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LEGISLATIVE HEARING ON H.R. 923, H.R. 1025, H.R. 1826, H.R. 1898, AND H.R. 2349

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

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

ONE HUNDRED TWELFTH CONGRESS

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LEGISLATIVE HEARING ON H.R. 923, H.R. 1025, H.R. 1826, H.R. 1898, AND H.R. 2349

THURSDAY, JULY 7, 2011

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

The Subcommittee met, pursuant to notice, at 2:50 p.m., in Room 334, Cannon House Office Building, Hon. Jon Runyan [Chairman of the Subcommittee] presiding.

Present: Representatives Runyan, Lamborn, Buerkle, McNerney, Barrow, and Walz.

Also present: Representatives Bilirakis and Hastings.

OPENING STATEMENT OF CHAIRMAN RUNYAN

Mr. RUNYAN. Good afternoon, the Legislative Hearing on H.R. 1025, H.R. 1826, H.R. 1898, H.R. 923, and H.R. 2349 will come to order. I want to thank you all for attending today's hearing.

As the first order of business, I ask unanimous consent that all Members present be allowed to sit at the dais, and hearing none opposed so ordered.

I realize that it was a short turn around time for the witness's invitations to this hearing due to the recent holiday we had.

With that, however, we are disappointed in the late submission of testimony by the U.S. Department of Veterans Affairs (VA), as this is becoming a habit on their part. And even in their written testimony they have not submitted any statement on H.R. 2349.

I am hopeful that the VA will be able to provide us with the written testimony on that bill by the close of business on Monday, July 11th, so that we might be able to weigh the VA's input before the next mark up meeting of the Subcommittee.

[The VA subsequently provided views to the Committee on September 6, 2011, which appears on p. 54.]

Mr. RUNYAN. Before I recognize the Ranking Member, Mr. McNerney, and other Members of the Subcommittee, I wanted to briefly touch on H.R. 2349, which I have introduced.

H.R. 2349, the "Veterans Benefit Training Act Improvement of 2011," aims to improve the benefit claims process through focusing on individual training and skills assessment. The bill creates an individualized training program for all employees and managers who process or supervise the processing of disability claims.

Annually these members would take the test and assess their skills related to the claims processing.

Following the test, the VA would create an individualized training program for each employee who took the test. The individualized program will focus on areas of the test where the employees showed the greatest deficiency or need for improvement. The focus on the individual deficiencies would avoid redundant, blanket training that many employees already endure.

There is no reason why an employee of 20 years should be taking the same training as an employee who has been in the VA for only 2 years.

I hope that by establishing this program, we are able to encourage employees and managers alike to slow down and do the claims right the first time. Improving the number of claims sent out the door is not enough if the veteran is continually seeing mistakes being made on his claim. Quality must be improved, and the only way to improve quality is to make sure the VA employees are trained properly.

While I understand that some believe this bill is very similar to the certification testing that Congress required a few years ago, it is different and needed because it provides individualized metrics and requires follow through with the training retesting necessary to be truly effective.

I ask all of today's witnesses to summarize your written statement within the 5 minutes allotted, and without objection each written statement will be made part of the hearing record.

Before I begin my testimony, I will now yield to the distinguished Ranking Member from the great State of California, Mr. McNerney, for any remarks.

[The prepared statement of Chairman Runyan appears on p. 32.]

OPENING STATEMENT OF HON. JERRY MCNERNEY

Mr. MCNERNEY. Thank you, Mr. Runyan, I appreciate the introduction.

Today we are going to consider five bills, the impact of the legislation, and explore some of the what will come out if we do pass those bills.

We are going to take up H.R. 923, H.R. 1025, H.R. 1826, H.R. 1898, and H.R. 2349.

The first one of those, the "Pension Protection Act of 2011," H.R. 923, was introduced by my good friend and colleague, Alcee Hastings of Florida, and this bill and prohibit the VA from counting casualty losses and pain and suffering payments as income for the purpose of determining eligibility for non-service-connected pension benefits.

I think this is a worthwhile bill, it is on track from a policy perspective, and I look forward to advancing this to the full Committee.

The second bill on today's agenda, H.R. 1025, sponsored by Mr. Walz, again, a good friend and colleague, a hard working man who always has the interests of veterans at hand, would grant honorary veteran status to retired members of the Guard and Reserve who completed 20 years of service.

I support the bill, but I do understand there are reservations concerning moving the envelope on what type of service accords vet-

eran status as outlined in the VA testimony and with some of the veterans service organizations (VSOs).

The next one is H.R. 1826, introduced by our colleague, Mr. Bilirakis, would provide criminal penalties against any person who solicits, contracts for, charges, or receives fee or compensation from a veteran for advice on how to file a benefits claim or the preparation, presentation, or prosecution of a claim before the date of which a notice of disagreement is filed and then proceeding on that claim.

Our Nation's veterans have sacrificed so much that we need to protect them from those kind of bad actors looking to take advantage of the benefits that they have earned and deserve; however, I have heard concerns that this bill may create unintended negative effects on veterans seeking help from available resources as well as whether imposition of criminal provisions are necessary in the light of current law and regulations—or are even realistically enforceable.

The next is H.R. 1898, the "Veterans Second Amendment Protection Act," sponsored by Mr. Denny Rehberg of Montana, would require that a judicial authority adjudicate a veteran or other beneficiary in need of fiduciary assistance as mentally defective for the purposes of reporting to the Department of Justice (DOJ) the national instant background check system instead of the current system, which requires VA to report these individuals to the National Instant Check System (NICS).

The final piece of legislation, H.R. 2349, the "Veterans' Benefits Training Improvement Act," is your bill, Mr. Chairman, which attempts to hold the Veterans Benefits Administration (VBA) to greater testing and training requirements.

I think you have the best interest of our veterans in mind, nonetheless I have concerns that its provisions may be duplicative or run counter to the law on testing certification and training as established in P.L. 110–389; however, I understand that the VA reports that it received the bill too late in the time frame to provide views, and I want the Subcommittee to have the benefit of all stakeholders before making a final decision on this measure.

These are all worthwhile measures, they deserve consideration by the Subcommittee, and I thank all the Members for their thoughtful legislation, and I thank our esteemed witnesses for joining us today, and I look forward for your testimony. I thank you again and yield back.

[The prepared statement of Congressman McNerney appears on p. 33.]

Mr. RUNYAN. Thank you, Mr. McNerney, and the other three Members up here on the dais all have a piece of legislation that they sponsored, so I wanted to open it up to opening statements. Mr. Hastings?

OPENING STATEMENT OF HON. ALCEE L. HASTINGS

Mr. HASTINGS. Thank you, Mr. Chairman. I have to go and help prepare us a rule at the Rules Committee, and that is going to cause me to stay under the 5-minute limit.

But any way, Chairman Runyan, Ranking Member McNerney, thank you all as well as the rest of the Members of this Sub-

committee, and I thank my colleague Mr. Walz for letting me precede him.

I especially am grateful, Mr. Chairman, to the panel that you have, panels one and two, and I met some of the gentlemen and know some of the organizations that they work with, and I am very pleased that they can be here with you today.

I also would like to thank your staff and the Minority staff for accommodating those on the staff that work with me, and also for the incredible work that you all do here in this Committee on behalf of our Nation's veterans.

Exactly a year ago I testified before this Committee, or the Subcommittee on this Veterans' Pensions Protection Act of 2010. The bill was marked up, forwarded to the Committee on Veterans' Affairs by voice vote.

I am grateful now for the opportunity to bring it once again, and I am saddened by the fact that the Senate didn't consider the bill before Congress adjourned last year, and I am hopeful this year that they will.

I will accept your admonition, Mr. Chairman, and have any full statement introduced into the record, but I do want to say what happened here that gave rise to the office that I work with coming to this veteran's aid.

His name is Kerry Scriber and he is a Navy veteran with muscular dystrophy. He had his pension abruptly canceled, and how it happened, he didn't break the law nor did he commit any crime.

In March of 2008 Mr. Scriber was hit by a truck when crossing a street in his wheelchair with his service dog on his way to the pharmacy. He was thrown 10 feet in the air, witnesses describe it as absolutely remarkable that he survived, he suffered broken bones and teeth, and his service dog was injured and his wheelchair was destroyed.

He reported the incident to the VA, and when assessing his circumstances after he received an award for his damages, his pension was summarily rejected, and he made every effort that he could before it came to the attention of the office in West Palm beach that I represent. Then staff got involved, I got involved, the newspapers got involved and I wrote to VA, sometimes not hearing back from them, talked personally with then Secretary Shinseki, as well as wrote letters to him, and they didn't change their policy nor did they resolve Mr. Scriber's benefits for a whole year.

