this restriction.
- Action Requested** The regulation covering DIC payments is the result of prior legislation and requires Congressional action to correct this inequity.

ATTACHMENT I

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES  
CONGRESSMAN EVANS TO DEPARTMENT OF VETERANS AFFAIRS

Follow up Questions from the Benefits Subcommittee  
Hearing of June 10, 1999  
to the  
Honorable Joseph Thompson  
Under Secretary for Benefits

1. Identify each step taken by VA to provide a response to the request for views and estimates on H.R. 708 by February 23, 1999 or any other date. Please include the name and title of each employee of the Department of Veterans Affairs assigned to respond to this request, the date on which the request was assigned to each employee, the date that each employee completed action on the request, and the current status of the request.
2. Please provide the date that the Department's testimony was originally forwarded to the Office of Management and Budget (OMB), and the date and time that VA received a response from OMB. Describe all actions taken by VA or OMB subsequent to the original submission, including the time spent by each agency or component prior to submission to the Committee on June 9, 1999.

**Answer:** Please see the attached Chronology for response to Questions 1 and 2.

- 2a. Who was responsible for preparing the VA's preliminary cost estimate of \$24 - \$34 million over 5 years for H.R. 708?

**Answer:** Veterans Health Administration, Health Administration Center and the Office of the Deputy Assistant Secretary for Financial Management were responsible for the preparation of the cost estimate.

- 2b. Explain the discrepancy between the VA's cost estimate of \$24 - \$34 million and VA's estimate that only 31% of the remarried beneficiaries who have had DIC reinstated would be under 65 years of age and thereby potentially eligible for CHAMP-VA medical care at an average cost of \$1,042 per year under the CHAMP-VA rules?

**Answer:** Assumptions were made that 100% of DIC reinstatement cases would become CHAMPVA eligible versus 'potentially eligible,' for CHAMPVA benefits and that the total numbers of reinstatement cases would increase annually at a rate similar to the first year.

In fact, of those DIC reinstatement numbers collected and tabulated (manually) FYTD 1999, a selected sampling indicated that only 31% were under 65 years of age and thereby 'potentially eligible' for CHAMP-VA medical care. (For the record, the average cost of \$1,042 per year is

spread across all claims and participants, the actual cost per claim filed is higher.)

As depicted in the most recent estimates, only approximately 10% of those DIC reinstatement cases actually qualify for CHAMPVA, and the total number of cases is not expected to increase for years two through five.

3. What steps will VA take to meet the Committee's deadline for submitting testimony for in the future?

**Answer:** We recognize that VA's process of submitting testimony to the Committee has not been as efficient as it could be. As the Under Secretary for Benefits said at the June 10, 1999, hearing "we simply didn't put enough focus and emphasis on getting the responses out." Since our testimony often reflects the Administration's position on legislation, our Office of General Counsel has recently developed a process to track legislative items and assign accountability within VA. This enhanced process will aid not only the timeliness of legislative reports, but will also aid in developing testimony in a more timely manner.

4. Who in VA is held accountable for failing to submit testimony by the deadline and what are the consequences, if any?

**Answer:** Because Congressional hearings involve significant issues of policy, the need for coordination of all testimony and responses presented to Congressional committees is obvious. Conflicts and inconsistencies with Department policy, as well as factual inaccuracies, in the draft testimony of VA witnesses must be identified and resolved. Accordingly, prior to being sent to the Congress, all written testimony by official witnesses must be reviewed and cleared to ensure a coordinated and effective presentation of the official views of the Department and Administration.

Administration Heads, Assistant Secretaries, Deputy Assistant Secretaries, General Counsel, and other key officials, as well as field facility directors, will ensure that the prepared statement of any employee who is presenting official testimony at a Congressional hearing, either in Washington or at a field location, is forwarded to the appropriate office in VA Central Office at least five working days prior to the hearing. With respect to testimony for legislative hearings, the office of the General Counsel usually prepares the statement with input from appropriate officials. Testimony must then be reviewed by the Administration Heads, Assistant Secretary, other key officials, or Deputy Assistant Secretary involved, by the Office of Congressional Affairs, and by the General Counsel, who is responsible for obtaining any Office of Management and Budget (OMB) clearance necessary. The Office of Congressional Affairs is responsible for obtaining any required White House clearance that is not obtained by OMB. Any

changes to the prepared testimony are communicated to the witness by the appropriate Administration Head, Assistant Secretary, other key officials, or Deputy Assistant Secretary in Central Office.

