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LEGISLATIVE HEARING ON H.R. 2383, H.R. 2243, H.R. 2388 AND H.R. 2470

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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LEGISLATIVE HEARING ON H.R. 2383, H.R. 2243, H.R. 2388 AND H.R. 2470

WEDNESDAY, JULY 20, 2011

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:03 a.m., in Room 334, Cannon House Office Building, Hon. Bill Johnson [Chairman of the Subcommittee] presiding.

Present: Representatives Johnson, Roe, Flores, Donnelly, McNerney, and Barrow.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Mr. JOHNSON. Good morning. This hearing will come to order.

I want to welcome everyone to today's legislative hearing on H.R. 2383, the "Modernizing Notice to Claimants Act," H.R. 2243, the "Veterans Employment Promotion Act," H.R. 2388, the "Access to Timely Information Act," and H.R. 2470, the "Ensuring Servicemembers' Electronic Records' Viability Act."

These bills we are discussing today are the result of months of input, work, research, and investigation.

The "Modernizing Notice to Claimants Act," which I introduced last month, makes several important steps toward streamlining part of the claims process that will contribute toward reducing the disability claims backlog.

Section 5103 of title 38 currently requires the Secretary of Veterans Affairs to provide a claimant a written notice of responsibility that informs both the veteran and the U.S. Department of Veterans Affairs (VA) of their responsibilities regarding each claim. Furthermore, as written, this law requires a separate written notice of responsibility for any subsequent claim, even if that subsequent claim is covered under the original pending claim. Additionally, the section requires VA to make a reasonable effort to obtain private records relevant to a veteran's claim.

The "Modernizing Notice to Claimants Act" would allow for the most efficient delivery for any notice, including electronic written responses. Additionally, the proposed changes will not require VA to provide an additional notice for a subsequent issue that is already covered under a previous claim. The bill would also define VA's "reasonable effort" to acquire a veteran's record to no less than two requests, and also encourage the veteran to play an active role in providing evidence for his or her claim. Lastly, if a veteran's

claim can be adjudicated in the veteran's favor without additional evidence, there is no need for VA to acquire any further evidence.

One of the primary effects of these changes would be a reduction in claims processing time by approximately 40 days.

Often, we have laws on the books that date back many years and do not allow for utilizing all the tools at an agency's disposal. It is important that this Committee and the Congress revisit laws to ensure that they still achieve their original intent. By clarifying several key areas in the law, the "Modernizing Notice to Claimants Act" reinforces Congressional intent and delivers a better service to veterans.

Another bill I wish to mention in my opening remarks is H.R. 2388, the "Access to Timely Information Act," introduced by Chairman Miller. The need for this clarifying legislation results from frequent obstruction by VA in providing necessary information to this Committee. And the bill's objective can be summarized as enabling the Legislative Branch to better conduct its oversight responsibilities.

Even in requests for information that do not contain sensitive information, the VA often takes several weeks in providing responses, often demanding that the request be sent in the form of a signed letter. The longstanding agreement that was supposedly based off of VA policy had been that if a request from the Committee involved personally identifiable information, or PII, then the request would be sent in a signed letter. However, it has come to light that staff at VA inconsistently applies this policy and that the policy itself is not even in writing.

After multiple requests over several months for a written policy from VA, nothing has been presented to the Committee. And the end result has been obstructive behavior that hinders this Committee's efforts to help our veterans. This bill clarifies that requests from Committee Members and staff are covered under the pertinent privacy laws with respect to sensitive information.

This is not rocket science, and I am frustrated and disheartened that we have reached a point where we need this legislation. As I stated before, this bill will simply help us do our job. Past efforts at working with VA to establish a consistent policy have met the same type of resistance as the information request that I just discussed. And so we are taking the next step in fixing that problem.

I appreciate everyone's attendance at this hearing.

And I now yield to the Ranking Member for his opening statement.

[The prepared statement of Chairman Johnson appears on p. 33.]

OPENING STATEMENT OF HON. JERRY MCNERNEY

Mr. MCNERNEY. Thank you.

I want to thank the Chairman, Mr. Johnson, for holding this legislative hearing this morning. Having this Subcommittee conduct a legislative hearing is a little unusual, and I think it is a good idea, because it gives us a little more say in to what is going on here. And it will provide us the ability to conduct oversight and also to review legislation that affects many issues that fall within our own jurisdiction.

Today's hearing includes several bills. Among others, we will evaluate a proposal to change policies affecting claimants seeking benefits. We will also discuss legislation that addresses ongoing concerns regarding the need to improve the Interagency Program Office (IPO).

In addition, one of the bills included in today's hearing is H.R. 2243, the "Veterans Employment Promotion Act," which I introduced. My bill directs the Secretary of Labor to make public veterans' employment records data reported by the Federal contractors and subcontractors.

In the past, this Subcommittee has heard concerns from veterans service organizations and other stakeholders about compliance with veterans hiring policies. The purpose of the VETS–100 and the VETS–100A reports is to ensure that the Federal contractors comply with relevant laws.

Through this report, the contractor submits certain information to the U.S. Department of Labor (DoL), including information about new hires who are veterans. By making the information contained in these reports publicly available, my bill increases much-needed oversight and accountability. This bill is a step in the right direction and will help us as we continue to seek ways to improve enforcement of Federal contractor compliance.

Thank you, Mr. Chairman, and I look forward to today's discussion of H.R. 2243 and the other bills we are considering. I yield back.

[The prepared statement of Congressman McNerney appears on p. 34.]

Mr. JOHNSON. I thank Mr. McNerney for yielding back.

I would just like to comment on one point that he made. It is unusual for this Subcommittee, the Oversight and Investigations Subcommittee, to hold legislative hearings. That should be an indicator of the seriousness that this Committee takes its role and responsibility in making sure that our veterans are cared for. And you can depend and our veterans can depend that we are going to stay the course to make sure that we get some action and some results from some of these outstanding issues.

And, with that, I invite the first panel to the witness table.

On this panel, we will hear testimony from Thomas Murphy, Director of Compensation Service at the Veterans Benefits Administration (VBA) at the Department of Veterans Affairs. Mr. Murphy is accompanied by the Honorable Roger Baker, Assistant Secretary for Information and Technology at the Department of Veterans Affairs, and John H. "Jack" Thompson, Deputy General Counsel at the Department of Veterans Affairs. We will also hear on this panel from the Honorable Elizabeth A. McGrath, the Deputy Chief Management Officer at the U.S. Department of Defense (DoD).

Both of your complete written statements will be made part of the hearing record.

Mr. Murphy, you are now recognized for 5 minutes.

STATEMENTS OF THOMAS MURPHY, DIRECTOR, COMPENSATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY HON. ROGER BAKER, ASSISTANT SECRETARY FOR INFORMATION AND TECHNOLOGY, AND CHIEF INFORMATION OFFICER, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND JOHN H. "JACK" THOMPSON, DEPUTY GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS; HON. ELIZABETH A. MCGRATH, DEPUTY CHIEF MANAGEMENT OFFICER, U.S. DEPARTMENT OF DEFENSE

STATEMENT OF THOMAS MURPHY

Mr. MURPHY. Thank you, Mr. Chairman and Members of the Subcommittee, for the opportunity to testify and present VA's views on several legislative items of great interest to veterans and the Department.

Joining me today are Roger Baker, Assistant Secretary for Information and Technology, and Jack Thompson, Deputy General Counsel.

H.R. 2383, the "Modernizing Notice to Claimants Act," would amend section 5103 to authorize the VA to use the most efficient means to provide required notice to claimants. This bill would also amend section 5103A to clarify VA's duty to assist claimants in obtaining relevant private records.

VA fully supports this bill, which would significantly enhance its efficiency in carrying out its duty to assist and notify under the Veterans Claims Assistance Act (VCAA). VCAA requirements have had the unintended effect of complicating and unnecessarily delaying the claims process, while confusing veterans and their dependents. This bill represents a valuable step forward in addressing these concerns.

Section 2 of the bill would provide increased flexibility in how VA delivers notice to claimants. It would authorize VA to provide notices through the most expeditious means available, including electronic communications, which is critical during this time of transformation to a paperless claims process. By eliminating the language that directs VA to issue VCAA notices upon receipt of a complete or substantially complete application, section 2 of this bill would also significantly increase efficiency in the beginning stages of the claim process.

Sections 2 and 3 of this bill would add provisions to both section 5103 and 5103A to make it clear that VA's duty to notify or duty to assist does not apply to any claim or issue when VA can award all the benefits sought entitled under the law. This little change can take months out of the development process, thereby speeding delivery of benefits to veterans.

Section 3 would direct VA to encourage claimants to submit private medical evidence if such submission does not burden the claimant. VA would continue to assist the claimant if he or she requests such assistance. This approach would empower the claimant to take an active role with VA in preparing his or her claim for a decision.

In many instances, veterans want to procure their own records and can do so more quickly than VA. In crafting regulations to im-

plement this authority, VA would emphasize the value in partnering with the claimant while, at the same time, ensuring that they understand VA's readiness to assist as necessary. This approach will assist VA in engaging veterans earlier in the process.

H.R. 2243, the "Veterans Employment Promotion Act," we defer this to the Department of Labor.

H.R. 2388, the "Access to Timely Information Act," would amend title 38 and also effectively amend the Privacy Act to require VA to disclose sensitive personal information to the Chairs and Ranking Members of the House and Senate Veterans' Affairs Committees and Subcommittees and their designees. Because the bill would diminish the privacy rights of veterans who deserve the same information protection enjoyed by other Americans, we strongly oppose its enactment.

Current laws are intended to ensure that the privacy rights of individuals are respected during the exercise of legitimate Congressional oversight. In order to document and ensure the validity of such requests, VA has a clearly defined process. This creates a record that can be used in the event that VA's authority to disclose the information is later questioned.

This latter point is significant, in that the penalties for unlawful disclosure can be severe. An agency employee who discloses information in violation of an applicable confidentiality statute or regulation may be subject to criminal or civil penalties. Furthermore, the Department may be subject to civil liability under these provisions.

Veterans Affairs' Committee staff frequently request veterans' medical records, which contain among the most sensitive and private information imaginable. Because of social stigma associated with many medical and psychiatric conditions, patients often conceal their illness and treatment from their employers and even their immediate family. Any release of veterans' health information outside the Department, even when permitted by statutory exception, has the potential for undermining veterans' trust in VA. We cannot support legislation which would in any way diminish the existing legal protections this information rightfully enjoys.

H.R. 2470, the "Ensuring Servicemembers' Electronic Records' Viability Act," would amend the Wounded Warrior Act to alter the role, functions, and oversight of the Interagency Program Office of the DoD and VA with respect to electronic health records. It would also transfer control and responsibility of vital and sensitive programs for VA's electronic health records away from the clinicians and VA IT specialists who have made it such a success.

While the VA agrees that leadership and accountability will be vital to delivering an integrated Electronic Health Record (iEHR), VA opposes H.R. 2470 as written. The bill would alter VA-DoD infrastructure currently in place, with no discernible benefit.

H.R. 2470's transfer of control of VistA to the IPO would shift all responsibility for the development, implementation, and sustainment of all electronic health records systems and capabilities away from VA to the IPO. This will create disruption and uncertainty in the management of the most vital set of tools VA uses to deliver world-class care for our veterans.

While we have strong concerns regarding this bill, VA is always open to discussing our joint efforts with our DoD partners to advance iEHR capabilities and the important work of the IPO and the Committee.

This concludes my statement. Thank you for the opportunity to testify today. I would be happy to entertain any questions you or other Members of the Subcommittee may have.

[The prepared statement of Mr. Murphy appears on p. 34.]

Mr. JOHNSON. Thank you, Mr. Murphy.

Ms. McGrath, you are now recognized for 5 minutes.

STATEMENT OF HON. ELIZABETH A. MCGRATH

Ms. MCGRATH. Good morning, Chairman Johnson, Ranking Member Donnelly, and Members of this Committee. Thank you for including the Department of Defense in today's discussion regarding your recently introduced bill, "Ensuring Servicemembers' Electronic Records' Viability Act," H.R. 2470, to improve the electronic health information systems and capabilities of the Department of Defense and Department of Veterans Affairs.

We do truly appreciate this Committee's desire to be helpful in strengthening the role of the Interagency Program Office for electronic health records. However, the Department of Defense does not support H.R. 2470 as currently written, but looks forward to working with this Committee to ensure we have the right balance of authority, accountability, and focus for the Interagency Program Office.

We believe that existing legislation on this subject provides sufficient authority and flexibility to the Secretaries of Defense and Veterans Affairs to effectively administer the integrated Electronic Health Record Way Ahead. Specifically, section 1635 of the National Defense Authorization Act for 2008 (NDAA) established the IPO and vested it with significant authority.

Since its establishment, we have leveraged that authority to successfully deliver capabilities in two specific health information technology areas: the Virtual Lifetime Electronic Record (VLER) and the James A. Lovell Federal Health Care Center in north Chicago. With the daily focus on delivery-required capability for north Chicago, the IPO is well-positioned to identify and mitigate issues, enabling a successful opening of the facility in the fall of last year and a smooth transition from the Great Lakes Naval Hospital into the new center. We recognize that there is more to do, but we believe we have the right structure in place.

Additionally, in creating a common ground and way ahead for VLER, the IPO is essential in the establishment of an effective governance structure, including the establishment of executive committees, senior management committees, and also establishing the strategic plan with milestones and deliverables to ensure that we have our common collective focus on a joint health IT strategy.

The VLER Concept of Operations (CONOPS) was also identified and established with specific goals and issues, milestones and timelines, to hold us all collectively accountable, and to lay the foundation for success in a joint interagency master schedule.

And, finally, the two departments are currently updating the IPO's charter to reflect the directions of the Secretaries of Defense

and Veterans Affairs and take advantage of the full authority provided in the legislation to ensure that we both maintain focus on delivering of the joint common platform based on standards and common practices and processes that achieve the interoperability that we collectively desire. This would be as opposed to focusing on the sustainment of a legacy environment, which may take our eye off the ball.

The revised charter will be complete this summer, and we look forward to sharing it with this Committee. The governance structure agreed to by the Secretaries for the integrated health record reflects the pivotal role of the IPO as the central program office responsible and empowered for delivering capability.

Thank you again for the opportunity to testify today, and I look forward to continuing the dialogue in the future.

In short, DoD and VA are both counting on the IPO, under its governance model, and acting with the intent of the original legislation to achieve the goal: our joint vision of a modern electronic health record that works seamlessly across our departments.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. McGrath appears on p. 38.]

Mr. JOHNSON. Thank you very much, Ms. McGrath.

At this time, I would like to thank Ranking Member Donnelly. He was doing the people's business and came in a little after we got started.

Do you have any opening comments that you would like to make before we start questioning?

Mr. DONNELLY. The only opening comment I would like to make is: Thank you, Mr. Chairman. I look forward to the discussion of these bills.

And H.R. 2470, a bill which I recently introduced, we believe will increase the authority given to the IPO.

So, with that, I will turn it back over to you, sir.

Mr. JOHNSON. Thank you very much.

And at this point then, we will begin with the questioning.

Mr. Murphy, based on past testimony to the House and Senate VA Committees and the input received by VA, how do you feel the Modernizing Notice to Claimants Act would be received by the veterans service organization (VSO) community?

Mr. MURPHY. Mr. Chairman, I went back and did some research in preparation for this hearing today and looked back through from 2008 forward *The Independent Budget* and testimony provided by various veterans service organizations. And, in each case, I found that they have come out in support of the very provisions that are in this bill.

And I will give you a couple examples out of the 2012 *Independent Budget:* "In order to support efforts to encourage the use of private medical evidence, Congress should also consider amending 38 U.S.C., section 5103A, to provide that when a claimant submits private medical evidence, that that evidence is a component credible, probative, and otherwise adequate for rating purposes. The Secretary shall not also request such evidence from a VA health care facility."

And this is just one example that goes through the last 4 years of testimony that I see is in support of this bill.

Mr. JOHNSON. Okay, good. I take it, then, that—you just named one—there are specific examples where these changes have been requested by the VSOs, such as *The Independent Budget*?

Mr. MURPHY. Yes, that is correct, Mr. Chairman.

Mr. JOHNSON. Okay.

Mr. Murphy, do you perceive anything in this bill affecting court precedents related to claims processing and disability ratings?

Mr. MURPHY. No, sir, I do not.

Mr. JOHNSON. Would anything in this bill incentivize or allow VA to give a minimum disability rating when a higher rating might apply?

Mr. MURPHY. No, sir, absolutely not.

The advantage of this bill is and the challenge to VA is for us to figure out how to preserve all rights, entitlements, benefits, and notices that the veteran has, but take out some of the administrative times in here, reducing that timeline that it takes in order to deliver that same set of benefits to veterans.

And I have to give you an example of the fully developed claim process, which we have been running for the last year or so. We have done in excess of 5,000 cases. And in these cases, where the private medical evidence was submitted up front with the claim, we have cut our processing time, average days to complete those claims, by more than 50 percent. And this bill drives toward that very process.

Mr. JOHNSON. Okay. Thank you.

While I know that the second panel's testimony was embargoed until this morning, would VA be willing to respond to the concerns about this bill raised by the members of that panel?