Now, I understand that the VA faces a whole lot of challenges and they are going to face a whole lot more. As you all know better than I, with servicemembers that are going to be returning from the battle field throughout the world, but I feel, and I am sure you do Mr. Chairman and Ranking Member and all the Members of this Subcommittee, that we must do everything in our power to ensure that our veterans have the benefits they rightly deserve.

I am distraught that the VA can move so expeditiously to cancel somebody's pension when they are an unemployed and disabled veteran without notice, and I feel they have a moral obligation to undertake to do better.

I have stayed within 5 minutes, Mr. Chairman. My full statement is going to be available for the record, and I genuinely am

appreciative of you and the Subcommittee for having an opportunity to present.

[The prepared statement of Congressman Hastings appears on p. 33.]

Mr. RUNYAN. Thank you for your words, Mr. Hastings.

Mr. Bilirakis, I believe you are prepared for an opening statement of 5 minutes.

OPENING STATEMENT OF HON. GUS M. BILIRAKIS

Mr. BILIRAKIS. Thank you, Mr. Chairman, I appreciate it very much. Thanks for allowing me to sit on the Committee today.

I am honored that a piece of legislation that I have introduced and I have been an advocate for since the 111th Congress is on today's schedule.

My bill, H.R. 1826, would reinstate criminal penalties on any individual charging veterans unauthorized fees for claims before the VA. It is already illegal to charge veterans in conjunction with filing a benefits claim to the VA, so we are not changing the law here, we are just adding penalties; however, as I said, no penalty exists for individuals who unlawfully charge for such claims, and this has happened several times in my district. Our veterans are being taken advantage of.

While many VSOs help veterans to file their claims free of charge, veterans are often unaware that this benefit exists thereby opening the door for con artists to charge hundreds or even thousands of dollars each time a veteran files a claim.

My bill would simply make this offense punishable by up to 1 year in prison or fines.

The VA must have the tools necessary to stop crooked businesses from preying on our disabled veterans.

This bill does not change veterans current rights to hire counsel for general advice about benefits or use any accredited entity for preparation, presentation, or prosecution of a claim. This is happening quite a bit and it must stop,

Mr. Chairman, again, we are not changing the law, we are just making it enforceable by adding the legal penalties because there is no prosecution currently.

Thank you very much, and I yield back the balance of my time.

Mr. RUNYAN. Thank you very much, and I believe Mr. Walz also has an opening statement.

OPENING STATEMENT OF HON. TIMOTHY J. WALZ

Mr. WALZ. Well, thank you, Mr. Chairman. I would like to take a minute to commend both you and the Ranking Member, as well as the Majority and Minority staff for what I consider to be a great work ethic in this Subcommittee, a sense of urgency to get things done, and the pace of works that we are moving things. I am very appreciative of that. I think the understanding that it is required of us by our veterans and you are certainly taking that seriously, so thank you for that, and thank you for the opportunity to bring this piece of legislation forward.

H.R. 1025, as many of you know, is a veteran status bill, and I think the Ranking Member brought up some very good points, but this is about recognizing the men and women of the Reserve com-

ponents, who take the very same oath as our active-duty counterparts who are asked to do the same physical training standards and job training standards, who are held to the same Uniform Code of Military Justice (UCMJ) requirements, and who on any given day could and are often called to duty.

Their sacrifice of time and energy for this Nation is not questioned, but I think something that many of us have been keenly aware of, the public maybe not so much is, is that while these people can serve 20 years doing this never being called for a period of 180 days or more denies them only one thing, they are eligible for the GI Bill, they are eligible for many veterans benefits, the one thing they are not eligible for is the official status of being called a veteran.

This piece of legislation does not add any benefits, it scored at a zero cost, but I would argue that not doing so the cost to our Nation is to not honor that service the way we should, and I understand the concerns and I thank the VSOs who have worked on this.

I understand the concerns about differentiating or this very hypersensitive to setting precedence when it comes to veterans, but I think among veterans it is very clear, and each honors the other for their service, and inside that sisterhood and brotherhood of arms there is a clear understanding of the respect and the difference given to people in combat as well as those who supported that combat to make it possible to be done.

And with that this piece of legislation does nothing more than change the status in title 38 of veterans of those retired Guard components who have completed 20 or more years of service, but not considered veterans.

And many of the people in this room understand for many, many years many of us in the Reserve component did many tours of 179 days, and that was on purpose to not get to the 180th day even though it was 179 days, a day off, and then another 179 days, and I think the issue here is one of correcting an injustice of setting the record straight amongst those who have served and conferring that status of veteran.

I think there is a great attention to detail amongst veterans that if someone says you were awarded two Army achievement metals, if that is untrue the person would say, no, one Army achievement metal and one commendation metal or whatever it might be. We are very clear about that service.

This case is you have a lot of veterans, they did 20 years, and I would give the example of this, there were many honorable professional soldiers who came and trained me, and because I was called to a period of service I am considered a veteran and they are not. That is an injustice and that is wrong and I think this piece of legislation straightens that out.

I appreciate the opportunity to have it heard, Mr. Chairman and the Ranking Member, as I said, and I look forward to the testimony of some of the concerns or anything that could be put in to alleviate any of those concerns.

And, I yield back, Mr. Chairman.

Mr. RUNYAN. Thank you, Mr. Walz, for your personal insight on this and your passion. It is obviously something, as you said in

your statement, that has been taken advantage of to the demise of our veterans, so thank you for that.

With that I will ask the first panel to come please step forward.

Today we have with us Mr. Raymond Kelley representing the Veterans of Foreign Wars (VFW), Mr. Ian de Planque from the American Legion, Mr. Jeffrey Hall from the Disabled American Veterans (DAV), Mr. Al Garver from the Enlisted Association of the National Guard of the United States (EANGUS), Mr. Jimmy Sims of the American Federal of Government Employees (AFGE), and Mr. Richard Cohen representing National Organization of Veterans' Advocates (NOVA).

Mr. Kelley, you are now recognized for 5 minutes for your statement.

STATEMENTS OF RAYMOND KELLEY, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; IAN DE PLANQUE, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, AMERICAN LEGION; JEFFREY C. HALL, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; AL GARVER, EXECUTIVE DIRECTOR, ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES; JIMMY F. SIMS, JR., RATING VETERANS SERVICE REPRESENTATIVE, VETERANS BENEFITS ADMINISTRATION REGIONAL OFFICE, WINSTON-SALEM, NC, U.S. DEPARTMENT OF VETERANS AFFAIRS, AND AFGE LOCAL 1738 STEWARD, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO, AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL; AND RICHARD PAUL COHEN, ESQ., EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

STATEMENT OF RAYMOND KELLEY

Mr. KELLEY. Thank you, Mr. Chairman, thank you Members of the Subcommittee.

On behalf of the 2.1 million members of the Veterans of Foreign Wars and our auxiliaries, thank you for the opportunity to testify today.

My testimony provides VFW's opinion on all the bills that are being heard today, but due to time I think I will just refer to three of them.

The VFW strongly supports H.R. 1025, which would give men and women who choose to serve our Nation in the Reserve component the recognition their service demands.

So thank you, Mr. Walz, for your advocacy on this issue. You understand better than most that many who serve in the National Guard and Reserve are in a position that train for and support the deployments of their active-duty comrades to make sure the unit is fully prepared when called upon. Unfortunately, some of these men and women serve at least 20 years and are now entitled to retirement pay, TRICARE, and other benefits, but are not considered a veteran according to the letter of the law.

It is time to provide the respect that has been earned for so many years of preparing for and supporting the defense of our Nation.

This bill is also supported by the Military Coalition, which is made up of 34 organizations with a member representation of 5.5 million servicemembers, their families, and veterans throughout the United States.

The Veterans of Foreign War strongly supports H.R. 1826, which would make it a crime for individuals or companies to charge veterans for assistance in applying for disability benefits. Federal law prohibits charging fees for a disability claim, but VA is currently unable to enforce the law as there are no penalties or fines imposed. This bill would make it a misdemeanor with penalties and up to 1 year in prison.

Protecting our veterans from individuals and companies who are profiteering from their service and sacrifice will ensure the veterans interest are the only interest considered when a disability claim is filed.

Chairman Runyan, thank you for seeing the importance of producing quality disability claims. The VFW agrees that to successfully reduce the backlog and to fix the claims processing system, producing a quality claim the first time is a critical part of that success. Your bill, H.R. 2349, begins the task of ensuring VA employees who produce claims have the core competencies and retain those competencies in an occupation that is always changing by evaluating their skills; however, much like the Employee Certification Act of 2008, now section 7732A of title 38, this bill is a container that will be filled with a VA solution.