Overall responsibility for coordinating Department relations and activities with the Congress is assigned to the Assistant Secretary for Congressional Affairs. The Office of Congressional Affairs is the focal point for Department interaction with Congress and is responsible for management and coordination of Congressional affairs.

5. What steps have you identified which could be taken to assure that persons preparing testimony before the committee involving cost estimates, such as those provided for H.R. 708, communicate with those components of VBA which have data concerning the eligibility requirements for the specific program, and the data compiled by VBA concerning the number of persons who are eligible to apply for benefits?

**Answer:** We will diligently increase our efforts as part of the concurrence process to insure that the estimates we develop have been prepared with the appropriate input and review of the pertinent program staff.

Answer: Questions 1&amp;2

**Chronology of VA's Formulation of Views  
Regarding H.R. 708, 106th Congress**

**KEY**

10	Office of the Under Secretary for Veterans Health
20	Office of the Under Secretary for Veterans Benefits
50	Office of the Inspector General
02	General Counsel
02A	Deputy General Counsel
021	Assistant General Counsel, Staff Group I (Bankruptcy, Education, Loan Guaranty, Hospital Collections, Tort Claims, Vocational Rehabilitation)
022	Assistant General Counsel, Staff Group II (Compensation, Pension, Insurance, Burial, and Other Miscellaneous Benefits; National Cemeteries)
023	Assistant General Counsel, Staff Group III (Crimes and Police Matters, Ethics, Human Resources and Labor Relations, Medical Care Eligibility and Benefits, Medical Administration and Operations)
041	Office of the Deputy Assistant Secretary for Budget
008	Office the Assistant Secretary for of Planning and Analysis
009	Office of the Assistant Secretary for Congressional Affairs

DATE	ACTIVITY	TO
02/09/99	Letter from Congressman Evans	
02/11/99	Received by the Office of the Secretary	
02/12/99	assigned to 02	
02/17/99	officially entered into Electronic Data Management System (EDMS 43446)	
02/18/99	memo from (022) requesting comments and cost estimate	(10); (20); (008); (009); (041); (50)
02/25/99	(008) no comment on bill	
03/03/88	cost estimate from (10)	
03/12/99	(009) no comment on bill	
undated	(50) no comment on bill (received 2/24/99)	
undated	(20) comment & cost, stating no objection to bill (received 3/4/99)	
03/16/99	(022) sent report for concurrence	(10), (20), (008), (009), (041) and (50)
03/16/99	(023) concurrence received on (022) buck slip	
03/17/99	(021) memo indicating concurrence	
03/18/99	(50) concurrence	
03/19/99	(008) concurrence	
03/23/99	(009) concurrence	
03/26/99	(20) concurrence	
03/26/99	revised cost estimate from (10) (regarded as their concurrence w/ revised cost figures used)	

Answer: Questions 1&amp;2 (continued)

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DATE	ACTIVITY	TO
03/26/99	(041) concurrence	
03/31/99	(02A) directed revisions to report	
03/31/99	(022) revised per (02A))	
04/01/99	(022) sent revised report for new concurrence	(10), (20), (008), (009), (041) and (50)
04/01/99	(041) concurrence	
04/09/99	(008) concurrence	
04/12/99	(10) concurrence	
04/12/99	(50) concurrence	
05/12/99	invitation letter from HVAC Benefits Subcommittee requesting VA testimony on bill at hearing scheduled for 06/03/99. VA position on legislation still unclear at this point; emphasis shifted from report preparation to preparation of testimony.	
05/14/99	interim response to Congressman Evans request sent to Chairman Stump	
05/17/99	Stump requested report on bill	
05/18/99	assigned to (02)	
05/19/99	(20) concurrence on report	
05/21/99	letter from Subcommittee; hearing rescheduled for 6/10/99	
06/03/99	draft testimony prepared by (02)	sent to (20)
06/04/99	VA position changed per Secretary	
06/07/99	testimony transmitted for clearance	to OMB
06/08/99	OMB passback with revisions received	
06/10/99	VA testimony presented at hearing	
06/10/99	Under Secretary for Benefits advised Benefits Subcommittee that VA cost estimate for H.R. 708, as provided in testimony, would be revised	
07/15/99	022 received cost estimate data	
07/20/99	022 drafting response regarding revised cost estimate (which requires OMB clearance)	