Mr. MURPHY. Yes, sir, we would be happy to take their testimony for the record and provide VA's response.

[The VA subsequently provided comments on the Disabled American Veterans (DAV) and the Veterans of Foreign Wars of the United States (VFW), which will be retained in the Committee files.]

Mr. JOHNSON. Okay.

All right. Let's talk about Congressional inquiries for just a minute. In your testimony regarding H.R. 2388, you state that it has long been interpreted to mean only the chairpersons who have oversight authority or acting under a grant of authority from the Committees and, therefore, can receive disclosed information under the Privacy Act and title 38.

When was this interpretation formulated? And is it in writing?

Mr. MURPHY. On this matter, I have to defer to Mr. Thompson from VA General Counsel.

Mr. THOMPSON. Sir, that reference is to a Department of Justice opinion that was written in 2001. And I would be glad to supply that for the record.

Mr. JOHNSON. I would appreciate that. When do you think you can get that?

Mr. THOMPSON. This afternoon.

Mr. JOHNSON. Okay.

Mr. THOMPSON. Yes, sir.

[The VA subsequently provided the information, which will be retained in the Committee files.]

Mr. JOHNSON. If chairpersons are the only ones acting under a grant of authority from the Committees, then under what authority does VA consider staff members to be acting?

Mr. MURPHY. Same response, sir.

Mr. Thompson——

Mr. JOHNSON. The staff members are under the authority of the chairmen. So if chairpersons are the only ones, according to your interpretation, the Justice Department's interpretation, as acting under a grant of authority from the Committees, then under what authority does the VA consider that staff members are acting?

Mr. THOMPSON. Certainly, staff members act for the Committee, and report to and work for the Committee. The Department of Justice opinion is that, under House rules, under Senate rules, only the chairpersons of the Committees are authorized to act on behalf of the entire Committee. The law authorizes disclosure to the Committee, and, therefore, the Department of Justice says the requests have to emanate from the chairmen.

Mr. JOHNSON. I look forward to receiving that Justice Department opinion.

I will yield now to the Ranking Member for his questions.

Mr. DONNELLY. Thank you, Mr. Chairman.

And this would be for Mr. Baker or Ms. McGrath, either one.

What has been the driver behind the recent attempts to empower the IPO? And if this Public Law 109–461, if it was passed 3 years ago, why are we just now beginning to attempt to improve the IPO?

Mr. BAKER. I believe the primary driver, at this point, is the two Secretaries' agreement that the two departments should establish a single, common electronic health record. If we go back to the President's directive in 2009 that we move forward with a virtual lifetime electronic record, we have made progress on that. But what the Secretaries recognized last fall was that we needed to achieve agreement and move forward on a single, common electronic health records system between the two departments.

It is their intent, expressed in a memorandum, that the IPO structure be used as the point, and the implementation point, for that new electronic health records system. And that is, in fact, what Ms. McGrath and I are driving, under direction from the Secretaries.

Mr. DONNELLY. Are you aware—and, again, Mr. Baker or Ms. McGrath—that the former director has retired, the deputy has been recently reassigned, and is this where we are right now?

Ms. MCGRATH. Certainly we are aware of the current state of the population of the IPO.

If I could just add to Mr. Baker's comments a moment ago, as I mentioned in my opening remarks, the IPO has been focused on the successful opening and delivery of the capabilities there in north Chicago, in addition to the Virtual Lifetime Electronic Record. In our two organizations, looking forward toward, I will say, our modernization efforts for the electronic health record, we have made the determination to take a very joint approach. And those decisions were made starting in December and through the last few months. As this Department, DoD, went through our analysis of alternatives, we are utilizing the IPO; we are adding to what we currently had them focused on.

Roger mentioned that he and I are both very active in terms of the oversight of the activities with all of those things—north Chicago, VLER, and the integrated electronic health record. We have established effective governance surrounding not only the IPO but in total, to ensure that we have the functional representation at the table where they need to be, as well.

So I don't view this necessarily as new as much as I do as an evolution based upon the decisions that the departments have made, fully taking advantage of the authorities in the legislation that does exist.

Mr. DONNELLY. Let me ask you this. When the IPO was created, there were 22 billets, with 2 senior executives. And as of the present time today, there are 8 full-time people, with both directors departed. Why are we in this spot?

Ms. MCGRATH. So, to look at the current population of the IPO I think is perhaps a little bit incomplete, given the fact that, at least within the Department of Defense, we also have efforts such as an office established for an Electronic Health Record Way Ahead program office.

What we are doing is capitalizing on not only the IPO assets but also those other assets that were previously focused on a DoD-unique capability. And we are moving all of those into the IPO so that it has both the right numbers and skill sets to ensure a successful program office. We are doing an organizational assessment, just like you would for any program, to say, what are the right skills and people I need in certain jobs? And what is the right mix of both functional, technical, DoD, and VA to ensure that that is positioned for success.

And so, although the numbers might not appear, I will say, to be complete, the rest of the story includes the fact that we have people working in both organizations under both my and Roger's direction to ensure that we are focused on having all those piece parts in place to deliver a successful capability.

Mr. BAKER. I believe an important point there, Congressman, is that the DoD has named one of their most senior and, certainly, in my view, one of their best Senior Executive Service's, the Acting Director for the IPO moving forward, Mr. Wennergren. He is Ms. McGrath's deputy. That has been taken throughout both organizations as a recognition of where the two Secretaries intend to go with the IPO moving forward on the iEHR.

Mr. DONNELLY. Is the Acting Director, is he or she currently in the Rosslyn headquarters full-time now?

Mr. BAKER. I see him mostly in the Pentagon as we get together to talk about the EHR meetings, where all of us go for those meetings.

Mr. DONNELLY. Has he met with the organization yet, do you know?

Mr. BAKER. I do not know.

Ms. MCGRATH. So, we meet on a very routine basis, and the IPO participates in all of our meetings.

Mr. DONNELLY. Thank you, Mr. Chairman.

Mr. JOHNSON. Thank you, Mr. Donnelly.

At this time, we will go in order of arrival. Mr. Flores, do you have any——

Mr. FLORES. Mr. Chairman, thank you. I have no questions. You asked my question about H.R. 2388, so I would yield to any other Member that has questions.

Mr. JOHNSON. I do have some questions, but I was going to hold it for a second round. But if you have no questions and you would like to yield your time to Dr. Roe, we can go directly there.

Okay. Dr. Roe.

Dr. ROE. Thank you.

First of all, I want to introduce a friend of mine, Bill Darden, from my hometown of Johnson City, Tennessee, who is in this meeting today.

And, Bill, we are glad to have you here.

Back to the IPO, you know you are a first-term Congressman when you get to go to Great Lakes, Illinois, in January, which I did last Congress. And we looked at the interoperability of the record then. To be honest with you, I was underwhelmed at what had been accomplished. And I have gotten no further follow-up and feedback, and I would like to.

Because I think what you said, Mr. Donnelly, was correct, and I wanted to follow up with that a little bit, because I haven't seen what was accomplished and I think it was a good idea to combine the VA and the Great Lakes Hospital. Does that record work at all, or do we need to make another trip so we can get another look and see? And I would prefer, this time, to go when it is warm. But I do want to know if that works.

Is it working now? It will be 2 years this coming January, so it was 19 months ago when I was there.

Mr. BAKER. Congressman, thank you.

As you recall, I was freezing on that trip, along with you and——

Dr. ROE. Yes.

Mr. BAKER [continuing]. Several other folks, I believe Mr. Herbert.

Large parts of the IT are working, at this point. They were working at the point where we moved into the facility. The medical single sign-on, so that when a clinician pulls up a patient record in one medical records system, if they look at something in the other medical records system, that we know it is the same patient has been implemented.

Single patient registration has been implemented——

Dr. ROE. How long does that wind-up take? And the reason I get into the weeds with this is because if you are seeing 30 people a day or 25 people a day and it takes you 2 minutes to wind up, which doesn't sound like much but that is an hour a day just to get on the computer.

I have implemented an electronic medical records system. It may be why I am in Congress now, because that thing was so frustrating. Are you able to get on?

Mr. BAKER. My understanding is the answer to that is, yes, Congressman. I have not looked at it directly, but the clinicians that I have talked to have been very happy with that capability. As you are probably aware, certainly VA clinicians are pretty vocal about things they don't like on the IT with me, and I have not heard that kind of feedback from our clinicians, that those pieces are slow for them.

Dr. ROE. So they can access the record, they can pull it up in a timely manner?

Mr. BAKER. Right. Correct.

Dr. ROE. And what I saw happening when we were up there before was that you had to go to two different systems to be able to get the information that you needed. I mean, you could get a blood count. Well, you can do that very simply; I mean, those systems have been available forever.

Are they actually able to work now? Because I would like to go see if it does. If it does, we can implement it across the whole system pretty quickly.

Mr. BAKER. I believe that it works pretty well. As you know, there are a few things that have not been delivered, in particular on the pharmacy and the consults side. But items like interoperability and orders portability on lab and—I am trying to—there is one other area—have been implemented between the two medical records systems.

The main thing that occurs is a physician primarily works inside of one of the medical records systems. If necessary to look at the other one, that is what the single sign-in——

Dr. ROE. Well, if a sailor gets hurt over at the Great Lakes side and comes over to the VA hospital, how does that work?

Mr. BAKER. I believe that the clinician is going to be working inside of VistA, inside the facility. A lot of it depends on what clinic the sailor is seen in, because the functionality is pretty much defined as one medical records system or the other based on which clinic you are being seen in. And so I believe, in general, they are going to be seen and the record is going to be kept inside of the records system for that clinic and then moved to the other records system through the——

Dr. ROE. So the VistA; when the sailor went back to duty, how would the medical officer pull that up?

Mr. BAKER. I believe that is going to be through the Bidirectional Health Information Exchange.

Dr. ROE. Well, I would like to see that work.

Ms. MCGRATH. Sir, if I could just add, the access to the information is available to the clinicians. They are still housed in the two separate solutions, because they are not yet integrated solutions. That is the biggest difference between how things work today and where we are aiming for tomorrow.

So, in north Chicago, we moved the two organizations together, but we retained our legacy environment. And we are trying to ensure that we have communications, robust communications, real-time, so that the clinician sees the information.

Where we are heading in the future with this integrated electronic health record is to adopt the same data standards and achieve data interoperability so that it is a single record when the clinician pulls up the information. So we are not talking about things like Bidirectional Health Information Exchange. It is real-time access——

Dr. ROE. "Bidirectional," the English language translation is two different records, right?

Ms. MCGRATH. Two different sources.

Dr. ROE. Yep. That is what I thought.

I will yield back. Will we get a chance to ask some more questions? Okay, thank you.

Mr. JOHNSON. Yes. For everyone's information, I suspect we will have a second round of questions.

At this time, Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Chairman.

And I thank the panel for coming today.

One of my pet peeves is the backlog. And, Mr. Murphy, I would like to know what the VA is doing to reduce the backlog of claims by adjudicating through the electronic written responses. Is there anything that you are doing to make this better?

Mr. MURPHY. I guess I don't understand the question. The written responses as it is—are we talking about through this bill here?

Mr. MCNERNEY. In the current law.

Mr. MURPHY. In the current law. Okay.

We are in the process of full development of the VBMS, Veterans Benefits Management System, which is essentially the replacement for what is largely a paper process today. And it is literally—I am sure you have seen our regional offices—volumes upon volumes of paper. This process takes it, allows us to gather the information in an electronic format, process it in an electronic format, run it through an electronic knowledge-based decision matrix, put the entire package in front of an experienced rater to have the human interaction and to make sure that the computer is driving to the right decision, and then adjudicate the case.

This is in direct support of the Secretary's goals of no claim over 125 days with 98 percent accuracy by 2015. And this system and all of the pieces that are integrated into it are what is going to solve this breaking the back of the backlog.

Mr. MCNERNEY. The word "solve" is a big word. But there are going to be people that are going to resist that. I mean, as Dr. Roe just mentioned, people are going to resist going to electronic means. Are the veterans that are submitting these forms aware of the help that is available, getting their information on electronic media?

Mr. MURPHY. We are facing a large education campaign, getting veterans to understand, that with no giving up of their rights, benefits, entitlements, notices, et cetera, that the electronic process will allow them to receive the same thing that they are getting from us today in a significantly reduced time frame.

Mr. BAKER. Congressman, if I could, there are two main parts of, if you will, the intake piece of VBMS. The first part, where we are working with National Archives, is a smart scanning approach, where we take the paper that is coming and scan it in and harvest the data off it so that we have actual data to feed into the automation system.

The second piece is, as you point out, to encourage veterans to actually have the information be electronic at the source. So bringing them to a Web site for what has often been phrased as a "TurboVet" approach to filling out the information necessary, using what we call DBQs, or the disability benefits questionnaires, to make certain that they are providing a fully completed claim so that it can be adjudicated quickly. And, as Mr. Murphy points out, there is a large education piece to that.

But in the beginning, as we roll this forward, we are anticipating the veteran still largely operating in paper, if they choose to, and with us going back and forth with them in paper. But inside the VBA, it will be all electronic. All those images will be scanned.

Mr. MCNERNEY. Thank you.

Mr. Murphy, you have deferred to the Department of Labor to provide views on H.R. 2243. Are there any comments you are prepared to offer in broad terms about the issue of improving Federal contractor compliance?

Mr. MURPHY. No, Congressman, we are not prepared at this time.

Mr. MCNERNEY. Okay.

Ms. McGrath, what additional steps would you recommend for improving coordination between the two departments, the Department of Veterans Affairs and the Department of Defense?

Ms. MCGRATH. With regard to the electronic health record?

Mr. MCNERNEY. Correct.

Ms. MCGRATH. I actually think that a lot of the steps we have taken in the last few months have driven our two organizations very close together with regard to focusing on the capabilities that we need, bringing the functional process, architecture, and the technical folks together so that we are joined in every aspect of our Way Ahead.

The governance model that we have presented and has been approved by the Secretaries, I think positions us well for every aspect of delivering that capability. I think oversight, rigorous oversight, both within our respective departments and by the Members of Congress, will be critical to ensure that we continue to keep and maintain the focus to deliver these joint capabilities so that we aren't, I will say, deferring or coming off the path that we are currently on.

So I really do think there is a super-strong partnership between these two organizations in every aspect of the development and delivery of the capabilities.

Mr. MCNERNEY. Well, you certainly have chosen the right words to say.

I will yield back.

Mr. JOHNSON. Thank you for yielding back.

I want to continue that line of questioning, because the cooperation and the sense of urgency that you say in your words that exists don't show up in the results. The IPO has been in existence for approximately 4 years, yet today we see the organization is not fully staffed and still we have no record integration.

When was the Acting Director appointed?

Mr. BAKER. I believe that was effective with the June 23rd meeting between the Secretaries.

Mr. JOHNSON. So it has just been within the last few weeks.

Mr. BAKER. Within the last month, yes.

Mr. JOHNSON. Within the last month. Okay.

And, you know, I will submit to you that this lack of a sense of urgency, and that we are 4 years into this process and we still have no record integration, we still don't have an IPO that is fully staffed, that is just further indication of the lethargic response that

we get on IT-related issues in solving our veterans issues. So I am still very concerned about that.

I want to go back to the issue of responding to requests for information. Mr. Murphy, you indicated that many of the requests from the Committee staff—or that they frequently request veterans' medical records. How many of the requests do you receive in a year that require medical records?

Mr. THOMPSON. Sir, I am not sure that there is a tally on that.

Mr. JOHNSON. Okay. Can you find out and report back to us?

Mr. THOMPSON. I am not sure a log is kept of that, but I will——

Mr. JOHNSON. Well, certainly, if that is a concern of the VA, that the staff is requesting medical records, there would be some record of that.

Mr. MURPHY. We can provide a response to that one, yes, Mr. Chairman.

[The VA subsequently provided the following information.]

[The attached documents will be retained in the Committee files.]

Question:
Please provide historical information on VA responsiveness to Committee oversight requests.

Response:
Calendar year 2011 to date, the Department of Veterans Affairs (VA) has received approximately 76 requests for information (RFI) from the Oversight and Investigation Subcommittee of the House Committee on Veterans many of which were communicated by phone call or e-mail. Of those requests, 12 involved medical records and/or other privacy-protected information.

VA may only disclose such information relating to an individual's privacy in response to: (1) a request from Congress or from a committee or subcommittee of either house of Congress in connection with a matter within its oversight jurisdiction, (2) an inquiry from a member of Congress made at the request of a constituent, or (3) a request from a member of Congress or a staff member processed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Additionally, such a document, which in its original form contains privacy-protected information, may be disclosed if the document is redacted such that all information that would render the document privacy-protected is omitted.

Of the 12 RFIs relating to privacy-protected information, below shows the number for each of the excepted categories mentioned above:

Outstanding: 3
Redacted: 2
Chairman's Letter: 3
Privacy Act Release: 3
Not provided/Excepted categories not met: 1
Average response time: 32 calendar days
Shortest response time: 1 calendar day
Longest response time: 75 calendar days

Instances that may affect response times include when inquiries have been amended in scope, when clarifications were needed, or when discussion was necessary on the prerequisites for providing privacy-protected information.

Mr. JOHNSON. Okay. I would appreciate that.