As we have found with the Employee Certification Act, that training solution has not been beneficial to improving quality claims. The VFW's concern is that VA's solution will not be geared towards truly improving quality, but because of the constant pressure VA is under to reduce the backlog. The training that will be developed will likely only conform to law failing to achieve the goal of ensuring that claims processors have the tools they need to produce quality work.

A more specific evaluation and training system is needed to ensure that mutual goals of increasing quality claims. To do this VFW believes the training and evaluation should be based on the findings of the Systematic Technical Accuracy Review system or STAR. Each month STAR reports on the quality of each regional office. To truly improve quality, training should be ongoing and based on the findings of the STAR report and conducted monthly to correct deficiencies.

I don't think any of us in employment would like to wait till the end of the year to find out what we are doing wrong and then be taught how to correct it. We all want to do the job right as we are moving along, and doing it this way would take that into account.

Tying quality assurance with quality control will ensure that VA employees are being trained on issues that have negatively impacted the quality of claims. Also, the VFW suggests that the report to Congress should have an explanation of how the assessments were conducted. This explanation should include the types of assessment that were conducted and who was responsible for the evaluations. Basing success of training on assessment results alone will not provide a full picture of the quality of the training.

This concludes my testimony, I will be happy to answer any questions at this time.

[The prepared statement of Mr. Kelley appears on p. 35.]

Mr. RUNYAN. Thank you very much, Mr. Kelley.

Mr. de Planque.

STATEMENT OF IAN DE PLANQUE

Mr. DE PLANQUE. Thank you Chairman Runyan and Ranking Member McNerney and Members of the Subcommittee.

You already have our positions on the pieces of legislation. I really just want to take a minute or 2 to comment largely on H.R. 2349, your bill, Mr. Chairman, the "Benefits Training Improvement Act."

At the American Legion, we are very excited for going towards the area of having real consequences for identifying these errors. We talked about it last time when we were here talking about problems within regional offices, we talked about that a lot, like not seeing consequences for VA. This bill does appear to have consequences for VA. Look, if there is a problem then here is the solution. Set up a program that is going to address that.

Our experiences from having dealt with and spoken with VA employees throughout the time address one of the things that you mentioned earlier, the redundant training that if I am a 20-year veteran and I have had the training for the last 20 years on the exact same thing, I should be getting training on things that are going to matter to me.

Our main concerns that we have are in the implementation, how this is going to work with the existing testing requirements and certification requirements that are already there.

We are willing to come forward to participate as a stakeholder to work through these issues. We want to recognize that that is there.

We use the example that when you are in a math class as a child and you take a test and if you fail a question on binomial equations, then your teacher knows you need to go back and study binomial equations. If half the class is failing, that then the teacher knows the entire class needs a remedial thing on this.

This seems to be missing in some way, or if it is there it is not apparent to any of the stakeholders that something like this is working in the VA with going through the claim system when you have not just the STAR as my colleague, Mr. Kelley mentioned, but also the common errors that are cited by the courts that they are finding the common errors that are found at the Board of Veterans' Appeals and at the Appeals Management Center.

In all of these areas we are seeing the repeated errors, but they are not getting back and we want to work and help make this bill address that. So not just through testing, but also through aggregating these errors as they come through to set up a program that is going to help the VA employees have the tools they need to succeed, because they want to succeed, they want to be right, and they want to have confidence in that.

And I will yield the rest of my time back for questions. Thank you very much.

[The prepared statement of Mr. de Planque appears on p. 36.]

Mr. RUNYAN. Thank you very much.

Mr. Hall, you are now recognized for your opening statement.

STATEMENT OF JEFFREY C. HALL

Mr. HALL. Thank you. Chairman Runyan, Ranking Member McNerney, and Members of the Subcommittee, on behalf of the 1.2 million members of DAV, it is an honor to be here today to offer our views regarding the pending legislation before the Subcommittee.

My full statement details DAV's positions on all the legislation, so I am just going to focus on my oral remarks today on a couple of bills.

H.R. 2349, the "Veterans Benefits Training Improvements Act," would require VA to institute annual skills assessments for all employees and mangers, develop individualized training and remediation plans for each, and take disciplinary actions for those who cannot pass the test after repeated attempts.

Mr. Chairman, DAV has long supported the intent of the legislation to require testing, training, and accountability for VBA employees and managers involved with claims progressing. Regular assessment of these individuals is elemental in determining whether they possess the requisite skills to properly perform their jobs. Likewise, when deficiencies are found it is imperative for additional training to be provided and appropriate personnel action taken when repeated attempts are met with unsatisfactory results.

We believe a robust training, testing, and accountability process is the proper way for VBA to ensure only qualified individuals are involved in the disability claims process.

DAV agrees with the intent of the legislation; however, before attempting to enact it we feel Congress should examine how similar laws already in place are being implemented and enforced.

Mr. Chairman, as you know Public Law 110–389, the Veterans Benefits Act of 2008, requires certification examinations for VBA employees and managers who are involved in the disability claims process; however, almost 3 years after its enactment there are still gaps and problems with this testing.

It is our understanding that certification examinations are being utilized, at least in part for veterans service representatives (VSRs), rating veteran service representatives (RVSRs), and decision review officers (DROs), but there are not yet any examinations for VBA coaches, supervisors, or managers even though required by section 7732A of title 38.

We would also note that despite the plain language of the statute on consultation with interested stakeholders, VBA did not consult DAV or other VSOs in the development of these examinations, which would have served them well. We hope to hear more from VA today about how existing testing program is being implemented.

While testing and training are essential to reforming the claims process system they must be integrated into VBA's quality assurance control programs to provide effectiveness. Unless there are direct linkages between training, testing, and quality control, VBA will miss the opportunity to take full advantage of the myriad of

data that exists, includes STAR reviews, coach's reviews, Board of Veterans' Appeals remands, and other quality assurance programs.

Mr. Chairman, should the Subcommittee decide to move forward with this legislation, we have some recommendations to strengthen the language.

First, the term assess needs to be clarified in the bill. Without a definition this could be open to interpretation about whether it requires an administered test or whether it could be a subjective review by a manager.

Second, we recommend the Subcommittee consider further defining who the appropriate employees and managers are so it is clear to include all coaches, supervisors, and managers, and that they are being to the same testing standard as those employees they oversee.

Third, DAV strongly recommends that language regarding test development and consultation similar to that already contained in section 7732A be included. This would allow for input from DAV and other VSOs, as well as employee representatives during the development and implementation of any new testing procedures.

Lastly, regarding H.R. 2349, DAV strongly recommends the Subcommittee change the term disciplinary action to personnel action, a more conducive phrase which accurately conveys the importance of the individual accountability without needlessly appearing punitive.

Mr. Chairman, with respect to H.R. 1826, this legislation would codify criminal penalties for persons charging claimants unauthorized fees for representation before the VA prior to a notice of disagreement being filed. DAV feels the intent of the legislation is vital to the protection of the often limited financial resources of veterans. Although current law allows attorneys to collect fees for representation after a notice of disagreement has been filed, it does not include penalties for anyone unlawfully collecting fees for representation prior to an Notice of Disagreement (NOD) being filed.

While we have not yet adopted a specific resolution on that matter we do support passage of H.R. 1826.

In closing, Mr. Chairman, DAV and other VSOs provide expert representation throughout all phrases of the process at no cost to a claimant. Although attorneys are allowed to collect fees from a claimant, DAV remains concerned that there is no limitation on the amount of fees that may be charged by an attorney.

During our recent national convention in 2010, DAV membership adopted a resolution calling for legislation to provide a reasonable cap on the amount of fees an attorney can charge veterans for representation before the VA, and we urge this Subcommittee to consider such legislation.

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

[The prepared statement of Mr. Hall appears on p. 38.]

Mr. RUNYAN. Thank you, Mr. Hall.

Mr. Garver, you are now recognized.

STATEMENT OF AL GARVER

Mr. GARVER. Chairman Runyan, Ranking Member McNerney, Members of the Subcommittee, thank you for the opportunity to testify today.

As the Executive Director of the Enlisted Association of the National Guard of the United States, EANGUS, I am here to speak on behalf of the 412,000 enlisted soldiers and airmen currently serving in our Nation's National Guard. In this instance, I am also speaking on behalf of their families, as well as the hundreds of thousands of retired Guardsmen across America.

I hope my testimony might have additional impact due to my 28 years of military service, including 8 years on active duty, 20 years in the Guard and Reserve, and 2 tours in Iraq, and that I am still serving today as a Senior Master Sergeant in the U.S. Air Force Reserves at the Pentagon.

While EANGUS supports all five pieces of legislation before this Subcommittee, I would like to focus my comments specifically on H.R. 1025.

When I first saw the sister bill or the original bill, H.R. 3787 last year, I frankly read it in disbelief. In the past 20 years of my service in the Guard and Reserve, I was completely unaware that there were retired Guardsmen and Reservists who were not considered veterans simply because they served their entire period of service without ever having been activated for a qualifying period of Federal active-duty service.

While the actual numbers of Guardsmen who fall into that category may be relatively small, I think it is safe to state it is likely that none of them rightly know today, even know that they are not considered veterans.

When my father, a World War II veteran, died in 1996, I was in charge of his funeral arrangements. I was told by the funeral director what his veterans benefits included. I was asked if we would like to inter him in a veterans cemetery.

He served for 4 years on active duty in the U.S. Navy from 1941 to 1945, and I remember thinking how nice it was that our Nation wanted to honor his service in that way.

Now imagine the shock of the family of a retired Guardsmen who served 20 to 40 years, being told by a funeral director and Veterans Affairs that they would not qualify for those same honors and that their loved one was technically not a veteran.

It is difficult to fathom how this loophole has gone on unnoticed and without remedy for so long.

EANGUS is truly indebted to Congressman Tim Walz, a retired Command Sergeant Major with 24 years of service in the National Guard, for championing this issue, and EANGUS is proud to endorse his legislation, H.R. 1025.

The Guard has evolved over 375 years from a simple volunteer militia to an operational reserve force that can be activated at both the State and Federal level. This makes for a rather interesting legal framework required to authorize and support a variety of missions. Everyone on this Committee clearly understands the difference between title 10 status, when the President is in command, and title 32 status, when a specific State governor exercises command over the Guard.

This difference is not so simple when one takes into account title 38 and veteran status. As the Federal component of the Guard's legal structure, title 10 neatly dovetails into title 38 and veterans issues, but the same cannot be said of title 32 and title 38.

H.R. 1025 bridges the gap between title 32 and title 38 by changing the definition of veteran in title 38, section 107A and by linking veteran status to title 10 retirement pay for non-regular service.

During last year's consideration of H.R. 3787, which was similar legislation sponsored by Congressman Walz in the 111th Congress, the Congressional Budget Office officially stated those honorary veterans would not be eligible for additional benefits from the Department of Veterans Affairs based on this new status. Thus, CBO estimates that the bill would have no budgetary impact, enacting H.R. 3787 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

A similar endorsement was made by the Department of Veterans Affairs and H.R. 3787 moved easily through the House, but languished in the Senate at the end of last year.

H.R. 1025 was carefully drafted to ensure that this broader definition of the term veteran would not be applicable for purposes of compensation, for purposes of dependency and indemnity compensation, or for purposes of hospital, nursing home, domiciliary, and medical care. If enacted into law, this bill will be at no cost to the Nation.

Let me emphasize that this issue of bestowing veteran status is a matter of honor, nothing more, nothing less.

This year the Senate Companion Bill to H.R. 1025, S. 491, was introduced by Senator Mark Pryor in March, and the Senate Committee on Veterans' Affairs recently held a hearing on the bill on June 8th. With movement on both the House and Senate versions I am optimistic that both chambers of Congress can advance this worthy legislation before the end of the year and hopefully in time for Veterans Day on November 11th.

The Enlisted Association of the National Guard of the United States respectfully requests that the Subcommittee favorably report the Honor America's Guard Reserve Retirees Act of 2011 to the full house Committee on Veterans' Affairs.

Thank you for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Garver appears on p. 42.]

Ms. BUERKLE [presiding]. Thank you, Mr. Garver.

Mr. Sims, you are now recognized.

STATEMENT OF JIMMY F. SIMS, JR.

Mr. SIMS. Thank you, Ms. Buerkle, Ranking Member McNerney, and Members of the Subcommittee, thank you for allowing me the opportunity to testify on behalf of the American Federation of Government Employees and National VA Council.

H.R. 2349 is legislation that we feel will improve the VBA's overall claim process by focusing on the skills of supervisors and employees.

As AFGE has testified on a number of occasions before this Committee, the only effective training is individualized training. As

such we support the concept of this legislation, which directs the development of such training programs.

Enactment of this legislation would give employees a meaningful training program to address their areas of weakness and deficiencies and allow for real improvement in the quality of their work. This needs to be implemented not only at the level of the claims processor, but at all levels of supervision over the claims process.

The claims process is a complex one and we have seen supervisors put into positions within this process without the requisite skills and experience to oversee it. This is what has led to the breakdown in the claims process we see today.

VBA's supervisor's training program specifically states in the initial training you do not need to be a technical expert over the area over which you supervise. While this may be true in many areas of management, in the claims process this has proven not to be the case.

While AFGE applauds Congress on the concept and direction of this legislation, there are a few areas of concern with the legislation, which I would like to voice.

First, annual assessments. The VA has spent countless millions of dollars in the development and implementation of certification examinations. AFGE urges the use of the current certification examinations as assessment tools for all claims processors and supervisors.

While AFGE believes the use of these examinations would be the most responsible fiscal action, there are concerns which have been raised by the prior contractor who stated their position was only to ensure strong test questions and not to develop a test of knowledge.

AFGE is concerned the current contractor, Cumber, may fall into this same trap, thereby resulting in poor certification testing.

Second, individualized training programs. We urge Congress to mandate that all VBA training programs, including individualized training programs, be centrally developed by the VBA academy in collaboration with the compensation and pension training staff and a stakeholder advisory group. VBA has a poor track record of implementing training in a consistent and effective manner.

In the fall of 2010, I served on a site team, which reviewed implementation of the final phase of training for new employees across a sample of stations. As we reported to the Under Secretary, we found that none of the stations were implementing the centralized training as directed. Sadly, VBA has taken no corrective actions to this date.

Third, remediation of skills. This provision of H.R. 2349, as currently drafted, is vague about how VBA will carry out skill remediation. Currently, VBA managers utilize performance improvement plans as a means to reassign or remove low performing employees. We urge you to spell out the proposed remediation process in more detail to ensure consistency and fairness.

For example, the bill could require remediation be implemented only after an employee who participates in an individualized training program does not pass the certification exam.

Lastly, disciplinary action for unsatisfactory performance. H.R. 2349 proposes the use of disciplinary action in cases of unsatisfactory performance of employees. This is contrary to current Federal workforce law and policy on proper responses to unsatisfactory performance, therefore, we urge the Subcommittee to amend H.R. 2349 to substitute appropriate personnel action in place of disciplinary action.

While there are minor issues which I have identified, the overall direction of the bill is one which has been needed and called for for many years. Until VBA takes drastic measures to improve the training programs, there will be no improvement in the quality of the work performed within the claims process.

Unfortunately, VBA does not have an effective track record when it comes to implementing change. For this reason, I urge you to establish an oversight committee comprised of stakeholders, including AFGE and the VSOs who can report directly to this committee on the VBA's implementation efforts.

I would also urge you to ensure the stakeholders advisory group works directly with VBA on review of the annual certification examinations and individualized training programs.

Thank you for allowing me to testify and I stand by for your questions.

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

Ms. BUERKLE. Thank you, Mr. Sims.

Mr. Cohen, you are now recognized.

STATEMENT OF RICHARD PAUL COHEN, ESQ.

Mr. COHEN. Thank you for inviting the National Organization of Veterans' Advocates to testify here today.

I will concentrate on only three bills, because those are in areas where NOVA has some expertise.

The first bill, and I will go in numerical order is H.R. 1826, which would criminalize soliciting or receiving improper fees.

That bill is necessary for non-accredited agents and attorneys, because there are some bad actors out there. There was even a report in the media recently about a so-called insurance agent in California who was soliciting fees for helping veterans apply for pension benefits. We have heard reports about that, and presently there is no effective way to sanction to those people.

I would contrast that with accredited attorneys and agents, both of whom are restricted under VA regulations 14.632 and 14.633, and required to only accept and solicit reasonable and appropriate fees. If they do not do that, the punishment is loss of accreditation.

For attorneys, there is an additional punishment, through their State bar. Most States implement the model rules of professional conduct requiring appropriate fees, and because most State bars have reciprocal enforcement, an attorney who solicits an improper fee or receives an improper fee will face loss of VA accreditation and will also likely get disbarred and prohibited from practicing law in front of any forum.