What about instances where no medical records are requested? Because, as I indicated in my opening statement, we've got situations where the information is relatively benign, administrative, and yet we still get pushback from the VA requiring that the Chairman sign a letter of request.

Mr. THOMPSON. Sir, our testimony goes to requests that involve Privacy Act-protected information.

Mr. JOHNSON. Okay. I hear that.

Mr. THOMPSON. Yes.

Mr. JOHNSON. But what I am asking is, why, when it does not require Privacy Act information, do we still get pushback?

Mr. THOMPSON. Well, you should not be getting pushback on the basis that the law precludes its disclosure.

Mr. JOHNSON. Well, vis-à-vis the need for this legislation, because, apparently, we still do get pushback, even though you say that the law should not preclude that.

When was the last time that VA's longstanding policy in this regard was transmitted to the House, to this Committee? We have asked for the policy, and we have yet to receive a written response. So when can we expect to see a written response on this policy?

Mr. THOMPSON. We can certainly provide a letter describing——

Mr. JOHNSON. When?

Mr. THOMPSON. Very shortly, sir.

Mr. JOHNSON. When? Give me a date.

Mr. THOMPSON. How about tomorrow? Does that do it?

Mr. JOHNSON. Yep. That would be great, Mr. Thompson.

Mr. THOMPSON. Good.

Mr. JOHNSON. Because we have asked for it repeatedly, and we get the same answer, "We will provide it," and it never shows up. So by tomorrow I am going to expect it.

Mr. THOMPSON. Okay. I haven't been asked before.

Mr. JOHNSON. Okay.

Let's go back to the IPO issue. Ms. McGrath, you mentioned in your testimony that the revision of the IPO charter currently is under way. What can you tell us about why this revision was needed? Why is the charter being revised?

Ms. MCGRATH. The charter is being revised to include the focus of the integrated electronic health record, as recently decided by the two Secretaries. I also mentioned that we are ensuring that we have the right construct in terms of skill sets, that is the right technical, functional, business operating, and implementation change management types. It is a very, what I will call, standard practice in terms of ensuring that we establish the foundational footprint prior to populating it with additional skill sets.

I should also mention, to the gentleman's comment or questions earlier, we have people—the IPO is a piece of the delivery. Prior to implementation from a program office, the clinicians or the functionals, if you will, must identify very clearly what their stated needs are, also working with our technical folks so that when we deliver a capability it is something that the clinicians will use, which has been somewhat of a struggle in the Defense Department in terms of the usability aspects of some of our legacy environment.

And so we absolutely have reached across DoD and VA, using the existing functional boards, the Health Executive Council being an example, to ensure we get the prioritization right from them, and so that we get the right input, functional input, before handing them over to, if you will, the IT folks.

Also, I should mention that we have architectural teams working on both DoD and VA doing a gap analysis of our military health system architecture to see what we can leverage from our existing architecture, again, to drive the capabilities.

In addition to the business process re-engineering, Mr. Baker mentioned pharmacy. Today, it is amazing to me how differently

we execute the business, pharmacy being an example. To ensure that we deliver the IT capability that is needed by the clinicians, we are taking a very business-process focus to ensure that when we have common practices, common processes, we are utilizing those, documenting them in the enterprise architecture, and then ensuring that we deliver those capabilities against that. Again, it does take longer, but if you don't take those necessary steps, the probability of delivering an IT capability that does not meet the functional requirements is higher.

And so it is all of those aspects, both inside and external to the IPO, that must participate in all of those activities to ensure that we have that capability.

Mr. JOHNSON. Wow. You have just made my case for why an architecture is so very, very important——

Ms. MCGRATH. It is extremely important.

Mr. JOHNSON [continuing]. To accomplish—yeah.

And, you know, this Committee has repeatedly requested to see the VA's IT architecture, and, as we speak today, we have still yet to receive one. So I am curious, how do you get insight from those architectural inputs? I would like to know what your secret is. Because we haven't seen an IT architecture from the VA, and we are very concerned about that.

I am asking Ms. McGrath.

Ms. MCGRATH. So, I can focus on the electronic health record part. We are doing a gap analysis. Again, architects from both organizations—and, again, I can——

Mr. JOHNSON. Have you seen the VA's IT architecture with which to do that gap analysis?

Ms. MCGRATH. I personally have not seen the——

Mr. JOHNSON. But your team has, or——

Ms. MCGRATH. It is my understanding that, yes, that the VA has brought forward their current architecture design in addition to the DoD's military health system architecture, and are doing a gap analysis, again——

Mr. JOHNSON. Can you provide this Committee what you have seen in terms of their architecture design?

Ms. MCGRATH. I would be happy to.

[The DoD subsequently provided the following information:]

In response to your question, please see the attached documents. **[The attached documents will be retained in the Committee files.]**

These documents represent a variety of architectural diagrams and descriptions produced by and used by DoD and VA teams. A summary of the documents is provided below:

iEHR Pharmacy Process Model Summary Report—The Joint DoD/VA Pharmacy TO–BE process and sub-processes described in Business Process Modeling Notation (BPMN) and associated text. The processes and sub-processes give the architects and developers a detailed description of the steps associated with the Pharmacy Module, thus allowing them to construct the technical functionality necessary to fulfill these tasks.

EHR Operational View (OV)-1—An overview describing the TO–BE EHR lifecycle from initiation of care to end of benefits. This diagram describes the key steps in the EHR lifecycle in a non-technical manner.

EHR Blood Management High-Level Business Processes—This business process diagram is a formal model in BPMN describing the AS–IS DoD Blood Management workflow. The diagram enables the architects and developers to understand the necessary tasks in the process such that they can translate the business task into a collection of technical tasks.

2010 Target DoD/VA Health Standards Profile—A comprehensive list of health care, communication and interoperability standards. The iEHR solution will comply with these standards in order to maximize interoperability with other EHR and non-EHR systems while ensuring patient safety, privacy and overall EHR integrity.

Conceptual iEHR Architecture—The Conceptual Architecture is a high level representation of the joint DoD/VA capabilities that captures the common functionality as well as DoD and VA specific functionality. It acts as a reference for architects and engineers as to how the iEHR solution should be constructed.

High-Level Service Architecture—A component diagram representing the high level capabilities and supporting capabilities necessary to deliver iEHR functionality. The component diagram provides a somewhat more granular reference for architects and engineers as to what functionality must be present in the EHR.

MHS Enterprise Portal Reference Architecture OV–1—The OV–1 provides an overview of the functionality provided by the Enterprise Portal and its interaction with the supporting systems such as the Service Oriented Enterprise. The Reference Architecture provides a high level view of recommended functionality within the Portal such that architects and engineers can implement the appropriate Portal technologies in support of iEHR requirements.

EHR System Functional Model—Chapter 3: Direct Care Functions—Descriptions of the Health Level 7 (HL7) EHR requirements to deliver health care and clinical decision support. The EHR System Functional Model provides a comprehensive list of capabilities that are used by architects and engineers to construct an iEHR solution that is in keeping with HL7 recommendations.

EHR System Functional Model—Chapter 4: Supportive Functions—Descriptions of the HL7 EHR requirements to deliver administrative, financial, public health, and research related services. The Supportive functions are required to enable the capabilities described in the Direct Care Functions.

EHR System Functional Model—Chapter 5: Information Infrastructure Functions—Descriptions of the HL7 EHR requirements to address patient safety, security, and operational efficiency that are not necessarily health care specific. The infrastructure functions are necessary to implement the Supportive and Direct Care Functions.

Common Services Spreadsheet—A description of the Service Oriented Architecture (SOA) Services in support of the EHR System Functional Model. The Services described in the Spreadsheet described a collection of low level technical functions that can be combined to fulfill the capabilities of the iEHR solution.

Workflow Functions—A mapping of the EHR System Functional Model to business process activities. The mapping shows how the EHR requirements are fulfilled by the various workflows of the iEHR solution.

Mr. JOHNSON. Okay. Thank you very much.

Does the DoD and the VA intend to brief this Committee on the updated IPO charter prior to its release?

Mr. BAKER. Congressman, as you are aware, I have monthly meetings with your staff. We have kept them apprised of the progress in the meetings with the Secretaries, going through the memorandums. It has been moving quickly, the work with the Secretaries.

So, absolutely, just as a normal course of that, as we have something to report out, I plan on making certain that we walk through with your staff those items.

Mr. JOHNSON. Okay. All right. I appreciate that.

The clock didn't start, so I have no idea how much time I have consumed. So I am going to yield now to the Ranking Member to ask some more questions just in case I am over my time.

Mr. DONNELLY. I have no additional questions at this time, Mr. Chairman.

One comment I would like to make is to Dr. Roe, that we just consider that brisk weather in January in Illinois in our neck of the woods.

Mr. JOHNSON. And I am with you. I don't like to be cold, and I am enjoying this heat wave we are having up here. I am probably the only one that is.

Dr. Roe, do you have additional questions? Mr. Flores, do you have any questions?

Mr. FLORES. I have no further questions. I would say this is just moderate weather, though.

Mr. JOHNSON. Okay.

Dr. Roe.

Dr. ROE. Just very briefly, I can certainly appreciate on Health Insurance Portability and Accountability Act (HIPAA). It is frustrating from our standpoint, because everybody is busy. I mean, you guys are busy, we are busy. And if we ask for a request and it doesn't show up for a month or 6 weeks or 2 months, you almost forget about what the request was about.

And so how long does it take, if the Committee makes a request of VA, by the time it works through all of the processes it has to, that we get feedback? Is it months, is it days, or what?

I know, Mr. Thompson, you are going to get a request back tomorrow. I know what "tomorrow" is, unless you are a building contractor, and "tomorrow" is sometime in the future. But we expect "tomorrow" will be tomorrow we will get it back.

So how long is that?

Mr. MURPHY. I don't have that information with me. But as part of my response talking about the number of requests we get without PII, I can certainly respond with a timeliness, the number of requests, number of days.

Dr. ROE. And also, on the medical record, just a comment. That information ought to be available. We kept it in our office. If someone requested a medical record, you could call us at the end of the week and we could tell you how many we had. So that shouldn't be hard to get that information. How much is HIPAA protected? And then some of this is not HIPAA-protected information. That ought to be fairly forthcoming.

Mr. MURPHY. Yes. The non-HIPAA information is where I was going to focus this response on, but I can expand it to all requests, because we do track them inside our agency of which requests we have and the timeliness of those.

Dr. ROE. Okay. I yield back.

Mr. JOHNSON. Any other follow-on questions, Mr. McNerney?

Mr. MCNERNEY. Yes, I actually do, Mr. Chairman, if you will allow it.

You know, Ms. McGrath, I just have to say, I was impressed with the words that you used there when I had my last set of questions, but I didn't see in your tonality or your body language a real belief in those words.

And I just have to say, the IPO—and I am following up some earlier words—the IPO was passed 3 years ago, and yet we are still haggling about it.

I mean, would it be completely and totally unfair to say that there is a jurisdictional dispute or jurisdictional issue between the two departments on this issue? Or are we just cooperating like we are all up in heaven and getting along just fine?

Ms. MCGRATH. I would like to say that since the Deputy Secretary has asked me to engage in the integrated electronic health record effort, starting back in December, to try and ensure that we collectively, both the DoD and VA, were on the most common path we could be on, we have been in lockstep. And, I mean, I live this every day. And these aren't words for words' sake; these are words with actions behind them.

And even though Mr. Baker identified that we put an interim program manager in place on the 23rd of June, we have been managing the effort for months to ensure that we are focused on common data standards, common business process, the architectural piece. The teams have been working side-by-side in my conference room multiple times a week, hours upon hours, to ensure that we have put the foundational pieces in place to drive this forward.

And so it is unfortunate that perhaps my body language isn't speaking the volumes of the day-to-day activity. I do not feel that there is jurisdictional disconnect between the two organizations. In fact, I feel that we are more aligned today. And I don't have a past with VA, and I have not worked collaboratively with them on any IT projects before, but I can tell you where we are headed today. The level of cooperation, coordination, and leadership, frankly, between our two organizations is demonstrated throughout them.

Mr. BAKER. Congressman, I just have to tell you that Ms. McGrath's strong commitment to this has been pivotal to the progress we have made over the last 6 months. I couldn't estimate the amount of her time that goes into this, but in a range of probably close to 50 percent of what she does as an Under Secretary is going into this effort inside of DoD.

And so I think it is fair to separate prior to the engagement of the Secretary of Defense, Secretary of Veterans Affairs and post that. Post that, I believe there is no issue and we are in lockstep. Prior to that, I think that there were substantial issues that showed up in the IPO relative to agreement between the two departments.

But that is why it took the two Secretaries stepping in and saying that they weren't going to take "no" for an answer anymore, that "yes" was the required answer. And that is what you have seen over the last 6 months.

Mr. MCNERNEY. So that has been the driver, the two Secretaries making it clear that this is high-priority?

Mr. BAKER. Absolutely. You can see that in the memorandums that have come out of those meetings.

Mr. MCNERNEY. Now, earlier, the Chairman mentioned the difference, perceived difference, in the architecture between the two departments. Is there a lack or a lag in the VA with regard to that issue, the architecture?

Mr. BAKER. Absolutely, yeah. The Chairman—we had a hearing here a few months ago, and I concur with the Chairman. There has been a lack of a well—documented architecture at VA for years. We are working to address that, but the Chairman knows, that is not an easy—it is not a tomorrow. I will make no commitments relative to delivering an architecture tomorrow. It is something we are wrestling with.

Mr. JOHNSON. I was going for today, Mr. Baker, but okay.

Mr. BAKER. We need someone as good as you to help us with that, sir.

I do believe, though, that what we are able to share with the DoD is what is in place at the VA now and where we intend to go. Is it a well-documented, formalized architecture that I would feel proud to deliver to a Congressional Committee? No. But we have an understanding of where we are and where we are going along those lines.

Mr. MCNERNEY. Thank you, Mr. Chairman. I yield back.

Mr. JOHNSON. Thank you very much for yielding.

Seeing no further questions, Representative Donnelly I think has one final question for this panel.

Mr. DONNELLY. The question would be, you know, we have talked a lot about the last 6 months. What happened for years before that, and when you come before us and say, well, we have this handled, don't worry about it, there is really no need for you to go into legislation on this side we went years with a gap, and so how come the truck never left the garage during those years?

Mr. BAKER. Congressman, I can't speak for previous administrations. I can tell you that the driver in this administration has been the President's vision of a virtual lifetime electronic record, and then the two Secretaries view that that meant making hard decisions that might have been resisted.

Mr. DONNELLY. What happened before December of last year?

Mr. BAKER. We have made substantial progress on the lifetime electronic record as the two organizations have defined it and in working together. I believe what the Secretaries found, using north Chicago as an example, was that trying to continue to exist in a world where two different medical records were trying to be implemented at the same hospital was not one that made logical sense anymore. And so at that point it was clear to them that they needed to personally tackle the issue. The organizations by themselves were not going to solve the issue. It was going to take the two Secretaries in a series of meetings to make the decisions necessary to get past "no" and on to "yes." I recognize that the bureaucracy does not move fast. It did take those two individuals getting involved.

Mr. DONNELLY. Thank you, Mr. Chairman.

Dr. ROE [presiding]. On behalf of the Committee, thank you for your testimony. You are now excused.

At this point I would like to invite the second panel to the witness table. On this panel we will hear testimony from Ms. Debra Filippi, former Director of the DoD/VA Interagency Program Office, the IPO. We will also hear testimony from Jeff Hall, Assistant National Legislative Director for the Disabled American Veterans; and Brian Gallucci, Deputy Director of the National Legislative Service for Veterans of Foreign Wars of the United States. Your complete written testimony and statements will be made a part of the hearing record, and you are now recognized, Ms. Filippi, for 5 minutes.

STATEMENTS OF DEBRA M. FILIPPI, FORMER DIRECTOR, U.S. DEPARTMENT OF DEFENSE/U.S. DEPARTMENT OF VETERANS AFFAIRS INTERAGENCY PROGRAM OFFICE; JEFFREY C. HALL, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; AND RYAN M. GALLUCCI, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF DEBRA M. FILIPPI

Ms. FILIPPI. Mr. Chairman, Ranking Member Donnelly, distinguished Members of the Committee, thank you for this opportunity to provide testimony on the "Ensuring Servicemembers' Electronic Records' Viability Act," H.R. 2470, to improve the electronic health record information systems and capabilities of the Department of Defense and the Department of Veterans Affairs.

I offer this testimony today as the former Director of the Interagency Program Office, serving from October of 2009 to June of 2011. I retired from that post June 3rd after a fulfilling 34-year career with the Federal Government. It is my privilege to have this opportunity to provide remarks regarding the proposed legislation that would strengthen the functions and the authorities of the IPO to better serve our military, veterans and their families.

Since its inception, the IPO has had a positive impact on enhancing the interagency approach to electronic health record development for DoD and VA. The IPO created interagency plans and schedules that provided a road map of joint activities, established a multitiered governance approach that guided the interagency decision process, and provided a neutral meeting environment that minimized biases and fostered accountability between the two Departments on the execution of their separate electronic health record initiatives.