So it is not necessary to impose criminal sanctions on accredited agents and attorneys for improper fee practices, but is very necessary to impose sanctions on non-accredited people and to put those sanctions in another section. Section 5904 is not the appro-

priate place for it. Perhaps Congress should create a new section under a new article 60 to provide a mechanism to deal with those bad actors who are not otherwise supervised that would be an appropriate idea.

H.R. 1898 is a very important piece of legislation. At present veterans may oppose a VA finding of incompetency merely because they are concerned about losing their right to possess firearms, and even though they would concede that they really can't manage their money. It is very clear that inability to manage money does not translate to danger to self or others, which is the proper standard to prohibit someone from possessing the right to firearms.

So this bill, which would say that a veteran is not automatically determined to be a mental defective under 18 U.S.C. 922 if they are found to be incompetent to manage their money is a worthy bill, which would help veterans and the VA.

H.R. 2349, the "Veterans Benefits Training Improvement Act," is a very good idea. We question, however, whether H.R. 2349 duplicates some provisions that are presently in 7732A. Maybe H.R. 2349 should be merged into 7732A.

Our biggest concern is that, at present the work credit system, which is monitored by the VA's ASPEN system, will prevent suitable training and assessment, because it limits the amount of free time that employees will have for the training and assessment. The VA, right now as we speak, is still very much concerned with pushing paper, not with correctly adjudicating claims and not with providing suitable training.

That concludes my prepared statements. I am available for any questions.

[The prepared statement of Mr. Cohen appears on p. 46.]

Ms. BUERKLE. Thank you very much, Mr. Cohen.

And I will begin questioning by yielding myself 5 minutes.

Mr. Hall, regarding H.R. 2349, do you have any specific recommendations for what skills should be tested?

Mr. HALL. You mean specific skills for the individualized testing?

Ms. BUERKLE. Yes.

Mr. HALL. Sure. A couple of things come to mind, and that is the ability to understand the evidentiary record when they are receiving it, to process and understand the development in the development stage of a claim, understanding that evidence and how it plays a role in the rating schedule, how it plays a role in all of that. That is a specific skill that should be monitored and tested regularly to make sure that they understand the medical evidence as they are reviewing it.

Another one would be the rating schedule itself. If you have seen it it is pretty in-depth in understanding what specific rating criteria must be applied, those are also a specific area to make sure an individual understands when they are reviewing the evidence and applies the specific regulation or part of the rating schedule that they understand how it really works, anatomy, physiology, all of those things combined with it. Those are some things that I would start with.

Ms. BUERKLE. Thank you. And which managers and employees would you suggest be tested annually?

Mr. HALL. Coaches, so you have your team coaches definitely have to be in the mix, any individual that oversees a coach or how it is aligned within the VA. It is not really quite clear who those individuals might be, so when we say coaches, managers, and supervisors they might be one in the same, but they are definitely—if you are going to train and test VSRs and you are going to require them VSRs and RVSRs, then those individuals that are overseeing them have to be included in the same training, testing, and monitored in the same way that we would expect of their employees, the same as we do in our own organization. It doesn't matter what level we are at, if I am training and testing someone I have to undergo the same training and testing.

So coaches, DRO, VSRs, RVSRs, as well as probably assistant service center managers, service center managers should be included in that as well.

Ms. BUERKLE. So should testing be tied into the amount of time an employee or manager has worked at VBA, or you are saying everyone should be tested?

Mr. HALL. No, I think everyone should be tested. I think it should be taken into account with something along the lines of—and I know it is not maybe specific to the bill H.R. 2349 on the individualized skill assessment—but at the same time if I had 18 years of doing claims processing national service officer work in the field, which I did, and I am required to take the same training as somebody that has less than a year, I have to be expected to keep it fresh, you know, and more specific maybe pick a particular area that had a lot of changes throughout the year, like specific monthly compensation or maybe a little more difficult to grasp, so we do tailor it, so I think the VA must tailor it also. If you have a 20-year employee and a 3-year employee, yes, it should be tailored specifically, but they should all be required to do so.

Ms. BUERKLE. Thank you.

Mr. Kelley, with regards to H.R. 1025, what is your response in terms of critics who might say we are creating a slippery slope here and will be providing full veteran benefits to this entire group?

Mr. KELLEY. I believe there is always a risk of when you start adding new things, but I think in this particular case it is worth the risk. I know the VFW would fight against and that voice be heard if benefits would start being associated with that.

So again, I believe it is worth the risk to give the honor and respect that is due to these veterans.

Ms. BUERKLE. Thank you, Mr. Kelley.

I am yielding now to Mr. McNerney 5 minutes.

Mr. MCNERNEY. Thank you, and I appreciate your questions.

Mr. de Planque, in regard to H.R. 1025, has there been any movement to oppose or to support such a bill in the form of a resolution by your membership?

Mr. DE PLANQUE. As of right now and the last time that it was discussed we have no resolution, and as you know we are grassroots and we work that way.

I know our convention this summer, next month, is going to be in Minnesota and hopefully we will have a chance to talk to the sergeant major. I know he has been a tireless and great advocate for this bill, and I know it is something that is being looked at and

some of the previous concerns that had come up have been addressed.

And one of the things when you have commissions that meet on like a quarterly basis basically, they don't necessarily get to move with the same rapidity, but it is something that is in the mix and it is being examined, and hopefully like I said, we are looking forward to hopefully talking with the sergeant major next month about it.

Mr. MCNERNEY. Thank you.

Mr. Garver, do you see any cons or any reason why we wouldn't want to pass H.R. 1025?

Mr. GARVER. Well, I think what has to happen, especially anybody that is critical, and I read some of the remarks from the American Legion and some from the VFW, and the concerns are valid in that, you know, veterans have long been honored for their service federally; however, the expanding and changing role of the Guard is so significant, and especially in this last 10 years in the Global War on Terror.

Let me give you one example. When 9/11 hit, we stood up Guardsmen all over this country in Operation Airport Guardian. We did that under title 32 order because of the posse comitatus law, Federal troops cannot take up arms in a law enforcement status, so therefore, all of those troops that were on 180 days or more should have been—they were protecting our country against terrorists—but they are not recognized as a veteran.

And so there are a number of instances or examples we could give of that, and I think you could make the case with any surveying active duty, with any veteran from the VFW or American Legion a long-serving veteran and explain that and they would agree that those veterans should be afforded the title of veteran for their service.

It is really an administrative glitch that needs to be remedied. I don't think anyone would question the actual honor ascribed to those individuals, especially serving 20, 25, 30, 35, 40 years and retiring simply because they didn't serve on Federal active duty.

Most of us would be surprised if you said I didn't know they weren't a veteran, and I don't think anyone would begrudge anyone for gives that title to them.

Mr. MCNERNEY. Okay, thank you.

Mr. Cohen, thank you, I think your testimony was very clear today, I appreciate that.

On H.R. 1826, could you elaborate on the VA system for accrediting attorneys and other agents who represent veterans and other beneficiaries who make claims at the VA?

Mr. COHEN. Yes. Initially whether it is an agent or an attorney, they must submit to the VA an application, which shows their background. An attorney would have to state where he or she is admitted and provide a certificate of good standing. An agent needs to additionally pass an exam with a grade of 75 or higher. Both an agent and an attorney has to show, within the first year, that they have completed 3 hours of VA law specific training, CLE (continuing legal education) training. Then there are annual reports that have to be submitted to show that they are still in good standing and that the training has continued.

What this does is allows the VA to monitor the actions of the attorneys and the agents, and in fact as I mentioned before, the VA does have the responsibility and the power to sanction anyone who acts improperly.

Mr. MCNERNEY. Do you think that the possible imposition of criminal penalties will be an effective tool in this legislation or do you think it is a deterrent?

Mr. COHEN. Well, I don't know that an accredited agent or attorney would be further deterred by criminal penalties. The likely loss of the opportunity to practice VA law and for an attorney to practice any law is a very powerful deterrent. For that reason, I don't see that that the legislation is necessary. In fact, what we are seeing in the media, and the complaints that I hear anecdotally are not concerning attorneys and agents. They concern insurance agents or financial consultants who are consulting with veterans regarding eligibility for pensions and aid and attendance.

Mr. MCNERNEY. Thank you. I have run out of time so I am going to yield back.

Ms. BUERKLE. Thank you very much.

I know yield to the gentleman, Mr. Walz.

Mr. WALZ. Thank you, Madam Chairwoman.

And again, I want to thank each of you for your thoughtfulness you put into that. I am always so proud of this Committee of serving on it, I feel like it is the way democracy should work, that suggestions are proposed by citizens, we work back and forth, and I would like to thank each of you.

Specifically on H.R. 1025, we worked on this quite a while. Mr. Garver, I want to thank you and EANGUS. In full disclosure I am certainly a life member of that organization and glad that you are there, but the thoughtfulness that all of you put into this of getting this right I am very appreciative of that, and I also think it is really critical that we do get that right, that this definition is narrowed to the point where we don't infringe upon some of those things, because it is not where any of us wanted to go with it. And I think Mr. Garver is right, I think the vast majority of the public doesn't understand this.

My concern was, it is that sense of honor that goes with people of getting their record exactly right and having to explain technically I am not truly a veteran. I do think it misses the point and could be a dangerous precedence that we don't honor those who serve in the capacity, whether it be support. And I look to it of all the years of training. There is an awful lot of Guard and Reserve folks down range performing professionally as well as any force ever has and they were trained by a lot of these folks that fall into this category, and so I very much appreciate that. We will watch very closely as it coming forward.

I also, Mr. Cohen, I appreciate your thoughtfulness on this, especially on our colleague Mr. Rehberg's second amendment protection. You made a great point of not linking money management skills to gun ownership, because I am thinking not a Member of Congress will ever hunt again if they try and do that. I am very appreciative of that, I think it is thoughtful making sure we get this right.

I had one question, Mr. Kelley, on H.R. 923, and I think some of these, and this is where I always struggle with when you hear my colleague, Mr. Hastings, describe the situation with his constituent. VFW I thought brought up a valid point on this of what is the VA capable of doing when we change some of these.

So Ray, I don't know if you have something on that you could—if there is anything or if I could get it from you later about some of the specifics on this trying to understand what the implications of the Pension Protection Act will be.

Mr. KELLEY. Thank you, Mr. Walz. Currently there are twelve provisions. And it appears to me that most of it is a piece of paper that you can take to the VA to show why that money should not be taken away from you, or factored in. Going forward with this it appears that it will be a little bit tougher. Determining pain and suffering payments will be much tougher. It is not a piece of paper that you can do. The Secretary will have to do this on a case-by-case basis, and it is going to be a bigger muscle movement that what they have to do at this point. That is one particular issue and there are a couple of others that I can get back with you on.

Mr. WALZ. Okay. Are there some fixes to this, you think, to make that easier? Or do you think it is the nature of this that there is going to be a fundamental shift if this happens? With all good intentions, but in the long run causing us more issues for a broader number of veterans? I am just trying to figure out as this moves forward where that goes.

Mr. KELLEY. I will get back with you on that as well.

Mr. WALZ. Okay.

Mr. KELLEY. Let me put a little thought into it.

[Mr. Kelley subsequently provided the following information:]

> After speaking with VA, they do not believe that this bill will affect their ability to accurately assess existing and the proposed value assessments on loss of property and medical and insurance reimbursements. Therefore, the VFW withdrawals its concern that this legislation will impose an undue burden on VA.

Mr. WALZ. No, very good. And again, I appreciate the thoughtfulness of this entire group. It certainly helps make our job easier and I yield back.

Ms. BUERKLE. Thank you, Mr. Walz. Unless either one of my colleagues have any further questions? Do you, Mr. Ranking Member?

Mr. MCNERNEY. Well yes, I do actually, if you allow that?

Ms. BUERKLE. Absolutely.

Mr. MCNERNEY. Thank you. Mr. de Planque, on your testimony regarding H.R. 1826 you mentioned anecdotal evidence that veterans are being taken advantage of for profit. Do you have some specific examples so we can get some idea of what we are talking about here?

Mr. DE PLANQUE. One of the things that we have been noticing happening in the arena, you know, we have service officers who are out there, you know, trying to help veterans, is that particularly in the area of elder care, and it was touched on by a number of people, the aid and attendants benefits and stuff like that. There are some predatory kind of bad actors who are swooping in and trying to take advantage of, you know, accessing a veteran's benefits and getting money back from them on it when these people are in a

particularly weak position to begin with. And that, as you know, in America in general, even outside the veterans community, elder care and how people transition into that area, and whether it is nursing homes, or pension, or various things, that there is a tremendous opportunity for predators in that area. And we have noticed over the last several years more incursions into the veterans community in that area because people are realizing that there is a substantial portion of the veterans community that is reaching that area. And it is, in terms of specific cases we can try and find some and see if we can get back to on some specific instances.

But you know, I mention it anecdotally in, you know, we have annual service officer schools where we will bring everyone together and it is something that they have definitely been voicing back to our national staff, of this is what is going on, you know, is there any way that, you know, we can try and move in? And I know responsible attorneys who are also, you know, involved in the process. They are concerned about that as well because you do not want to have the bad actors who are in there. And I know most of the VSOs, you know, we all do not charge veterans for any of our services. We are not there to take advantage of them. We are there to get all the benefit back to the veterans. And so that, when I mentioned the anecdotal evidence that is what I am talking about. Is specifically in that area, we have been seeing it more in the elder care and retirement home, and veterans going into old veterans home areas, people who are preying on that group.

Mr. MCNERNEY. I have one more question, if the Chairman will allow it? To Mr. Cohen, I see you are anxious to say something anyway. But I wanted to change the subject to H.R. 2349. You proposed that the Subcommittee remain focused on reforming the work credit system rather than adopting increasing training. Would this legislation that is proposed in your mind help? Or, would it help reduce the backlog, or not?

Mr. COHEN. Well I do not——

Mr. MCNERNEY. I know the backlog is an important issue to you.

Mr. COHEN. Yes, it is. And I think the biggest impediment to reducing the backlog is the present work credit system. Yet, training and assessment is certainly very important. But as a practical matter I do not believe that the VA is capable, at this time, of implementing further testing and assessment with the existing burden of the work credit system and the monitoring that it requires. The work credit system imposes tremendous burdens up online workers and supervisors. I just do not think that this legislation is actually going to accomplish anything. It is a wonderful idea, and it is necessary. Had the work credit system already been fixed, this training and accession program would be a perfect thing to go to. But without fixing the work credit system first I do not know how this would actually be implemented.

Mr. MCNERNEY. Okay, thank you. I yield back.

Mr. RUNYAN [presiding]. Thank you, Mr. McNerney. I apologize to everybody for having to step out. We had to deal with some of our current heroes actually being taken advantage of, and I had to do an amendment on the floor. I do not know if it has been talked about a little bit but Mr. Hall, you kind of touched on some of the things. I think the one thing that I think we disagree on is the

word disciplinary action. I like being forceful with that. I know we have had this discussion in previous hearings but to that fact I think we are both on the same page.

But I think what we are missing is the connection to the individual because we all know as individuals we have deficiencies. And I realize the data from the regional offices suggest one thing. But to be able to go down to the individual level and take care of those deficiencies because they do have to operate as a team. And like I think we agreed on, someone there 20 years should not be given the same training as a 2-year person. And it is being able to go in and give that person what they need to do their job. Do we have an understanding on that?

Mr. HALL. We do.

Mr. RUNYAN. I kind of feel like that is almost like the sticking point of the whole situation. But that is the direction we want to go. Because I really think it comes down to data collection. Where are the deficiencies, and how are we going to address them? Because obviously the VA says all the time training is the solution. No, it is proper training is the solution. I have heard that my whole life. My son was at a football practice the other day and it came out again. The football coach says, "perfect practice makes perfect." And if you are not perfecting your procedures and how you are adjudicating these claims, it is not going to happen. I just want you to know that is the intent of the bill and that we look forward to getting this worked out because I know you had a couple other issues with it.

Mr. HALL. Well primarily, Mr. Chairman, we are supportive of the intent. I want to make sure that is clear and I did not lose that in translation, that we are supportive of the intent of the bill because as I have appeared before this Subcommittee and others, other of my colleagues, training, testing, and accountability. And we have talked about that time and time again. So I am, you know, DAV is very happy to see this particular type of legislation being introduced. Specific language in it, those are some things that we would be happy to work with you, with the Subcommittee to, you know, to work out specific language of it if it makes it more conducive, you know, to the process.

We can agree or not agree on specific verbiage, like disciplinary action. But in the scope of the entire purpose and intent of the bill, we are with you on that particular aspect of it. And as, again, an organization that prides itself on practice makes perfect, training, 32 months of ongoing training beyond your initial 16 months, 32 months of ongoing training for area supervisors, supervisors, and all of the national service officers below, we are required to complete that 32 months of ongoing training and then when we get done we start again with new material because laws have changed, things, regulations have changed. So we are never out of training. So the first time I have been out of training is coming, you know, and being part of the legislative staff is the first time. But I am training in a different way at this point. So we are supportive of the intent of the bill. We would just like to make sure that if you could consider those recommendations for specific change in language.