However, these steps were marginal in comparison to what could have been accomplished had the appropriate functions and necessary authorities been assigned to the IPO to fulfill the law. The role and mission of the IPO as defined in a charter signed by the two Deputy Secretaries in September 2009 was to be the single point of accountability for coordination and oversight, not for development and implementation as stated in the law.

Furthermore, the authorities necessary to execute section 1635 of the 2008 NDAA were specifically retained by the DoD and VA program offices, not conveyed to the IPO. Accordingly, the control of the budgets, contracts and technical development remained with the two Department program offices. As a result, the IPO was not empowered by the Departments with the necessary functions or authorities to execute the intent of the law.

Initiatives such as the James A. Lovell Federal Health Care Center Project in north Chicago would have benefited, greatly from converged solutions implemented by a single entity rather than the complex, duplicative, two-department solutions they received.

Congress established the IPO to improve the fielding of an interoperable health record capability for those who have served our country so nobly. The quantum leap for both Departments is to unite their development efforts into one organization and create a single superlative electronic health record that by definition is

interoperable and yields a transparent, effective and efficient capability for our warriors, present and past.

The IPO is the medium for DoD and VA to merge their resources, their intellectual property and their spirit as force multipliers for operational as well as economic success. The promise of a fully empowered IPO is synergy, solidarity and unity between DoD and VA, and a patient-focused capability for our patrons. The chosen path for the IPO was only a step in the right direction, a bunt in baseball parlance that resulted in modest progress. Now we need a home run: a single program office embraced by the two Departments and empowered with the necessary authorities to develop, implement and sustain the best electronic health record capability.

This draft legislation is a designated hitter for this home run. It declares to the Departments what is expected in establishing a true Interagency Program Office, to include the authorities necessary to execute the functions. The language serves as a template for the necessary modification to the IPO charter and obviates any conflict or resistance that still may exist.

The most important issue to be reconciled is who is the responsible party for executing the funding, for that organization is truly the one accountable for interoperability of EHR systems. This is not only about interoperability, it is about pursuing economic-minded approaches to Federal Government best business practices.

Creating the IPO was an innovative idea, one that will no doubt cast the mold for future Federal partnerships. I strongly endorse the passing of this language for the benefit of our military, veterans and their families. Thank you.

[The prepared statement of Ms. Filippi appears on p. 39.]

Dr. ROE. Thank you.

Mr. Hall.

STATEMENT OF JEFFREY C. HALL

Mr. HALL. Thank you, Chairman Roe, Ranking Member Donnelly and Members of the Subcommittee. Thank you all for inviting Disabled American Veterans to testify at this legislative hearing of the Subcommittee on Oversight and Investigations. Due to time constraints I will focus my remarks on the pending bill most concerning to us.

H.R. 2383, the "Modernizing Notice to Claimants Act," would make a number of changes to VA's current duty to notify and assist claimants seeking disability compensation benefits. Mr. Chairman, while we believe the intent of this legislation is to help streamline the claim process in order to reduce the backlog of claims for disability benefits, we have serious concerns about whether some of the new regulatory provisions in the bill might be implemented by VA in a way that could instead weaken the ability of veterans to receive their full benefits.

In the context of VA's focus on reducing the large and growing backlog of claims, the regulatory changes proposed in H.R. 2383 could create opportunities to speed claims through the process regardless of whether VA has provided sufficient notice and assistance to ensure that the veterans receive maximum benefits to which they are entitled.

Mr. Chairman, DAV agrees that VA must have the ability to fully utilize electronic communication, but we do have concerns about the language proposed to achieve this goal. H.R. 2383 would require VA to send notice by the most expeditious means available, including electronic notification or notification in writing. However, because we believe the only way to reduce the backlog is to create a system designed to decide the claims right the first time, not just get them done quickly, we also believe that notice should be sent by the most effective means, not simply the most expeditious means. We recommend the bill language be changed so rather than direct VA to use the quickest means, they instead seek to use the most effective means.

Just as many of us are given such a choice in communicating with our banks or paying bills, so, too, should veterans be given the choice to elect the best method for VA to communicate with them.

H.R. 2383 would also allow both notice and duty-to-assist requirements to be waived at VA's sole discretion if they can award the benefits sought based on the evidence of record. Though DAV is supportive of the general intent of this section of the legislation, which is to provide veterans the benefits to which they are entitled at the earliest stage in the process, we have concerns about how this language might be implemented in the field.

For example, many claims are for conditions that have more than one possible disability rating, and it is important that VA not waive its duty to notify and assist claimants unless they are awarding the full benefit to which the veteran is entitled. In an environment where eliminating the backlog is VA's focus, we are concerned that allowing VA this type of authority might create incentives and opportunities for ratings to be awarded at a lower level, even if there is some likelihood that further development might lead to a higher rating based on additional evidence.

We are also concerned that such a waiver of authority might create disincentives to review a claim for inferred or secondary conditions. There are situations when the claimants feels an increased rating—feels he is entitled to an increased rating and indicates the condition has adversely affected employment. This could lead to an inferred claim for individual unemployability, which might require additional development to establish. However, under the new language, benefits sought, i.e., increased rating, could be awarded without further development to determine whether the veterans should be rated for the individual unemployability.

To clarify the provision of this bill, DAV recommends the language be changed to make clear that such a waiver of VA's obligation should only occur when maximum benefits sought can be awarded, including benefits for inferred or secondary claims.

Section 3 of the bill would also change VA's duty to assist to a new standard that VA would assist only if the claimant requests assistance. We believe the intent of this provision is to reduce unnecessary development for private records that have no material impact on the outcome of a decision. We are concerned that it could create too great a burden on those veterans who may not have the physical or financial means to obtain private medical records.

Finally, DAV has serious concerns about inserting language into title 38 to allow a claimant to waive all or part of VA's duty-to-as-

sist requirements. As with many of the changes proposed in this legislation, we are particularly apprehensive about unrepresented veterans who may not have the knowledge or expertise to fully understand the ramifications of agreeing to such a waiver. Moreover, it is not clear when and how VA might seek to use such waiver of authority. For example, would VA try to get veterans to waive their duty to assist in obtaining private medical records in exchange for a faster decision?

In closing, we agree with the goal of preventing unnecessary overdevelopment of the claim. To help with this, DAV has proposed and supported legislation directed at ensuring private medical evidence be given the same weight as VA medical evidence, and that private treating physicians be allowed to electronically submit disability benefit questionnaires.

Mr. Chairman, we would welcome the opportunity to work with you and the Committee along with our colleagues in the veterans community to craft comprehensive legislation to achieve these other shared goals. This concludes my statement, and I will be happy to answer any questions the Subcommittee may have.

[The prepared statement of Mr. Hall appears on p. 43.]

Dr. ROE. Thank you, Mr. Hall.

Mr. Gallucci.

STATEMENT OF RYAN M. GALLUCCI

Mr. GALLUCCI. Chairman Roe, Ranking Member Donnelly and Members of the Subcommittee, on behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States and our auxiliaries, I thank you for the opportunity to present our views on today's pending legislation.

The bills before the Committee today seek to remedy persistent oversight issues keeping veterans from receiving the timely care, benefits and opportunities they deserve. The VFW generally supports many of the ideas up for discussion today; however, we have several concerns that we hope the Subcommittee will address before proceeding.

On H.R. 2388, the "Access to Timely Information Act," the VFW supports this bill, and we applaud efforts to ensure the VA provides timely information to the Committees.

On H.R. 2243, the "Veterans Employment Protection Act," the VFW supports the intent of this bill, but views publishing of veteran employment information by Federal contractors is only one small step in ensuring that veterans actually have the employment opportunities that companies have reported.

Today, the Department of Labor fails to follow up on information provided by contractors in their VETS–100 paperwork. In Congressional testimony last year, the VFW outlined a series of reforms that must take place in Department of Labor reporting and auditing processes to ensure compliance with veteran hiring mandates. This bill would only satisfy one of our recommendations, and the VFW would be happy to work with the Committee on ways to implement others.

The VFW is proud to support H.R. 2470, the "Ensuring Servicemembers' Electronic Records' Viability Act," which will create a final reporting authority for the creation and implementation of

electronic health and service records for use by the Department of Defense and the VA.

As an Iraq veteran, I can tell you that this electronic record is long overdue. When I completed my enlistment in 2007, my Reserve unit sent me my health and service records, the only complete copy of my military records available. Since 2007, I have requested copies of certain paperwork only to learn that DD–214s, awards, schools and, most importantly, my medical records may be missing from certain military databases. Thankfully I already enrolled with VA while I was still a drilling Reservist and authorized VA to copy what they needed from my record at the time. If I had simply transferred out of the military before enrolling at VA, I can only imagine the hurdles I would have had to jump through simply to prove my eligibility. This is just one example of why a bidirectional and fully electronic health record with the ability to be updated by both DoD and VA is of the utmost importance.

Since DoD and VA were tasked with creating the joint electronic record, we have seen little progress. This bill, which establishes a joint office no lower than a Deputy Secretary level and dedicates budget line items for funding, will set into motion a chain of accountability and authority to ensure that the electronic record finally becomes a reality.

Finally, I will dedicate the balance of my time to discussing H.R. 2383, the "Modernizing Notice to Claimants Act." Today duty-to-assist requirements can mean that veterans' claims can remain idle within the VA system for more than a month and a half, exacerbating the backlog and creating potential financial hardships for veterans. The VFW agrees that steps must be taken to reduce delays due to statutory requirements; however, the VFW insists any changes must not negatively affect veterans.

The VFW views the notion that the VA can communicate electronically with veterans positively, considering that many conduct business online. However, online communication may not be the most expeditious to all; therefore, it must be requested by the veterans and not mandated by VA.

The VFW also has three concerns with placing the duty-to-assist notice with the claim application. First, this could shift the burden to gather evidence from the VA to the veteran.

Second, it could also encourage veterans to collect their own medical evidence prior to formally filing a claim, delaying their effective date. The VFW believes that any changes must include a clear, easy-to-follow process in the instructions to VA form 21–526 whereby a veteran can initiate an informal claim, receiving an immediate effective date.

Third, the VFW is concerned that by moving the duty-to-assistant notification, veterans will no longer be notified of VA's receipt of the claim. The VFW suggests that if the duty to assist is moved to the application phase, then VA must continue to send receipt notifications.

The VFW also believes that language of the bill must ensure that duty-to-assist notifications comply with current regulation and precedent established by the Court of Veterans Appeals whereby VA must assume that the veteran is seeking the maximum benefit allowed for the disability.

I direct the Committee to our submitted remarks for how we believe section 2, paragraph 5 of this bill should read. The VFW must reiterate that veterans can neither have the burden to gather evidence shifted to them, nor shall any changes in regulation harm a veteran's ability to receive the most complete and accurate claim as possible.

The VFW's full recommendations are included in our submitted testimony, and we look forward to working with the Committee on how to streamline the process to deliver the best outcomes for our veterans.

Chairman Roe, this concludes my testimony. I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Gallucci appears on p. 48.]

Dr. ROE. Thank you very much.

And also, thank you all for your service to our country.

I had to chuckle a little bit when you were talking about your medical record, because when I was in, I had a Manila envelope, and if it got lost, your whole record was—it was Thomas Jefferson's medical record. We have to do better than that.

And I think certainly the trip I made to Detroit 2 years ago, Mr. Hall, to look at the amount of paperwork was, I was amazed at how much paperwork there is. We have to do better.

And I guess, fortunately or unfortunately, we are right now in a transition where we are going from a paper record to a paperless one, and it is a huge challenge. I had them put an electronic medical record in my office, and I can't imagine the millions and millions of pieces of paper. We have to do that, though, because you are absolutely correct, when you leave the military, if you hadn't done that, you might still be looking for your records and information.

Mr. Hall, I read your testimony before I came this morning, and I know your concern is legitimate, but do you think that the VA is heading in the right direction here? I just filled out my online form for my Social Security. I finally got old enough to get it. The only problem, I found out next month is that there is not going to be any money to get my check, so I was a little disappointed in that. But other than that, it was a pretty easy process to go through. And I really was amazed in just about 10 minutes; they called the next day. It was literally not a 30-minute deal.

I realize that a veteran's disability is much more complicated, because there may be multiple physicians and years of information. The VA is trying to streamline this. I know certainly Secretary Shinseki is. He is absolutely committed, instead of veterans going for years and years before they get a decision.

And I read your concerns about this, about how an older veteran might be more reluctant to use a computer or can't use or doesn't have a computer, whereas maybe the younger folks could—I mean, they don't even talk on the phone anymore, they just text each other, so it is very easy for them. Am I correct on that?

Mr. HALL. Yes, sir. For DAV, I mean, the VA—in our opinion, the VA is moving in the right direction, albeit slowly with certain aspects of it, especially the moving from paper to a paperless claims process with the VBMS system, different things like that, which—you know, we have had the opportunity to look at snap-

shots of the VBMS and how it might affect the overall claims process, and that is still far out from where it is going to be. I believe delivery is expected in 2015. So that is just one aspect of it.

A newer one, the eBenefits system, being able to go online and file your claims, we like the idea of that. Certainly there are going to be veterans that really, really appreciate having that means to be able to do it. They can go online; they can do it simply as you have described it.

What we want to ensure with something like that is that things like proper duty to notice and assistance from VA is not lost in the translation of that. For example, veterans should be offered the opportunity to know that free representation, adequate professional representation by service organizations like DAV, they need to know that that information is there for them, that they can obtain it. So if they go online on the eBenefits system, one of the first things they should see is, do you have a representative? Do you know that some representatives do not charge for their services? Here is an example of some of them.

What we have seen of lately is they have made progress of getting that there to where when you log on, you click on it, there it is. "Do you have a representative" appears. When you go to select DAV, it goes to DAV national headquarters as an address, not the nearest one that the person—and that is who they need, not my office per se. Maryland, as an example, doesn't even exist. We have an office in Baltimore; it doesn't exist in there.

There are obviously things that have to be tweaked and fixed with that, but the idea of the fact that progress is moving? Yes, progress is moving. We don't think that an electronic notification of "we are providing you notice that A, B and C will be done in your claim, and it is your responsibility to do D, E and F," because if it is a disclaimer where I accept the terms and conditions of this that is 10,000 pages deep, nobody will read it, and the veteran is going to miss that. Albeit maybe they don't read the one—you know, a lot of them don't read the paper duty for notification, the VCAA notice letter.

But the point is they are moving in the right direction with the electronic technology. We just want to make sure that the notice isn't lost nor the duty to assist is lost in translation. Thank you.

Dr. ROE. Ms. Filippi, you made some great points in your testimony. If you were the head of all this right now, what would you do to make this move along quicker? See, I think what would have made more sense—and again, you have DoD with records, you have VA with records; both were digging in their turf. I like my record, this outfit likes their record. It would have been simpler if we just went to one record; said, look, on day 1 we are going to switch. It is painful to do, but that is absolutely the easiest way to do it, and trying to integrate them apparently for 10 years and $10 billion hadn't been successful. What would you do?

Ms. FILIPPI. As I said in my comments and testimony, I think the real key here is the notion of unity of effort. And frankly, up until very recently I still think the two Departments had very separate paths that they were pursuing. That is why I feel so strongly that the IPO needs to represent and really needs to be a merge of the two program offices from the two Departments so you will have

that unity; you will have them thinking as one; you will have them creating that one architecture, that one data source, and that one capability that they field out there to all their constituency.

So that is where I think the center of gravity is is creating this oneness so that we are not thinking about two different approaches or two different strategies.

Dr. ROE. Thank you.

Mr. Donnelly.

Mr. DONNELLY. Thank you, Mr. Chairman.

And, Ms. Filippi, what were some of the challenges you faced as Director of the IPO in regards to people going on two different tracks, in fact?

Ms. FILIPPI. Yes, sir, that is a great question. I think it really boils down to as long as everybody is pleased with the decision, everyone cooperates. So it is when you get to the real tough conflict where the two parties don't really see things that same way and want to go in two different directions, where does the conflict resolution occur?

And unfortunately, the IPO didn't have the empowerment to resolve conflict, and it always had to go back to very high authorities to try to resolve the day-to-day kinds of things. And so I think that is really why this notion of merging together under one roof.

And, Chairman Roe, you mentioned earlier in the Rosslyn program office, that is really where the center of gravity should be, not in the Pentagon, not over at VACO headquarters, but in Rosslyn. That is where the resources should be, that is where the decisions should be made, and that will expedite moving things forward.

Mr. DONNELLY. And this would be for Mr. Gallucci, Mr. Hall, either one. H.R. 2383 requires the VA to communicate with veterans electronically. Do you think it is a concern with our older veterans who may not be technologically savvy as to this requirement, and how do we deal with that?

Mr. GALLUCCI. Thank you for the question.

We do agree that we don't believe that many older veterans would be as technologically savvy. This is why we pointed out that it may not always be the most expeditious form of communication. You can't guarantee that a veteran is going to check their email or even have an account. So what we would prefer the bill to say is that the veteran can choose to use electronic communication as the most expeditious means, but that we would prefer VA not mandate it.

Mr. HALL. I agree, with the addition of, as I had stated in my oral remarks, expeditious is going to mean one thing to one individual, but we are looking really towards VA communicating in the most effective means possible. That may be electronically for a large part of the claim population, it may not be. Veterans should be given that choice of how they want to communicate.

Also it adds to the question of what is really meant by "electronic communication"? What is the limit to that? What is the intent of the legislation? Is it broad to say that if I receive something from VA that I can turn around and email back, and I am going to have this daily email chat with VA? We don't know because it is not written in the law.

That is something that is going to be a major concern, because if we have regionalized call centers, and we are trying to go to a more slimmer or reduced amount of information in a notice, how apt are we going to be—speaking as VA, how apt are we going to be to reply to emails? So those are things that concern us as well.

Mr. DONNELLY. I want to thank the witnesses.

Thank you, Mr. Chairman.

Dr. ROE. I notice Mr. Donnelly looked over here when he said "older veteran."

Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Ms. Filippi, I certainly thought your testimony was informative, and thank you for your thoughtful remarks.

You know, the prior panel had given the impression that things are coming along pretty well, and I appreciate that. But what I would like to ask is do you agree with that assessment? Is the IPO moving along in an expeditious manner at this point?

Ms. FILIPPI. Well, sir, obviously my involvement is dated as of June 3rd, but I will say that, back to the comments that were made earlier, we are moving in the right direction, but we are not moving fast enough. As I said in my comments, I think we have hit a bunt; we need to hit a home run. We need to invest the execution authority into the IPO. We need to merge the program personnel from the two Departments into the IPO.

There was mention made that a charter is being written and should be done by August. A charter had been rewritten for the IPO last fall that had all the authorities and the responsibilities in it that were really required to move forward in an expeditious fashion. So I am not sure what additional time is needed to create the right environment. I just think action is required, and authority needs to be invested.

Mr. MCNERNEY. Good.

It was testified that the work and the urgency imparted by the Secretaries in a joint manner has been important in terms of moving the process forward, and that seems reasonable. Do you think that is sufficient, or do we need to do legislation to make sure that that actually happens?

Ms. FILIPPI. Well, I came here today to say that I endorse the legislation that has been proposed. And I still think that it is a good thing, that it has the right words and the right expectations of what the intent of Congress was for the IPO to move forward as the sole organization on behalf of the Department. So I do endorse the legislation.

Mr. MCNERNEY. So specifically H.R. 2470 is the legislation you are referring to?

Ms. FILIPPI. Yes, sir.

Mr. MCNERNEY. And you think that may be a home run, maybe a triple, but it is getting us farther down in terms of scoring.

Ms. FILIPPI. Yes, sir. I like the analogy.

Mr. MCNERNEY. Thank you.

Mr. Gallucci, I appreciate your comments regarding H.R. 2243. I think what you are saying basically is similar to what was said: It is a bunt, it is a step in the right direction, more needs to be done. And I certainly would be willing to work with your office, my

staff and the Committee staff, to get those additional measures involved.

Is there anything specifically you would like to point out at this time that would be an improvement?

Mr. GALLUCCI. Well, one of the points that the VFW made in earlier Congressional testimony is that there need to be auditing processes whereby the Federal contractors who file their VETS–100, VETS–100A paperwork can be held accountable for the numbers that they report on veteran hires.

Right now the way that we understand it is once the paperwork is filed, that is the end of the process, it is taken at face value. So the VFW would encourage a stronger piece of legislation to allow the Department of Labor to take action against contractors who don't actually meet compliance or report false information.

Mr. MCNERNEY. Thank you for that suggestion.

With that, I yield back.

Dr. ROE. Thank you for yielding.

Mr. Hall, in the actual legislation it says, by inserting "the most expeditious means available, including electronic communication or notification in writing" before "of any information." So I guess what you are saying is once—and I agree with you—once we begin to communicate, is it going to be electronic, is it going to be by the mail? I think that is what I heard you say; am I correct?

Mr. HALL. You are correct. I mean, if you are looking specifically at just the electronic communication, understanding that the legislation also says, you know, by written notification. Again, what concerns us with that is once the law is changed, and once the regulatory amendment comes into play, how does that affect the field offices? Will this VA regional office communicate primarily by electronic means? I mean, the directive may be from VA central office that this is the way we are going to do it, and you have no choice. But they have things like that in place now, that the local authority supersedes that, and they are able to choose which path.

So, yeah, we simply think that—we agree with your assessment of it that it needs to be inclusive in that.

Dr. ROE. Any further questions from the panel?

Thanks to the panel. You are now excused.

Oh, you had one, I am sorry. Go ahead.

Mr. MCNERNEY. Mr. Gallucci, a little bit more follow-up on H.R. 2243. Do you believe that making the VETS–100 reports public will encourage contractors to better comply with hiring laws?

Mr. GALLUCCI. We would agree with that assertion. This is something that the VFW said in past testimony is that this was one of the recommendations. And just to go back to the baseball analogy, by mandating that companies file the VETS–100, DoL has the runner on base; just need to move them over now. And by encouraging that public discourse, it would hold Federal contractors accountable for what they report.

Mr. MCNERNEY. So would that be useful to your organization, that information, in terms of making sure that the veterans are treated in accordance with the law?

Mr. GALLUCCI. Yes, it would. And one of the points that I brought up in my submitted remarks is that the Federal Government is held to a higher standard on hiring veterans. We saw the

Veterans Hiring Initiative over the last couple of years, and we just want to ensure that contractors that do business with the government are held to a similar high standard.

Mr. MCNERNEY. Thank you.

All right, Mr. Chairman, I yield back.

Dr. ROE. I thank the gentleman for yielding.

Certainly with a 14 percent unemployment rate for veterans now, that is absolutely critical.

Our thanks to the panel. You are now excused, and your complete written testimonies will be part of the hearing record.

I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material. Without objection, so ordered.

I also want to thank the Members and witnesses for their participation today. The hearing is now adjourned.

[Whereupon, at 10:36 a.m., the Subcommittee was adjourned.]

APPENDIX

Prepared Statement of Hon. Bill Johnson, Chairman, Subcommittee on Oversight and Investigations

Good morning. This hearing will come to order.

I want to welcome everyone to today's legislative hearing on H.R. 2383, the Modernizing Notice to Claimants Act; H.R. 2243, the Veterans Employment Promotion Act; H.R. 2388, the Access to Timely Information Act; and H.R. 2470, the Ensuring Servicemembers' Electronic Records' Viability Act.

The bills we are discussing today are the result of months of input, work, research, and investigation. The Modernizing Notice to Claimants Act, which I introduced last month, makes several important steps toward streamlining part of the claims process that will contribute toward reducing the disability claims backlog. Section 5103 of Title 38 currently requires the Secretary of Veterans Affairs to provide a claimant a written notice of responsibility that informs both the veteran and the VA of their responsibilities regarding each claim. Furthermore, as written, this law requires a separate written notice of responsibility for any subsequent claim, *even* if that subsequent claim is covered under the original pending claim. Additionally, the section requires VA to "make a reasonable effort to obtain private records relevant to" a veteran's claim.

The Modernizing Notice to Claimants Act would allow for the most efficient delivery method for any notice, including electronic written responses. Additionally, the proposed changes will not require VA to provide an additional notice for a subsequent issue that is already covered under a previous claim. The bill would also define VA's "reasonable effort" to acquire a veteran's record to no less than two requests and also encourage the veteran to play an active role in providing evidence for her or his claim.

Lastly, if a veteran's claim can be adjudicated in the veteran's favor, without additional evidence, there is no need for VA to attempt to acquire any further evidence.

One of the primary effects of these changes would be a reduction in claim processing time by approximately 40 days. Often, we have laws on the books that date back many years and do not allow for utilizing all the tools at an agency's disposal. It is important that this Committee and the Congress re-visit laws to ensure they still achieve their original intent. By clarifying several key areas in the law, the Modernizing Notice to Claimants Act reinforces congressional intent and delivers a better service to veterans.

Another bill I wish to mention in my opening remarks is H.R. 2388, the Access to Timely Information Act, introduced by Chairman Miller.

The need for this clarifying legislation results from frequent obstruction by VA in providing necessary information to this Committee, and the bill's objective can be summarized as enabling the legislative branch to better conduct its oversight responsibilities.

Even in requests for information that do not contain sensitive material, the VA often takes several weeks in providing responses, often demanding that the request be sent in the form of a signed letter.

The longstanding agreement, that was supposedly based off of VA policy, had been that if a request from the Committee involved personally identifiable information, or PII, then the request would be sent in a signed letter. However, it has come to light that staff at VA inconsistently applies this policy, *and* that the policy itself is not even in writing. After multiple requests over several months for a written policy from VA, nothing has been presented to the Committee, and the end result has been obstructive behavior that hinders this Committee's efforts to help our veterans.

This bill clarifies that requests from Committee Members and staff are covered under the pertinent privacy laws with respect to sensitive information.

This is not rocket science, and I am frustrated and disheartened that we have reached a point where we *need* this legislation. As I stated before, this bill will simply help us do our job. Past efforts at working with VA to establish a consistent

policy have met the same type of resistance as the information requests I just discussed, and so we are taking the next step in fixing that problem.

I appreciate everyone's attendance at this hearing, and I now yield to the Ranking Member for an opening statement.

Prepared Statement of Hon. Joe Donnelly, Ranking Democratic Member, Subcommittee on Oversight and Investigations

Thank you Mr. Chairman.

H.R. 2470, a bill which I recently introduced, will increase the authority given to the Interagency Program Office (IPO).

The IPO is charged with making decisions on behalf of DoD and VA Secretaries to ensure the electronic health record initiative succeeds.

Currently, the IPO lacks the authority and clarity that the IPO is the single point of contact on EHR issues. My bill addresses this serious concern.

I am also aware that although Public Law 110–181 indicates the IPO was developed to implement the on-going efforts to establish the Electronic Health Care Record initiative, this office is often bypassed by the VA and DoD.

It seems to me that there is little interest by both VA and DoD to incorporate the IPO in ongoing EHR efforts.

For this and other reasons I introduced H.R. 2470, the E–SERV Act. This bill empowers the Interagency Program Office with the clear authority to provide our servicemembers and veterans the 21st Century Electronic Health Record they deserve.

Thank you and I yield back.

Prepared Statement of Hon. Jerry McNerney

I would like to thank Chairman Johnson for holding this legislative hearing. Having the Subcommittee conduct a legislative hearing will provide us the ability to conduct oversight and also to review legislation that affects many of the issues that fall within our jurisdiction.

Today's hearing includes several bills. Among others, we will evaluate a proposal to change policies affecting claimants seeking benefits. We'll also discuss legislation that addresses ongoing concerns regarding the need to improve the Interagency Program Office.

In addition, one of the bills included in today's hearing is H.R. 2243, the Veterans Employment Promotion Act, which I introduced. My bill directs the Secretary of Labor to make public the veterans' employment data reported by Federal contractors and subcontractors.

In the past, this Committee has heard concerns from veteran service organizations and other stakeholders about compliance with veterans hiring policies. The purpose of the VETS–100 report is to ensure that Federal contractors comply with relevant laws. Through this report, contractors submit certain information to the Department of Labor, including information about new hires who are veterans.

By making the information contained in these reports publicly available, my bill increases much needed oversight and accountability. This bill is a step in the right direction that will help us as we continue to seek ways to improve enforcement of Federal contractor compliance.

Thank you Mr. Chairman, and I look forward to today's discussion of H.R. 2243 and the other bills we are considering.

I yield back.

Prepared Statement of Thomas Murphy, Director, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify and present the views of the Department of Veterans Affairs (VA) on several legislative items of great interest to Veterans and the Department. Joining me today are Jack Thompson, Deputy General Counsel, and Roger Baker, Assistant Secretary for Information and Technology.

H.R. 2383

H.R. 2383, the "Modernizing Notice to Claimants Act," would amend 38 U.S.C. § 5103 to authorize the Secretary of Veterans Affairs to use electronic communication to provide required notice to claimants for benefits under laws administered by the Secretary. This bill would also amend 38 U.S.C. § 5103A to clarify the Secretary's duty to assist claimants in obtaining relevant private records.

VA fully supports this bill, which would significantly enhance the efficiency by which VA carries out its duty to notify and assist under the Veterans Claims Assistance Act of 2000 (VCAA). Although the VCAA requirements are designed to promote more efficient and effective development of claims, some aspects of those requirements, as interpreted by the courts over the last decade, have had the unintended effect of complicating and unnecessarily delaying the claims process while confusing Veterans and their dependents. This bill would represent a valuable step forward in addressing those concerns.

Section 2 of the bill would amend 38 U.S.C. § 5103 to provide increased flexibility in how VA delivers notice to claimants of the information and evidence necessary to substantiate their claims. It would authorize VA to provide notices through the most expeditious means available, including electronic communication, which is critical during this time of transformation to a paperless claims process. This will enable VA to maximize the successes of Information Technology initiatives such as the eBenefits portal, the Veteran Benefits Management System, and the Veterans Online Application.

By eliminating the language that directs VA to issue VCAA notices "upon receipt of a complete or substantially complete application," section 2 of this bill would also significantly increase efficiency in the beginning stages of the claims process. For example, by attaching VCAA notices to certain forms or sending a Veteran an electronic VCAA notice at the same time VA sends the claimant an application, VA could shorten the overall development time associated with the claim. In these instances, VA would essentially be initiating development before the claim is received in the regional office. Once the claims folder is handled for the first time by a Veterans Service Representative (VSR), the VCAA notice obligation would be fulfilled, and other actions to move the claim along could be readily taken. This added flexibility would eliminate a significant number of VSR actions and significantly shorten overall claim development time.

As a technical matter, we note that section 2(1)(B) of the draft bill would revise 38 U.S.C. § 5103(a)(1) by replacing "notify the claimant" with "provide to the claimant." For clarity, we suggest inserting the term "notice" following "provide" or, alternatively, before the phrase "of any information," as it appears in section 5103(a)(1).

Section 2 also would eliminate a particular delay in the claims process that occurs when VA receives a subsequent claim while the same type of issue from a prior claim is pending before VA. This routinely occurs when a Veteran files a multi-issue claim and a few months later, while that claim is still pending, files another claim involving the same type of issue as in the currently pending claim. In many of these cases, the subsequent claim can be decided, or at least developed, along with the previously pending issues. However, the development and decision are delayed in order to provide a new, but essentially duplicative "VCAA notice" to the Veteran on the subsequent claim.

Sections 2 and 3 of this bill would add provisions to both 38 U.S.C. § 5103 and 5103A to make it clear that VA's duty to notify or duty to assist does not apply to any claim or issue when the benefit sought can be awarded based on the evidence of record. This would eliminate significant delays that occur when claims are unnecessarily developed.

Section 3 of the bill would clarify that "reasonable efforts" to assist the claimant in retrieving his or her private records would require VA to make no less than two requests to a custodian of the claimant's records. This reasonable clarification would help ensure that VA is following the intent of Congress.

Section 3 would also direct the Secretary to encourage claimants to submit private medical evidence if such submission does not burden the claimant. VA would, however, continue to assist the claimant if he or she requests such assistance. This approach would empower the claimant to take an active role with VA in preparing his or her claim for a decision. In many instances, Veterans want to procure their own records and can do so more quickly than VA. However, under the current VCAA process, many Veterans feel obligated to fill out the release forms VA provides to permit VA to procure such records. This results in delays in the claims process because of duplicate or unnecessary requests to custodians of records. This bill allows VA to enhance its communication with claimants and offer them clear options as to the types of VA assistance they want or need. In crafting regulations to imple-

ment this authority, VA would emphasize the valuable role the claimant may play in retrieving records while at the same time ensuring that the claimant understands VA's readiness to assist as necessary. This approach will better balance the responsibilities of both parties to obtain evidence in support of a claim.

One of VA's claim cycle time indicators, "average days awaiting development," was 53 days for the national pending inventory of 802,391 rating claims at the end of June 2011. The efficiencies gained through this bill would significantly reduce the time it takes to initiate development to a much more reasonable time period. Furthermore, by attaching VCAA notices to claims forms, VA could shorten development time. This improvement to the claims process is paramount to VA's ability to achieve its 125-day goal for completion of rating claims.

There are no benefit or administrative costs associated with this proposal. The enactment of this bill will not affect benefit amounts and does not affect obligations in any given fiscal year.

H.R. 2243

H.R. 2243, the "Veterans Employment Promotion Act," would amend 38 U.S.C. § 4212(d) to require the Secretary of Labor to publish on an Internet Web site certain information about the number of Veterans who are employed by Federal contractors. VA defers to the Department of Labor to provide views on this bill.

H.R. 2388

H.R. 2388, the "Access to Timely Information Act," would amend title 38, and also effectively amend the Privacy Act to require VA to disclose sensitive personal information to the Chairs and Ranking Members of the House and Senate Veterans' Affairs Committees and Subcommittees, or to anyone else the Chairs and Ranking Members designate to make such requests. Because the bill would diminish the privacy rights of Veterans, who deserve the same information protections enjoyed by other Americans, we strongly oppose its enactment.

VA appreciates the important oversight responsibilities shared by this Committee and its Senate counterpart. The Department expends considerable effort in responding to Committee requests for information. However, current laws are intended to ensure that the privacy rights of individuals are respected during the exercise of legitimate Congressional oversight. First, absent express waivers by affected individuals, the laws permit agencies to disclose records protected by the Privacy Act and title 38 to only the Congressional Committees or Subcommittees themselves that have oversight authority or persons acting under a grant of authority from the Committees, which has long been interpreted to mean only the chairpersons because only they are authorized to act on those bodies' behalves. Second, the disclosures may be made only in furtherance of legitimate oversight activities that are within the particular Committees' purviews.