Mr. RUNYAN. I do realize that a lot of you and I know the Ranking Member did also, used the word duplication of the previous law from 2008. I think there is some carryover. But I think this is actually taking it to a level to actually get it to work, make it apply, make it, we talk about efficiencies, I think more efficient and more tailored to the cause we have. Because obviously we are dealing with this massive backlog that we have to get out of our way. And that is ultimately the goal of the whole situation, to take care of those who take care of us. And I appreciate that.

I think you guys have probably touched on most of my questions. I will have to go back and read the rest of the transcript. With that, unless anybody else has any other questions? I know you were on your second round. Thank you all very much and we will have the next panel up.

Welcome. This panel consists of Mr. Thomas Murphy of the VBA, who is accompanied by Mr. Richard Hipolit from the Office of General Counsel, Department of Veterans Affairs. Mr. Murphy, you are now recognized for 5 minutes for your testimony.

STATEMENT OF THOMAS MURPHY, DIRECTOR, COMPENSATION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS

STATEMENT OF THOMAS MURPHY

Mr. MURPHY. Thank you, Mr. Chairman. Chairman Runyan, Ranking Member McNerney, and Members of the Subcommittee, thank you for providing the opportunity to present the views of the Department of Veterans Affairs on pending benefits legislation. Joining me today is Richard Hipolit, Assistant General Counsel. This is my first time speaking before the Committee and I would like to tell you that I consider it an honor and a privilege to be here before you today.

I would like to start out by apologizing to the Committee for the lateness of our testimony. I realize your time is valuable and that providing our testimony in advance gives you the opportunity to prepare for these hearings. I will make every effort to make sure that this is not repeated in the future.

H.R. 923, the "Veterans Pension Protection Act of 2011," would expand the existing exemption in 38 U.S.C. 1503(a)(5) by excluding two types of payments from determinations of annual income for the purpose of determining eligibility for improved pension; first would be reimbursements for expenses related to accident, theft loss, or casualty loss, and reimbursements for medical expenses resulting from such cause; and second regarding pain and suffering related to such causes. VA opposes excluding payments received for pain and suffering from accountable income because such payments do not constitute a reimbursement for expenses related to daily living. This provision with the bill would be inconsistent with a needs based program.

VA does not oppose the remaining provisions of this bill, which would exempt payments for reimbursement for accident, theft loss,

casualty loss, and resulting medical expenses subject to Congress identifying offsets for any additional costs. VA cannot determine the potential benefit cost because insufficient data are available regarding the frequency or amounts of such payments to the population of pension beneficiaries.

H.R. 1025 would add to chapter 1, title 38 U.S.C. a provision to honor veterans based on retirement status but who do not have qualifying service for veteran status under 38 U.S.C. 102(2). The bill states that such persons would be honored as veterans but would not be entitled to any other benefit by reason of this amendment.

Veteran status is conditioned on the performance of active military, naval, or air service. Under current law, a National Guard or Reserve member is considered to have had such service only if he or she, one, served on active duty; two, was disabled or died from a disease or injury incurred or aggravated in the line of duty during active duty for training; three, was disabled or died from an injury incurred or aggravated in the line of duty, or from certain medical conditions suffered during inactive duty training. VA does not support this bill because it represents a departure from the active service as the foundation for veteran status. VA estimates that there would be no cost benefit or administrative costs associated with this bill if enacted.

H.R. 1826 would amend 38 U.S.C. 5905 to reinstate in a modified form an earlier provision that had provided criminal penalties for charging improper fees in connection with representation in a claim for benefits before VA. Because this bill involves criminal benefits, courts are likely to interpret the phrase, "advice on how to file a claim for benefits," as referring to advice on how to complete an application for VA benefits. It would be unlikely to deter the solicitation or receipt of any fee or compensation for the provision of advice on how to transfer or shield financial assets in order to become eligible for certain VA benefits. The proposed penalty provision could seemingly be easily circumvented by charging for services other than those specified in the bill while also providing services that the bill is intended to cover.

VA supports the protection of claimants from unscrupulous fee practices, but we doubt that this bill would effectively address the entire scope of the problem. We defer to the Department of Justice on whether the new provision imposing criminal penalties would be enforceable as a practical matter.

H.R. 1898, the "Veterans Second Amendment Protection Act," would provide that a person who is mentally incapacitated, deemed mentally incompetent, or unconscious for an extended period will not be considered adjudicated as a mental defective for the purposes of the Brady Handgun Violence Prevention Act. We understand and appreciate the objective of the legislation, to protect the firearm rights of veterans determined by VA to be unable to manage their own financial affairs. We believe adequate protections can be provided on these veterans under current statutory authority. Under the NICS Improvement Act of 2007, individuals subjected to an incompetency determination by VA can have their firearm rights restored in one of two ways. By reversing the determination of incompetency, or by proving that they are not a threat to public

safety. Although VA has admittedly been slow in implementing this relief program, we now have a procedure in place and are fully committed going forward to implement this program in a timely and effective manner.

But exempting certain VA mental health determinations the legislation would create a different standard for veterans and their survivors than is applicable to the rest of the population. VA estimates that there would be no additional benefits or administrative costs associated with this bill if enacted.

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

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

Mr. RUNYAN. Thank you very much, Mr. Murphy. I know on the last panel they really discussed the involvement of the stakeholders and being involved in the examination process. Because obviously there is a deficiency there. Was it an oversight? Or you really just shut the door on them, and their ability to get involved in that?

Mr. MURPHY. What do you mean by the examination process?

Mr. RUNYAN. The testing process. They feel like they have been left out of the whole deal.

Mr. MURPHY. Are we talking about H.R. 2349?

Mr. RUNYAN. Yes.

Mr. MURPHY. Okay. We are not prepared to discuss that——

Mr. RUNYAN. You are not going to discuss it?

Mr. MURPHY. What I can tell you is that we are prepared to provide any technical assistance you may need between now and the write up coming up here shortly. And my staff is available to the Committee staff for any assistance that you may need.

Mr. RUNYAN. That was about half of my questions for this panel. But you talked a little bit about providing protections for our veterans from individuals taking advantage of them, that this may not go far enough and there may be backdoor ways. Do you see any way to be able to protect them and help with legislation so they are not being taken advantage of?

Mr. MURPHY. I think, do you want to make a comment?

Mr. HIPOLIT. Yes, I would like to address that if I could. I think the difficulty we have is that VA can only regulate people who practice before VA. We have good authority to do that now. We have a good program for accrediting representatives who represent people before VA. We have disciplinary proceedings that we can take for people and suspend or remove their accreditation to prevent them from practicing before VA. We can review attorneys' fee agreements for attorneys that practice before VA and we can actually tell the attorneys to refund fees that we consider to be unreasonable. So we have good authority for people who are actually practicing before VA.

For people who are may be just advising veterans and who do not actually come before VA to represent the veterans, we do not have much authority in that area now and it would be difficult, I think, for us to enforce in that area. So I think that this bill that is before the Committee now is intended to widen the scope a little bit and put some authority out there to take action against people who we cannot regulate under our authority.

The difficulty is that the proposed legislation is a criminal statute so it would be subject to enforcement by the Department of Justice rather than VA. We are not really sure how effective it would be from their standpoint. Under previous law, there was a provision that provided criminal penalties for charging excessive fees and it was not enforced very often. I think the U.S. Attorneys Offices were reluctant to bring those cases for one reason or another because of competing resources. As there were not very many prosecutions brought under the prior law, I am not sure how effective this would be. I think the Justice Department might have a better idea about that. But there are some concerns about whether it would be effective.

Mr. RUNYAN. In your experience, have any complaints come to you? And do you redirect them to the Department of Justice?

Mr. HIPOLIT. We have heard some complaints about various practices of people providing advice and charging for it who do not actually practice before VA and are outside our control. What we have done in those cases, we have referred some to State officials to see if there was any State law that might have been violated. We have also alerted bar associations to see if there is unauthorized practice of law going on. But as I have said, we do not have much authority in that area. So we have made some referrals. I am not sure what has come of that, if anybody has tried to bring enforcement action at the State level.

Mr. RUNYAN. That is all I have for now. Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Runyan. Concerning H.R. 923, your hang up seems to be with the pain and suffering clause. Are you, as an institution, concerned that pain and suffering awards might be too big? Or not too big, but big enough so that the veteran does not need assistance? Or I do not see why that would be the one provision that you are against.