In order to document and ensure the validity of such requests, VA requires that they 1) be made in writing, 2) be signed by the Chair of the Committee or Subcommittee, and 3) specify how the information is relevant to a matter within the oversight jurisdiction of the Committee or Subcommittee. These requirements give assurances to VA employees that the requests can be lawfully fulfilled, and also create a record that can be used in the event the employees' authority to disclose the information is later questioned. This latter point is significant in that the penalties for unlawful disclosure can be severe. An agency employee who discloses information in violation of an applicable confidentiality statute or regulation may be subject to criminal and civil penalties. Furthermore, the Department may be subject to civil liability under these provisions. Absent the explicit prior written consent of the Veteran, the Department must carefully evaluate the contemplated disclosure and the particular oversight purpose for which the information is sought, and make an informed and reasoned decision as to whether the release qualifies under any of the exceptions. Often, upon negotiation with an oversight Committee, it may be determined that the request can be satisfied without compromising the privacy of an individual Veteran.

Veterans' Affairs Committee staff frequently request Veterans' medical records, which contain among the most sensitive and private information imaginable. When medical records are shared inappropriately, it can cause a patient great harm ranging from embarrassment and social stigma to loss of a job and insurance. VA actively reaches out to Veterans to encourage them to seek health care. Because of social stigma associated with many medical and psychiatric conditions, patients often conceal their illnesses and treatment from their employers and even their immediate families, and they have a well-deserved expectation that their records will be protected from disclosure to the general public. Any release of Veterans' health

information outside the Department—even when permitted by statutory exception—has the potential for undermining Veterans' trust in VA.

Current law sufficiently balances Veterans' personal-privacy interests and the need for congressional oversight. All that VA requires is a brief request, signed by the chair of a Committee or Subcommittee, sufficient to allow VA to exercise its responsibility to determine whether the invasion of the Veterans' privacy is necessary to satisfy the oversight purpose. A single such request can seek records concerning multiple individuals. The proposed legislation would remove existing legal protections for only one class of individuals—our Nation's Veterans—by requiring the Department to deem valid every request made by a chair, by a Ranking Member, or by an unlimited number of individuals delegated by a chair or Ranking Member of the two Committees.

By mandating VA to accommodate any such request without even inquiring whether the information requested is necessary or within a Committee's or Subcommittee's jurisdiction, the legislation would strip Veterans of the assurance that VA will share only the personally identifiable health information which it has verified as being truly necessary for congressional oversight purposes. In fact, the legislation would confer upon any person the authority to make such a request as long as the Committee chair or Ranking Member so delegates, and places no restrictions on who may receive this highly sensitive information. As a result, the draft bill has at least some potential for affecting Veterans' willingness to supply VA health-care providers with full and accurate health information, and could undermine their trust in the VA health-care system. Sensitive information is, of course, also maintained by other elements of the Department, including in VBA claims files, which include not only medical records but also information concerning home addresses, social security numbers, and banking information.

Events of the not-too-distant past were urgent reminders to our Department concerning the need to safeguard the sensitive personal information with which we are entrusted. We took those events seriously, and along with Congress, have worked to significantly enhance VA's protection of Veterans' personal information. We cannot support legislation which would in any way diminish the existing legal protections this information rightfully enjoys.

H.R. 2470

H.R. 2470, the "Ensuring Servicemembers' Electronic Records' Viability (E–SERV) Act," would amend Section 1635(b)(2)(A) of the Wounded Warrior Act (title XVI of Public Law 110–8 181; 10 U.S.C. 1071 note) to alter the role, functions and oversight of the Interagency Program Office (IPO) of the Department of Defense (DoD) and the Department of Veterans Affairs with respect to electronic health records. It would also transfer control and responsibility of vital and sensitive programs for VA's electronic health records away from the clinicians and VA IT specialists who have made it a success.

Mr. Chairman, while the VA agrees that leadership and accountability will be vital to delivering an integrated Electronic Health Record (iEHR), VA opposes H.R. 2470 as written. Together with our partners in DoD, we have created a governance structure to ensure delivery of an iEHR that will be comprehensive and inclusive. The IPO office has been placed at the head of the structure reporting to the Secretaries of Veterans Affairs and Defense, with the iEHR Advisory Board and the Health Executive Council performing a necessary oversight role. The bill would alter this infrastructure with what we see as no discernable benefit. It would shift our focus from developing an effective and safe iEHR to reorganizing the governance structure already in-place.

H.R. 2470 would also transfer control of the VA's legacy EHR, VistA to the IPO. VistA is at the heart of what VA does; delivering health care to our Nation's Veterans. VistA is at the forefront as a model system that has a 99.95 percent 'up-time' nationally and is highly responsive. To transfer all responsibility for the "development, implementation, and sustainment of all electronic health record systems and capabilities" away from VA to the IPO would create disruption and uncertainty in the management of the most vital set of tools VA uses to deliver world-class care for our Veterans.

While we have strong concerns regarding this bill, VA is always open to discussing our joint efforts with our DoD partners to advance iEHR capabilities and the important work of the IPO with the Committee.

This concludes my statement, Mr. Chairman. Thank you for the opportunity to testify. I would be happy to entertain any questions you or the other Members of the Subcommittee may have.

Prepared Statement of Hon. Elizabeth A. McGrath, Deputy Chief Management Officer, U.S. Department of Defense

Chairman Johnson, Ranking Member Donnelly, and Members of this distinguished Committee thank you for extending the invitation to the Department of Defense to address your recently introduced bill, "The Ensuring Servicemembers' Electronic Records' Viability (E–SERV) Act," H.R. 2470. To improve the electronic health information systems and capabilities of the Department of Defense and the Department of Veterans Affairs."

The Department of Defense does not support H.R. 2470 as currently written. While we appreciate the Committee's desire to be helpful in strengthening the role of the Interagency Program Office (IPO) for electronic health records, we believe that existing legislation on this subject provides sufficient authority and flexibility to the Secretaries of Defense and Veterans Affairs to effectively administer the integrated electronic health record way ahead.

Section 1635 of the National Defense Authorization Act for FY 2008 established the IPO and vested it with authority:

A. To act as a single point of accountability for the Department of Defense and the Department of Veterans Affairs in the rapid development and implementation of electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs.
B. To accelerate the exchange of health care information between the Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

Section 1635 therefore tasked the IPO with a dual role: to collaborate with the Departments in order to accelerate the exchange of health care information between them, and to serve in an oversight capacity to ensure that interoperability is achieved.

The two Departments are currently revising the IPO's charter to reflect the direction of the Secretaries of Defense and Veterans Affairs and take advantage of the authority provided in Section 1635. The revised Charter will be complete in August 2011. The Department of Defense does not believe that additional legislation is necessary, and in fact, could jeopardize the progress that has recently been made.

Additionally, the Department is concerned by the provision in H.R. 2470 that would make the IPO the only office of the Department of Defense and the Department of Veterans Affairs responsible for electronic health record capabilities, including any such capabilities existing before January 16, 2008. We believe that this would divert the attention of the IPO toward day to day management of legacy systems and make it less effective in what we view as its primary and proper function of developing the integrated electronic health record way ahead.

Finally, let me say that although we do not support H.R. 2470 as currently written, I am glad to appear before the Committee today to discuss the growing role of the IPO and, most importantly, to emphasize to you the partnership, level of effort and shared sense of urgency that exist between the Department of Defense and the Department of Veterans Affairs regarding the vital need to achieve a common integrated electronic health record for our servicemembers and veterans. We strongly believe that we are on the right track and that sufficient legislation is already in place to ensure that we reach our mutual goal.

I look forward to your questions.

Prepared Statement of Debra M. Filippi, Former Director, U.S. Department of Defense/U.S. Department of Veterans Affairs Interagency Program Office

Executive Summary

Since it's inception, the IPO has had a positive impact on enhancing the interagency approach to electronic health record (EHR) development for DoD and VA. The IPO created interagency plans and schedules that provided a roadmap of joint

activities, established a multi-tiered governance approach that guided the interagency decision process, and provided a neutral meeting environment that minimized biases and fostered accountability between the two Departments in the execution of their separate electronic health record initiatives. However, these steps were marginal in comparison to what could have been accomplished had the appropriate functions and necessary authorities been assigned to the IPO to fulfill Section 1635 of the 2008 NDAA law. The role and mission of the IPO, defined in a Charter signed September 2009 by the two Deputy Secretaries, was to be the "single point of accountability for coordination and oversight," *not* the "single point of accountability for . . . development and implementation" of EHR capability as stated in the law. Furthermore, the authorities necessary to execute Section 1635 were specifically retained by the DoD and VA program offices and NOT conveyed to the IPO. Accordingly, the control of the budget, contracts and technical development remained with the two program offices. As a result, the IPO was not empowered by the departments with the necessary functions or authorities to execute the intent of section 1635. Initiatives, such as the James A. Lovell Federal Health Care Center (JALFHCC) project in N. Chicago, would have benefitted greatly from converged solutions fostered by this empowered interagency organization.

Congress established the IPO to improve the fielding of an interoperable electronic health record capability for those who have served our country so nobly. To date, DoD and VA have made strides in sharing pertinent components of electronic health information; however, the quantum leap for both organizations is to unite their development efforts as one organization and create a single, superlative electronic health record that by definition is interoperable and yields a transparent, effective and efficient capability for our servicemembers and veterans. The IPO is the medium for these two largest Federal Departments to merge their resources, their intellectual property and their spirit as force multipliers for operational as well as economic success. The promise of a fully empowered IPO is synergy, solidarity and unity between DoD and VA. The chosen path for the IPO was only a step in the right direction—a "bunt" in baseball parlance—that has resulted in modest progress. Now we need a home run: a single program office, embraced by both DoD and VA, empowered with the necessary authorities to develop, implement and sustain the best electronic health record capability for our military, veterans and their families. This draft legislation is the designated hitter for this home run. It declares to the Departments what is expected in establishing a true interagency program organization, to include the authorities necessary to execute the functions. The language serves as a template for the necessary modifications to the IPO Charter and obviates any conflict or resistance that may still exist in the current document or in the departments. The most important issue to be reconciled is who is the responsible party for the execution of the funding, for that organization is truly the one accountable for the interoperability of the EHR systems/capabilities for DoD and VA. This is not only about interoperability; it's also about pursuing economic-minded approaches to Federal Government best business practices. Creating the IPO was an innovative idea, one that will no doubt cast the mold for future Federal partnerships. I strongly endorse the passing of this language for the benefit of our military, veterans and their families.

I. Introduction

Chairman Johnson, Ranking Member Donnelly, thank you for this opportunity to provide testimony on the proposed changes to Section 1635 of the 2008 National Defense Authorization Act to improve the electronic health information systems and capabilities of the Department of Defense (DoD) and the Department of Veterans Affairs (VA). I offer this testimony as the former Director of the Interagency Program Office (IPO) serving from October 2009 until June 2011. I retired from that post on June 3, 2011, after a fulfilling 34-year career with the Federal Government. It is my privilege to have this opportunity to provide remarks regarding the proposed legislation that would strengthen the authorities of the IPO to better serve our military, veterans and their families.

Since it's inception, I believe the IPO has had a positive impact on enhancing the interagency approach to electronic health record (EHR) development for DoD and VA. The IPO created interagency plans and schedules that provided a roadmap of joint activities, established a multi-tiered governance approach that guided the interagency decision process, and provided a neutral meeting environment that minimized biases and fostered accountability between the two Departments in the execution of their separate electronic health record initiatives. By all accounts these

are very important steps in fostering a more cohesive relationship between the two Departments that should improve the interoperability of electronic health records. However, these steps, while important, were marginal in light of what could have been accomplished had the appropriate functions and necessary authorities been assigned to the IPO to fulfill the NDAA requirement. The resources of the two departments could have been merged into one program office leveraging intellect, manpower and dollars for a single solution to EHR capabilities. Projects like the James A. Lovell Federal Health Care Center (JALFHCC) in N. Chicago would have had a greater commitment to converged solutions rather than duplicative products. Not only would a greater interoperability have been achieved but also more economic-minded solutions would have prevailed. The language proposed by the Committee reflects the original intent of the 2008 Law; let's move forward to empower the IPO with the appropriate roles, responsibilities and authorities. For the benefit of our servicemembers and our veterans, I strongly endorse the passing of this language.

II. Background

The charter for the IPO implementing Section 1635 of the 2008 NDAA was signed in September 2009 by the Department Deputies. The IPO was cast in a "coordination and oversight" role for the two department program offices versus that of "the" single, accountable program office. Also specified in the charter, the control of the budget, contracts and technical development remained with the two program offices. As a result, each Department continued to pursue separate strategies and implementation paths that were true to their desired approaches rather than coming together to build a unified, interoperable approach. Additionally, the governance structure for leading the interagency initiatives was driven by a Committee of department senior executives. There was no interagency decision authority below this Committee. As a result, the departments maintained the functions and authority—and therefore the accountability—for their individual EHR efforts; it was not instilled in the IPO.

I believe the role intended for the IPO in Section 1635 of the 2008 NDAA was to be the sole program office for EHR initiatives and, if chartered accordingly, would become that single point of accountability, leveraging the intellect and experience of the DoD and VA assets to yield one strategy, one design and one implementation of an EHR capability. Providing one solution versus two compatible solutions would establish the critical bedrock for a seamless, premier health care continuum that our servicemembers, veterans and their families so deeply deserve. For this to be effective, the Departments must empower the interagency program office with planning, programming, budgeting and execution authorities commensurate with the mission of accountability. These authorities will be the very tools used by the IPO to accomplish the necessary program management activities for the EHR, unite the efforts of the two Departments and implement an integrated, interoperable capability.

The draft legislation clarifies Congress' intent for the role of the IPO to be the "single program office" in the development of the EHR capabilities. The language acknowledges that the necessary authorities—programming, budgeting and execution—MUST be vested in the IPO in order for it to successfully execute the role. It also clarifies that the IPO should indeed become the "sole responsible office" on behalf of DoD and VA and not be considered as a separate, third party organization to "coordinate" two distinct efforts. The draft language is pivotal in ensuring that the Departments shift from a two-department approach to a single interdepartmental approach with the IPO at the helm. In my opinion, the most important issue to be reconciled is who is the responsible party for the execution of the funding, for that organization is truly the one accountable for the interoperability of the EHR systems/capabilities for DoD and VA.

Ideally, this interagency effort should be led by an executive from a third party Department such as Health and Human Services (HHS) or Office of Management and Budget (OMB) that would create a more neutral environment and obviate any concerns by either department of bias. However, if the Director of the IPO reported to the two Department Secretaries or their Deputies, each having equal authority over the Director as well as the Director having their support, this, too, would result in a more positive organizational alignment that would strengthen the effectiveness of a single, accountable program. The real key to success is that the two Departments turn to this organization as *their* "go to" asset, empowering them as their spokesperson, their program manager and their "single point of accountability" for EHR. Each Department must invest in this interagency organization and feel ownership and have the confidence in its ability to deliver on behalf of each.

III. Interagency Office Functions

This proposed language is clear in describing what Congress intended for the IPO with respect to the EHR initiatives: ". . . be the single program office"; ". . . the function of the office shall be to develop, implement, and sustain electronic health record systems and capabilities for the Department of Defense and the Department of Veterans Affairs"; "Sole responsible office . . . be the only office of the Department of Defense and the Department of Veterans Affairs responsible for electronic health record capabilities . . . ." It is clear by these words that the IPO is intended to be the one and only program office responsible for developing and representing the EHR initiatives for both DoD and VA. The Charter stipulates that the IPO is the single point of accountability for "***coordination and oversight***" which established a very limited, passive role for the IPO. The IPO was not seen OR ***staffed*** as a program office responsible for the design, development, test, implementation and fielding of the EHR capabilities; instead, it was used more as a "check point" for the two Departments in reviewing plans, schedules and milestones *after* they were developed, resulting in a more inefficient and less effective interagency plan. For example, the Departments developed separate strategies for implementing the information technology (IT) capabilities that were to support the N. Chicago demonstration project, the James A. Lovell Federal Health Care Center (JALFHCC). These strategies were linked to each Department's health IT plans versus a joint JALFCC plan. At one progress review, The IPO questioned DoD and VA regarding their decisions to implement separate pharmacy capabilities rather than just one at N. Chicago. The Department representatives acknowledged that the chosen paths for each complimented their separate strategies and were committed accordingly. This approach ultimately resulted in a delay in the delivery of the pharmacy capability due to additional time needed to develop highly complex interfacing software to support the two systems. Additionally, in another function fielded at JALFHCC, Medical single sign on (MSSO), each Department implemented the same capability using two different commercial tools. This has resulted in a burden for the user to learn two different interfaces and missed opportunities to leverage contracts and other sustainment costs. Each of these examples illuminates the challenge to interoperability if the Departments continue separate development paths. Recently, the departments revisited these decisions and are now planning to field one pharmacy capability and converge on one MSSO tool. Ultimately, this is the right decision; however, now they are incurring additional expenses and a delay in fielding a capability that could have been avoided had the Departments been working together as a single program office with joint goals. One organization needs to be responsible for promoting common solutions for the same requirements or we will continue to be consumed by overbearing mediation that at best will result in lowest common denominator solutions—neither efficient nor effective for the taxpayer, veteran, military and their families.

IV. Authorities for the IPO

All the critical authorities—program management, supervisory and most important, financial—remained under the control of the two separate Departmental program offices as stipulated by the charter: ". . . DoD and VA will retain responsibility for . . . life cycle program management activities including financial management, IT systems development and implementation." This eliminated any ability of the interagency office to be accountable as envisioned by the Law. Furthermore, this language implied that the IPO was *not* a part of either Department, which represents the mindset of each department relative to the IPO. The IPO should be considered as the single program office for electronic health care records development and be vested with the appropriate authorities to execute that role. This would enable the IPO to perform the design, development, test, acquisition, implementation and sustainment of all electronic health record initiatives—all those activities reflective of a true program office. DoD and VA must embrace the IPO as "their" program office with all the same confidence and trust they have today in their individual program offices. Most importantly, the IPO MUST be given planning, programming, budgeting and execution authorities in order to be the single point of accountability. The proposed language does this and therefore should obviate any confusion or contradiction by the 2009 Charter. The proposed language that calls for the IPO to "be the single program office" of DoD and VA, "responsible for the development, implementation and sustainment of all electronic health record systems and capabilities" greatly clarifies what Congress originally expected of the two Departments in empowering the IPO. This language should cause a shift in the "center of gravity" of the electronic health record initiatives from the DoD and VA program offices to that

of the IPO. In addition to this proposed language, the most important mechanism necessary to execute this language is to assign the budget for EHR to the IPO, as proposed in the following words: ". . . the budget materials submitted to the President by the Secretary of Defense and the Secretary of Veterans Affairs in connection with the submission to Congress, . . . each Secretary shall ensure that the Office is listed as a separate, dedicated budget line." To ensure the IPO is indeed vested with the Program Management and execution authorities for EHR, assign the EHR budgets from both Departments to the IPO. The current 2011 budget for the IPO is $14.6 million, while the EHR budgets in DoD and VA are in the hundreds of millions of dollars. This is a clear indication that the Departments are executing the program management role of design, develop, test and implement, and the IPO is executing a very small coordinating role in the EHR effort. The resources that exist in the respective Department budget lines today should be "merged" into a single "virtual line" to be executed and accounted for by the IPO for the EHR program.

V. Supervision and Organization

The hierarchy, mission and composition of the IPO organization are critical to its foundation and its success. Working across the two largest Departments in the Federal Government poses certain challenges to customary practices, but they are not insurmountable. The reporting relationship of the IPO must connote trust and assurance that the interests of the two Departments will be honored and supported and, moreover, that the IPO is seen as the Department's asset versus an outsider. The Director should be the "go to person" for Department Secretaries and Deputy Secretaries rather than other Department executives. This will reflect that the effort is a single, joint initiative and establish a single information loop that is consistent and responsive to both Department leaders. In the past, each Department has had a separate spokesperson they turn to on the various EHR projects (e.g., Virtual Lifetime electronic Record (VLER), N. Chicago, EHR) and the message was often inconsistent or tailored to the specific Department. This caused much confusion and posed challenges for establishing a baseline platform to report from and measure progress against. The IPO should be the organization responding to all inquiries and issues associated with the electronic health record initiatives on behalf of DoD and VA. They should be the "sole responsible office" contacted by any outside entity, to include Congress, OMB, and GAO to respond on all EHR inquiries. The mission needs to be clear, unambiguous and universally supported throughout the two Departments, particularly at the execution level.

The reporting relationship for the IPO has endured ambiguity and ineffectiveness. As a DoD employee, the Director reports to and is rated by the Undersecretary for Personnel and Readiness. This has caused some concern by the VA leadership that the IPO was more favorable to DoD. As an interagency initiative legislated to execute Title 10 and Title 38 authorities on behalf of DoD and VA, the IPO needs to be organized equitably so the Departments trust that the organization serves both with a balanced perspective. The IPO did not have the visibility with the Department executives as the interagency organization responsible for EHR. If the IPO reported to a third-party Federal organization outside of DoD or VA, the Departments may be more trusting of the IPO. However, an equally suitable alternative would be to have the Director report to the Department Secretaries to instill confidence and trust that this organization is acting in their best interests. Stipulating in the draft legislation that the IPO Director report to both Secretaries or Deputy Secretaries with each having 50 percent input to the performance review of the Director is a significant step toward building the needed trust. This will also bolster the Director to be the trusted agent on the EHR subject matter with top Departmental Executives and dissuade the Secretaries from turning to other department executives within DoD or VA.

Organizationally, the IPO should be structured as any other organization with the Deputy Director reporting to the Director, the next-tier employees reporting to the Deputy, and so on down the hierarchy. This reinforces the unity of chain of command within the IPO, regardless of whether they occupy DoD or VA billets. The current billet structure for the IPO consists of 10 DoD employees and 10 VA employees, plus 2 Senior Executives—the Director from DoD and the Deputy Director from VA. However, most of the VA billets (7) remained vacant since the inception of the IPO as a result of no hiring authority. Additionally 5 of the 10 VA billets were downgraded to GS–14 and -13 levels, while DoD rated all of their billets at the GS–15 level. This billet structure is austere in comparison to that of the Department program offices and clearly indicates that a very modest role was intended for the IPO. Additionally, this low-graded structure made it very difficult for the IPO to engage peer-to-peer with the Departments

A more effective way to provide staffing to the IPO is to merge the personnel from the DoD and VA program offices into the IPO so that it is a true "unity of effort." Collocate the personnel; capitalize on the intellectual property that already exists in the Department PMOs and position DoD and VA personnel to start thinking as one team. In this scenario, the discussions, the thinking and the solutions will take on a solidarity that will result in a cohesive end-to-end solution for the military and veterans. "They" will become "us," "their ideas" will become "our ideas" and the solutions will be joint.

VI. Conclusion

Congress established the IPO to improve the fielding of an interoperable electronic health record capability for those who have served our country so nobly. To date, DoD and VA have made strides in sharing pertinent components of electronic health information; however, the quantum leap for both organizations is to unite their development efforts as one organization and create a single, superlative electronic health record that by definition is interoperable and yields a transparent, effective and efficient capability for our users. The IPO is the medium for these two largest Federal Departments to merge their resources, their intellectual property and their spirit as force multipliers for operational as well as economic success. The promise of the IPO is synergy, solidarity and unity between DoD and VA. The 2008 law created an innovative yet startling approach to the interdepartmental development environment that challenged the accepted practices of both Departments. The chosen path for the IPO was only a step in the right direction—a "bunt" in baseball parlance—that has resulted in modest progress. Now we need a home run: a single program office, embraced by both DoD and VA, empowered with the necessary authorities to develop, implement and sustain the best damned electronic health record capability for our military, veterans and their families. This draft legislation is the designated hitter for this home run. It declares to the Departments what is expected in establishing a true interagency program organization, to include the authorities necessary to execute the functions. The language serves as a template for the modifications to the IPO Charter as well as the streamlining of fielding EHR capability. This is not only about interoperability; it's also about pursuing economic minded approaches to Federal Government business practices. Creating the IPO was an innovative idea, one that will no doubt cast the mold for future Federal partnerships.

Thank you for the privilege of providing testimony on this subject. I wish you and the Departments all the best in achieving success on this very worthy cause.

Prepared Statement of Jeffrey C. Hall, Assistant National Legislative Director, Disabled American Veterans

EXECUTIVE SUMMARY

H.R. 2383—the *Modernizing Notice to Claimants Act* would make changes to title 38, United States Code, sections 5103 and 5103A altering the Department of Veterans Affairs' current duty to notify and assist claimants seeking disability compensation benefits.

- DAV believes the intent of this legislation is to help streamline and speed the claims process in order to reduce the backlog of claims for disability benefits; however, we are concerned that the new regulatory provisions in the bill might be implemented by VA in a way that could weaken the ability of some veterans to receive the full benefits to which they are entitled.

H.R. 2388—the *Access to Timely Information Act,* would codify certain procedural steps that VA must follow in response to information requests from certain members of the Veterans' Affairs Committees of the House and Senate. DAV does not oppose enactment of this legislation.

H.R. 2243—the *Veterans Employment Promotion Act,* would modify title 38, United States Code, section 4212(d) requiring the Department of Labor (DOL) to publicly report via the Internet the information contained in the VETS–100 or VETS–100A reports submitted annually by Federal contractors to DOL. DAV does not oppose enactment of this legislation.

Draft Legislation—intended to improve the electronic health information systems and capabilities of the Department of Defense (DoD) and the Department of Veterans Affairs (VA). If enacted, this legislation would amend Public Law 110–181

(the "Wounded Warrior Act") to implement a fully interoperable electronic health record to serve both departments. DAV recommends the Subcommittee conduct a study as to its potential unintended effects on the basic functions of this and the authority Congress intended for VA's Chief Information Officer.

Chairman Johnson, Ranking Member Donnelly and Members of the Subcommittee:

Thank you for inviting the Disabled American Veterans (DAV) to testify at this legislative hearing of the Subcommittee on Oversight and Investigations. As you know, DAV is a non-profit organization comprised of 1.2 million service-disabled veterans and focused on building better lives for America's disabled veterans and their families. I am pleased to be here today to present DAV's views on legislation being considered by the Subcommittee.

H.R. 2383, the Modernizing Notice to Claimants Act, would make a number of changes to the Department of Veterans Affairs (VA) current duty to notify and assist claimants seeking disability compensation benefits. Specifically, H.R. 2383 would amend Sections 5103 and 5103A of title 38, which were the central provisions of the Veterans Claims Assistance Act (VCAA) of 2000.

Mr. Chairman, while we believe that the intent of your legislation is to help streamline and speed the claims process in order to reduce the backlog of claims for disability benefits, we have serious concerns about whether some of the new regulatory provisions in the bill might be implemented by VA in a way that could weaken the ability of some veterans to receive the full benefits to which they are entitled. As currently drafted, H.R. 2383 would change or eliminate a number of duties and responsibilities that VA is now required to perform in notifying and assisting a claimant when a claim for benefits is received. Taken together, and in the context of the large backlog of claims VA is focused on reducing, these regulatory changes could create opportunities for VA to speed claims through the process, regardless of whether they have provided sufficient notice and assistance to ensure that the veterans receive the maximum benefits to which they are entitled.

Under current law, when a claim for benefits is received by VA, the Secretary is required to send a notice to the claimant, often referred to as a "VCAA notice" (referring to Public Law 106–475, which serves to acknowledge the claim was received, state the issue or issues being claimed, and lists the evidence the claimant wishes to be considered. The VCAA notice also informs a claimant if there is any additional information or evidence VA requires, such as private medical treatment records, and requests that the claimant complete and return a VA Form 21–4142 ("Authorization and Consent to Release Information") so that VA is authorized to obtain such private medical treatment records. The claimant is asked to include detailed information regarding health provider, facilities, findings and diagnoses. The claimant is also instructed to identify any VA medical treatment, including the dates and specific facilities, so VA can also obtain any such records. Additionally, the claimant is informed he or she may provide their own statement regarding the claimed condition or conditions, as well as any lay statements from persons with knowledge of how the claimed condition or conditions may affect the claimant.

The VCAA notice includes specific time periods in which additional information or evidence must be received and informs the claimant of what actions VA has already taken, such as requesting records or a medical examination from the VA medical center. The notice informs the claimant that should the VA medical examination be missed without good cause, VA may move forward and decide the claim based on the evidence of record.

The VCAA notice explains what evidence is needed to support any claim for service-connection, secondary service-connection, increased evaluations, individual unemployability, or other claims. The claimant is also informed of VA's responsibility to assist them and the reasonable efforts they will take in obtaining evidence, as well as explain the role the claimant can play to ensure all relevant evidence is submitted for consideration. VCAA notice also explains how VA determines a disability rating and determines an effective date. Finally, each VCAA notice contains a VCAA Notice Response Form, which identifies the date of claim and provides a brief explanation regarding the submission of any additional information or evidence. If the claimant has nothing further to submit in support of the claim, he or she may elect to have the claim decided as soon as possible, which may alleviate unnecessary delays in processing; or the claimant may elect to submit additional information or evidence.

While there are certainly improvements that can be made to the current VCAA notice, DAV believes that on balance it provides claimants, especially unrepresented

claimants, with valuable information to help them submit stronger claims leading to more accurate results. Prior to enactment of the VCAA, notification to a claimant was generalized and limiting, causing difficulty and confusion for both the claimant in filing and VA in developing and adjudicating claims. The intent of the VCAA was to fully inform a claimant about the process VA would follow deciding their claim. Taken together, the notification and duty to assist requirements have served to temper the tremendous pressure VA and VA employees have been and are currently under to speed claims through the process in order to reduce the backlog, rather than to decide each claim right the first time. For this reason, we urge this Subcommittee and the full Committee to move cautiously in considering changes to these fundamental tenets of veterans' rights.

Mr. Chairman, the bill would remove the requirement that VCAA notices be provided "upon receipt" of a claim, thereby allowing VA greater flexibility in the timing of such notice. Such a change would allow VA to attach general notice statements to claims forms themselves, thereby eliminating one of the first steps taken in the development part of claims processing. However, this revised notice process would eliminate some of the benefits of the current system. For example, current VCAA notices contain not just generic boilerplate language about how claims are substantiated, but also individualized information about exactly what evidence has been submitted, what evidence VA will seek and what evidence the claimant must seek or authorize VA to obtain. As a former National Service Officer (NSO) for DAV, I can attest that having such information from VA allowed us to better represent veterans. We are concerned that this and other efforts to reduce VCAA notice to generic, nonspecific information will significantly reduce its value in assisting veterans who file claims. We also have concerns about how this would be implemented when filing electronically over the Internet, an environment where users have become accustomed to checking the box on license and other disclaimer agreements without first reading them. How such change would be implemented must be spelled out in greater detail in the legislation to meet the variety of circumstances. Finally, the VCAA notice is often the only acknowledgement a veteran may get that his claim has been received by VA, a basic piece of information most veterans want and should have as they navigate their way through the often frustrating process.

Mr. Chairman, DAV agrees that VA must have the ability to fully utilize electronic communication; however we have concerns about the language proposed to achieve this goal. H.R. 2383 would amend Section 5103 to require VA to send notice, ". . . by the most expeditious means available, including electronic notification or notification in writing." Once again, we believe the only way to reduce the backlog is to create a system designed to get claims done right the first time, not just get them done quickly. As such, we believe that notice should be sent by the most "effective" means, not simply the most "expeditious" means. For many veterans that may well be by way of electronic communication; but others may strongly prefer written communication. We would recommend that this language be changed so that rather than direct VA to use the quickest means, they instead seek to use the most effective means. Further, just as many of us are given such a choice in communicating with our banks and paying bills, so too should veterans be given the choice to elect the best method for VA to communicate with them.

H.R. 2383 also proposes to waive VA's obligation to send a VCAA notice to a claimant who has a pending claim for the same type of issue, such as service-connection, and was provided one for that prior claim. This provision seeks to eliminate unnecessary and duplicative notices being sent to a claimant when the previous notice provided the "information and evidence necessary to substantiate such subsequent claim." While we certainly agree with the goal of eliminating redundant mailings, it is not clear how broadly VA might seek to implement this provision and we would recommend that more specific definition or description be added to the legislation to clarify when such notice requirements would be waived. We are particularly concerned about unrepresented veterans who may have failed to fully understand the notice sent for the pending claim and will receive no further information to help guide them how to effectively support their new or additional claim.

The legislation would also eliminate the requirement of sending a VCAA notice to a claimant should the VA be able to ". . . [a]ward the benefit sought based on the evidence of record." Though DAV is supportive of the intent of this section of the legislation—to provide veterans with the benefits to which they are entitled at the earliest stage in the claims process—we have concerns about how this would be implemented in the field. For example, many claims are for conditions that have more than one possible disability rating, and it is important that VA not waive its duty to notify and assist claimants unless they are awarding the full benefit to which the veterans is entitled. In an environment where eliminating the backlog is VA's mantra, we are concerned that such new waiver authority would create incen-

tives and opportunities for claims to be awarded at the minimum level for a condition when justified by current evidence, even if there is some likelihood that further development might lead to a higher rating. Even when a claim for service-connection is granted, the claimant may disagree with the disability percentage assigned and respond with a notice of disagreement seeking a higher rating. A claim for service-connection and a claim for increased rating are separate types of benefits sought by claimants. Under the proposed legislation, we feel this could be construed as necessitating a separate claim for a higher evaluation and forfeit entitlement to the effective date of the original claim. Likewise, we have concerns as to how VA will be affected when a claim is received for different types of benefits, such as a claim for service-connection and increased rating of an already established service-connected condition.

We are also concerned that such waiver authority might create disincentives to inferring secondary conditions to conditions that are already service-connected. Rather than leaving this language open to interpretation, DAV recommends that the language be changed to make clear that such a waiver of VA's obligations should only occur when the "maximum" benefit sought can be awarded, including benefits for inferred and secondary conditions.

Section 3 of H.R. 2383 would similarly allow VA to waive its "duty to assist" in obtaining private records when they can award the benefit sought based on the evidence of record. Questions again arise regarding whether a maximum rating was granted and whether the identified private medical records not obtained might have allowed for a higher evaluation. There are also situations when the claimant is seeking an increased rating and indicates the condition has adversely affected employment. This could lead to an inferred claim for individual unemployability, which might require additional development to establish. However under this new language, the "benefit sought"—i.e., increased rating—could be awarded without further development to determine whether the veteran should be rated for individual unemployability. While our National Service Officers (NSOs) are adept in deciphering such claims and thereby address such inferred conditions from the outset, we are concerned that claimants without representation, and without a strong VA "duty to assist," may receive less than they are entitled to under the law. We therefore offer the same recommendation as above so that VA's duty to obtain private records could only be waived when the "maximum" benefit sought, including benefits for inferred and secondary conditions, can be awarded.

Section 3 of the bill would also change the standard for VA's "duty to assist" a claimant in developing facts pertinent to a claim, which is particularly important for unrepresented claimants. Currently, the duty to assist standard requires VA to seek records, ". . . that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain," with respect to any private medical records identified by a claimant. Under the proposed legislation, the new standard would change to, ". . . **if the claimant requests assistance**, in a manner prescribed by the Secretary." (Emphasis added.) This seemingly subtle change in language could create a new regulatory process that significantly shifts the burden for obtaining private records from VA to veterans. While we believe that the intent of this provision is to reduce unnecessary development for private records that do not materially impact VA's decisions on claims, we are concerned that it could create too great a burden on veterans. Oftentimes, a claimant does not have the physical or financial means to obtain private medical records.

The bill also calls for new regulations to ". . . encourage claimants to submit relevant private medical records . . . if such submission does not burden the claimant." We agree with the idea of encouraging veterans to fully participate in supporting their own claims; in fact, DAV's NSOs make this a routine practice. However, we do not believe that VA needs to open a new regulatory process to do so since current law does not prohibit VA from "encouraging" veterans to submit the most fully developed claims possible; a goal we share with VA.

Finally, DAV has serious trepidations about inserting language into Section 5103A of title 38 to allow a claimant to waive all or part of VA's duty to assist requirements. As with many of the changes proposed in this legislation, we are particularly apprehensive about unrepresented veterans who may not have the knowledge or expertise to fully understand the likely ramifications of agreeing to such a waiver. Moreover, it is not clear how VA would seek to use such waiver authority. For example, would VA try to get veterans to "waive" its duty to assist obtaining private records in exchange for a faster decision? With so much emphasis on "breaking the back of the backlog," could this become a tool to speed claims through the system, even if veterans may not receive the full benefits to which they are entitled? Until such questions are answered, we would have grave concerns about creating such waiver authority.

Mr. Chairman, we agree with the goal of preventing unnecessary overdevelopment of claims and we have proposed and supported legislation to ensure that private medical evidence be provided due deference. Too often, VA orders a medical examination even when a veteran has submitted recent and competent private medical evidence. Furthermore, we believe VA must be required to accept properly completed Disability Benefits Questionnaires (DBQs) from private treating physicians, and that those private treating physicians must be allowed to file DBQs electronically. We would welcome the opportunity to work with you and others on the Committee, in concert with our colleagues in the veterans' community, to craft comprehensive legislation to achieve our shared goals.

H.R. 2388, the Access to Timely Information Act, would codify certain procedural steps that VA must follow in response to information requests from certain members of the Veterans' Affairs Committees of the House and Senate. While DAV does not have a resolution on this matter, we are not opposed to enactment of this legislation.

H.R. 2243, the Veterans Employment Promotion Act, would modify Section title 38, United States Code, section 4212(d) requiring the Department of Labor (DOL) to publicly report via the Internet the information contained in the VETS–100 or VETS–100A reports submitted annually by Federal contractors to DOL.

Currently, the DOL Veterans' Employment and Training Service (VETS) monitors the reporting requirements of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974, requiring Federal contractors and subcontractors alike to annually report the number of veteran employees in their workforces by various categories as specified under the affirmative action provisions of VEVRAA. Those with Federal contract of $25,000 or more, that were entered into before December 1, 2003, file a VETS–100 report while those with Federal contract of $100,000 or more, that were entered into on or after December 1, 2003, file a VETS–100A report. The database is used by contracting officers to expeditiously verify reporting compliance and by DOL to monitor whether contractors are meeting their goals as set forth in their affirmative action plans. While DAV does not have a resolution on this particular matter, we are not opposed to enactment of this legislation.

Finally Mr. Chairman, regarding the draft legislation to improve the electronic health information systems and capabilities of the Department of Defense (DoD) and the VA; if enacted, this legislation would amend title XVI of Public Law 110–181 (the "Wounded Warrior Act") by sharpening requirements on, and strengthening the functions of, an office established by that Act at section 1635 whose purpose is to implement a fully interoperable electronic health record to serve both departments. This bill would elevate the organizational position of the existing office as a shared appendage of the Office of the Secretaries of Defense and VA, strengthen its responsibilities under existing law and give it new responsibilities and accountabilities to ensure a joint VA–DoD electronic health record is put in place, and that it accomplishes its essential purposes of documenting a veteran's lifelong relationship to government health care.

As we have consistently urged time and again in *The Independent Budget* (IB), including the IB for fiscal year 2012 *("The Continuing Challenge of Caring for War Veterans and Aiding them in Their Transition to Civilian Life,"* page 78), both DoD and VA need to accelerate progress in implementing a joint health record that is accessible to each agency, and to the active duty personnel and veterans about whom health records are maintained. Along with our partner organizations in the IB, we believe the absence of a joint records system stymies seamless transition, serves as a barrier to rehabilitation and recovery, and prevents some veterans from gaining the benefits and services they have earned through their sacrifice and loss.

While we agree with the principles of this draft legislation and commend its author for proposing it, we are concerned that giving the joint office broad acquisition authority for major electronic records systems may clash with the preexisting authority Congress granted to the VA Office of Information Technology in Public Law 109–461 (including many of the same responsibilities as outlined in this bill for the joint office). Therefore, should this draft legislation advance, we recommend the Subcommittee conduct a study as to its potential unintended effects on the basic functions and authority Congress intended for VA's Chief Information Officer.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions the Subcommittee may have. Thank you.

Prepared Statement of Ryan M. Gallucci, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States

Mr. Chairman and members of this committee, on behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, the VFW would like to thank this Committee for the opportunity to present its views on these bills.

H.R. 2383, Modernizing Notice to Claimants Act

H.R. 2383 seeks to do four things: Allow VA to communicate with claimants electronically; provide the Veterans Claims Assistance Act (VCAA) notice, or duty to assist, to veterans during the application period; stop sending duty to assist notices for subsequent claims if available evidence substantiates said claim; and allow VA to rate a claim without duty to assist notifications if evidence available can award the benefit sought by the veteran. All of these provisions are intended to reduce the average days awaiting development. Currently, the average period of time is more than 45 days, meaning veterans' claims sit idle, waiting to be developed, while duty to assist notifications are mailed, received and responded to.

The VFW agrees that to reduce the backlog and to make the average length of claim meet the Secretary's 125-day mandate steps must be taken to reduce delays that occur due to statutory requirements when a viable alternative is available. However, the VFW insists that any changes made must not have a negative effect on veterans.

The VFW views the idea of allowing VA to communicate with veterans electronically positively. Many veterans conduct business via email and web-based portals. Providing this choice will grant veterans the option to use this efficient form of communication. This form of communication will also be beneficial as VA moves forward with its electronic-based filing system. However, this new method of communication may not be considered the most expeditious means to the veteran; therefore, it must be requested by the veteran and not mandated by VA.

Informing veterans of VA's duty to assist at the application phase of the claims process does two things: It reduces the time it takes for a claim to go to development, and it allows veterans to be proactive in providing evidence to VA to substantiate their disability claim. The VFW has three chief concerns with placing the duty to assist notice with the application. First, depending on how the duty to assist notice is presented to veterans, the burden to gather private medical records could be shifted to the veteran. Although the statutory burden would still rest on VA, veterans could infer that the burden rests on them. Any changes to the duty to assist notification must be in plain, easy-to-understand language that informs the veteran what type of evidence is needed to substantiate claims and that the ultimate burden to collect medical evidence belongs to VA.

Second, the VFW wants to ensure that any changes to when the duty to assist notice is provided will not have a negative effect on the veteran's effective date of the claim. Currently, when VA receives a complete or substantially complete claim application, VA stamps it with an effective date, marking when the veteran's compensation or pension date begins. Under this proposal, veterans may spend weeks and months collecting their medical evidence based on VA's encouragement to veterans to collect their own records. This will negatively affect veterans by making their effective date later. Any changes to when the duty to assist is provided must include a clear, easy-to-follow process in the instructions of the VA Form 21–526 to initiate an informal claim, providing an immediate effective date.

Third, the VFW is concerned that by placing the duty to assist notification at the beginning of the process, the veteran will not be notified of VA's receipt of the claim. By virtue of the current process, veterans are notified by VA with the duty to assist letter. Now veterans will be waiting and wondering if VA has received their claim and started processing. The VFW suggests that if the provisions moving duty to assist to the application phase are implemented, a notification of receipt must be sent to the veteran. The VFW agrees that VA does not need to send a second duty to assist notification for subsequent claims when the evidence necessary to substantiate the claim is sufficient to rate.

The VFW's last point of contention is in regard to Section 2, paragraph 5 of the bill. Under current regulation and based on legal precedent, VA must assume that the veteran is seeking the maximum benefit allowed for the disability. To ensure precedent established by the Court of Veterans Appeals applies to new regulation regarding duty to assist, the VFW suggests that this bill language be amended to read "this section shall not apply to any claim or issue where the Secretary may

award the benefit sought based on the evidence of record when the maximum benefit allowed can be awarded."

The VFW must reiterate that veterans can neither have burden shifted to them, nor shall any changes in regulation harm a veteran's ability to receive the most complete and accurate claim possible. The VCAA was developed to protect veterans and any changes to this act to expedite the claims process must not come at the expense of veterans. For the VFW to support any changes to current law, our above concerns must first be satisfied.

H.R. 2243, Veterans Employment Promotion Act

The VFW supports the intent of this bill, insofar as the Department of Labor must make a concerted effort to ensure that Federal contractors and subcontractors are complying with affirmative action mandates to employ veterans within their companies. However, the VFW believes that steps must also be taken by DOL to ensure that contractors are meeting their obligations through the current VETS–100 filing system, and hold contractors responsible for failure to comply.

Though the VETS–100 form is mandatory for contractors to conduct business with the Federal Government, auditing procedures currently are not in place for DOL to verify outreach efforts and veteran employment figures reported by Federal contractors. The VFW welcomes working with the Committee to develop further plans to hold contractors accountable for their reports through the VETS–100 system to ensure that veterans actually have the opportunities they have earned and that Federal contractors have reported.

In the last year, DOL and other Federal agencies have made a concerted effort to ensure that veterans have an opportunity to enter the Federal workforce. The VFW believes that the DOL also has an obligation to ensure that those who do business with the Federal Government are held to a similar high standard.

H.R. 2388, Access to Timely Information Act

The VFW supports this legislation. H.R. 2388 would expedite information requests from VA to the House and Senate VA Committees by clarifying in law that all requests are "covered" for purposes of administrative procedure on records maintained on individuals, and is a permitted disclosure under HIPAA regulations. It also stipulates that the VA must send the Chairman of the Committee any information that is also sent to another Member of the Committee when acting as a designee of the Chairman or Ranking Member. We agree that it could assist the Committee in their work, and we thank the Chairman for his efforts.

H.R. 2470, Ensuring Servicemembers' Electronic Records' Viability Act

The VFW supports this legislation, which would give the Department of Defense and the Department of Veterans Affairs a better chance of implementing an electronic health information system that meets current and future challenges by modifying the Department of Defense–Department of Veterans Affairs Interagency Program Office to redefine its mission.

Working together, the two departments have achieved some success in creating a system that would make all personal health records bi-directional and fully electronic, with the ability to update and edit where needed. However, much more work needs to be done before such a system would be fully operational and deployed for the use of all relevant employees and contractors. Each of these key features—bi-directional, fully electronic, and editing capability for both departments when needed—must be part of the final health and service record-keeping solution. It must also not be rendered ineffective by onerous and unnecessary privacy concerns. Turf battles, institutional preference for existing solutions, and aversion to change have needlessly slowed down this process. At this point, human behaviors and constructs are causing more problems than technical limitations, and we find that to be completely unacceptable.

This bill will put DoD and VA in a position to make serious progress toward implementation of a state-of-the-art electronic health record. By making it clear in that the joint office must be the single point of accountability and authority, and that it has the sole responsibility for finishing the job and sustaining the capability into the future, there can be no more obfuscating who is responsible for successes, and who is responsible for failures. By ensuring that all reporting out of the office is done by an official not lower than a Deputy Secretary, this bill communicates the importance of the task at hand. By obligating both organizations to have a dedicated line item for funding the joint office, this bill ensures that both departments are fully at the table, and are fully sharing responsibility. We believe these are common-

sense steps. This problem is truly larger than either department and they must work together to bring forward a solution that meets the challenge and is a scalable platform that can more easily adapt to future innovations.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you or the Members of the Committee may have.

Prepared Statement of the Veterans' Employment and Training Service, U.S. Department of Labor

Chairman Johnson, Ranking Member Donnelly, and Members of the Subcommittee: The Department of Labor (DOL) is pleased to provide you with this statement on pending legislation.

President Obama and Secretary Solis are committed to ensuring that the men and women who serve this country have the employment support, assistance and opportunities they deserve to succeed in the civilian workforce. As a result, the Administration has undertaken initiatives to train, transition and employ Veterans; encouraged the Federal hiring of Veterans; and called upon the private sector to hire and employ America's Veterans.

The Veterans' Employment and Training Service (VETS) at DOL is playing an important role in these and other initiatives by providing Veterans and transitioning servicemembers with resources and expertise to assist and prepare them to obtain meaningful careers, maximize their employment opportunities and protect their employment rights. Moreover, VETS programs are an integral part of Secretary Solis's vision of *"Good Jobs for Everyone,"* and her commitment to help Veterans and their families get into the middle class and maintain financial stability.

This hearing is focused on four bills before the Committee: H.R. 2383, H.R. 2243, H.R. 2388 and Draft legislation. I will limit my remarks to H.R. 2243, the "Veterans Employment Promotion Act," which would fall under the Secretary of Labor's (the Secretary) jurisdiction. The Department of Veterans' Affairs (VA) would administer the remaining legislation and we defer to the VA with respect to those bills.

H.R. 2243, the "Veterans Employment Promotion Act"

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, 38 U.S.C. 4212, currently requires that certain Federal contractors and subcontractors (hereafter, "contractors") file a VETS–100 and/or VETS–100A report [1] annually to the Secretary that contains certain statistical data on their workforce, including the number of employees and new hires who belong to the categories of Veterans protected under the statute.[2] H.R. 2243 would modify title 38, United States Code, section 4212(d) to require DOL to publicly disclose via the Internet information contained in the VETS–100 or VETS–100A reports submitted annually by Federal contractors to DOL.

DOL supports enactment of this legislation. In our view, providing public access to the information contained in VETS–100/VETS–100A reports is consistent with the President's commitment to openness and transparency in government, and supports the Secretary's "Good Jobs for Everyone" initiative. Qualified Veterans seeking employment may find the information contained in the VETS–100A Reports useful in targeting their job search, by helping them to identify Federal contractors who employ or have recently hired Veterans with similar skill sets. Moreover, by making information contained in these reports publicly available, H.R. 2243 will encourage

[1] VETS promulgated two sets of regulations to implement the reporting requirements under VEVRAA. The regulations in 41 CFR Part 61–250 requires contractors with a Federal contract or subcontract of $25,000 or more that was entered into prior to December 1, 2003 and has not been modified to provide information on the number of covered Veterans in their workforces by filing a completed VETS–100 Report annually. The regulations at 41 CFR Part 61–300 implement the Jobs for Veterans Act (JVA) amendments to the reporting requirements under VEVRAA, and require Federal contractors and subcontractors with a contract or subcontract of $100,000 or more awarded or modified on or after December 1, 2003, to file a VETS–100A Report.

[2] For instance, Federal contractors completing the VETS–100A Report are to provide information on the number of employees and new hires during the reporting period who are: (1) Disabled Veterans; (2) Veterans who served on active duty in the U.S. military during a war or campaign or expedition for which a campaign badge is awarded; (3) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985; and (4) Recently separated Veterans (Veterans within 36 months from discharge or release from active duty).

Federal contractor compliance. However, the Department would want to work with Congress, the contractor community and others to ensure the appropriate treatment of proprietary or other confidential or protected information.

Every day, we are reminded of the tremendous sacrifices made by our servicemen and women, and by their families. One way that we can honor those sacrifices is by providing them with the best possible services and programs our Nation has to offer. Secretary Solis and VETS strongly believe that Veterans deserve the chance to find good jobs.

I again thank this Subcommittee for your commitment to our Nation's Veterans and for the opportunity to testify before you.