Mr. MURPHY. Yes, sir. This is a pension program primarily based on needs and income of the individual. We do not know what the size or amount or the impact is going to be on the financial livelihood of that individual based on the compensation they received in the pain and suffering. Because it is a needs-based program, the dollars received there do not impact the veteran's life as we are talking about from accident, death, loss, and the other provision of the bill. That is primarily designed to make that individual whole again based on the losses they suffered.

Mr. MCNERNEY. Any idea how many veterans would fall into that category?

Mr. MURPHY. I do not know that, sir.

Mr. MCNERNEY. Can you get that to us? Can you get that kind of a number to us?

Mr. MURPHY. Yes, we will take that one for the record.

[The VA subsequently provided the following information:]

NOTE: The HVAC DAMA Minority Staff Director supplemented this deliverable after the hearing as follows: For the second deliverable, as we discussed last week, it would likely be more feasible for VA to indicate whether excluding pain and suffering from the calculation of income for determining pension eligibility would impose an administrative burden on the VA pension program since you indicated that the figure requested likely would be difficult to deliver.

Response: There is currently no tracking mechanism in place to determine the number of Veterans denied pension solely on excessive income that would have been reduced if allowed credit for monies obtained in the course of "pain and suffering." There would be an increased administrative burden to determine pension eligibility based on reducing income for pain and suffering proceeds. This would require additional development activities and determinations as to which part of the proceeds is from pain and suffering and which part is from other categories. This development would impact the number of claims completed nationwide.

Mr. MCNERNEY. Okay. Regarding H.R. 1025, the Guard and Reserve bill, is your basic argument the slippery slope? You are concerned that opening this up will create an avalanche of people that would want to be veterans? Is that the basic, is that the crux of your disagreement with that bill?

Mr. MURPHY. We would be certainly opening a door that has not been opened previously. Yes, that is correct.

Mr. MCNERNEY. Okay. Well I guess that is, that clarifies that. On H.R. 1826—well, actually I think I will skip over to H.R. 1898. What I heard you say was that you, what Mr. Hipolit—how do you pronounce that?

Mr. HIPOLIT. Hipolit.

Mr. MCNERNEY. Hipolit, I am sorry, say that it was not really needed. That piece of legislation was not needed because internal regulations are going to take care of that problem. Is that what you are saying?

Mr. HIPOLIT. Let me clarify. For people who are actually practicing before VA, say attorneys or service organization people or claims agents who actually come in and practice before VA, who submit things to us, who come in to hearings and so forth, I think we have very good regulations in place right now to take care of those people because we have the accreditation program, we have——

Mr. MCNERNEY. Well I am talking about the Second Amendment Protection Act.

Mr. MURPHY. Yeah——

Mr. HIPOLIT. Oh, oh, I am sorry.

Mr. MURPHY. I will take that one.

Mr. HIPOLIT. Okay.

Mr. MURPHY. There are two ways right now that a veteran that has a fiduciary appointed can seek relief under this act. We have regulations in place, a specific fast letter that went out last November. There have been 142 requests for relief. At this point we are averaging approximately 130 days to reach a decision on that, and we are going back in and trying to cut that timeline in half again. But the bottom line is, a veteran that is declared incompetent here has a relief method to address it with VA and has his rights restored, and that has happened in many instances.

Mr. MCNERNEY. Well on the earlier panel we heard one of the testifiers said that veterans would be reluctant to be classified as mentally incompetent for fiduciary reasons if it meant that their Second Amendment rights would be eliminated. So, I mean, that is a legitimate concern.

Mr. HIPOLIT. Yes, but there is a relief mechanism because as an initial mechanism you could have your competency restored. Then there is a petition for relief. If you can come in and demonstrate

that you would not be a threat to public safety to have a handgun, then we can provide relief and the person would be taken off the list.

Mr. MCNERNEY. And you are confident that that would be expeditious? If, I mean, the veterans, the VA, for all its virtues, is bureaucratic. And you do hear more often than not that things take longer than they should. Someone might have a 6-month waiting period, or a 1-year waiting period to have relief on that sort of adjudication? Is that going to be any different at this point forward?

Mr. HIPOLIT. Yes, I think initially we were kind of slow in getting a procedure in place to hear the petitions for relief. But we do have something in place now, since last fall, and I think there have been a large number of adjudications under that. I think it has been a timely system since we have actually gotten our procedures in place.

Mr. MCNERNEY. So by timely you mean 2 months? A year?

Mr. MURPHY. At this point with all of the ones that we are doing, which is 142 cases, we are averaging 130 days to complete those. That starts from when the letter was published from last November to now. The back half of that, the most recent cases, are running significantly shorter. We have an internal goal that we are driving to of 60 days.

Mr. MCNERNEY. Okay, thank you. I yield back.

Mr. RUNYAN. Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman. And thank you, Mr. Murphy, for your service, for being here, and for being a partner in getting it right for our veterans. And I want to just say I very much, the counsel and the input of VA is a very strong, it very strong weighs on us as we craft this legislation.

I want to go to H.R. 1025. We spent a lot of time, on this, thought about it. I would expect you to be in the position where you are at, and I am appreciative of that. Your job is to guard as it is written now that law and how we view that. And I understand. Any time you change a definition, especially one, veteran, that is pretty fundamental to everything else that comes afterwards. So I am very appreciative of where you are at. I am very appreciative of the cautiousness. I think Mr. McNerney was getting at it. I think he is right that you, and rightfully so. I do not make light of a slippery slope argument because I think it is legitimate in many cases. I just want to ask in this, this thing was crafted very narrowly. And being very conscious of that very point.

But I think as Mr. Garver said and many of us have recognized is we and our job on this side of the table is to be conscious of the societal changes and things that happened. And that Guardsman no longer looks the way they did 30 years ago. I think I could have made a case then even that 20 years of Guard or Reserve service would warrant that title of veteran. Not the, we differentiate already on what veterans benefits you get. My retired pay will not be the same as an active-duty command sergeant major, and rightfully so. It will be prorated to the time that I did. But we would each serve on that.

Is there any way that the VA, and I know we have run this by you, we have run it by your counsel or whatever, is this just one of those issues that is that bright line that you cannot cross and

say we support because of what it opens up? And I do not know if that is a fair question or not. I am just trying to get, because what I am trying to get across to you is we want this to work exactly right for you, and the concerns you are bringing up are all exactly valid. And I am appreciative of them. But I think our concerns and the changing nature of this warrants that this is a good piece of legislation. I will just get your insights. And I know when you are sitting at that table it is a little harder than just telling us.

Mr. MURPHY. Yes. Thank you for appreciating that. What I can do with this is take this back and discuss it with the Secretary's staff and possibly look for a way where we may be able to modify this bill and come back with a support of it.

Mr. WALZ. Well I would certainly appreciate that. And as I said, I think we are working together, majority, minority staff, and Senate, of trying to get there. I just want to make it very clear that I am very sensitive to where you are at on this. Very sensitive to the need to get this right. But I am also just trying to convey that there is a very strong sense amongst especially the Reserve component, you heard it here. This is a very emotional issue. There are some of these that rise to the top. This is just one as I think, you know, Chief Garver said, it is just about honor and they feel very strongly about it. I want to get this right and your input is absolutely critical. So I think that, Mr. Murphy, that is fair if you take it and try and see what you can do with the——

Mr. MURPHY. You stated a moment ago about the passion that is there behind the Guard and the Reserve members. That same passion exists in the VA for this. This was a very hotly contested and debated in discussion before we came out with an official position here. There is a whole lot of passion.

Mr. WALZ. I appreciate that.

Mr. MURPHY. There is passion about the service that the Guard and Reserve members have provided to this Nation, including myself. This bill directly affects me. The person they are describing right here is me.

Mr. WALZ. Yeah.

Mr. MURPHY. So I get this. And I understand.

Mr. WALZ. Well I appreciate that. I just, convey that on if you——

Mr. MURPHY. I will work with the VA staff and see if there is a way that we can get to yes with this and return that as a question for the record.

[The VA subsequently provided the following information:]

> After further consideration, VA has not changed its position regarding H.R. 1025, nor found a workable alternative that might ameliorate VA concerns. Please refer to VA's testimony to further analyze our position, as it remains unchanged.

Mr. WALZ. I appreciate that. Again, thank you both for your service. I yield back.

Mr. RUNYAN. Thank you, Mr. Walz. And for your passion on this, because you are in that wheel house also. And going back to H.R. 1898 and with the Second Amendment rights. Now how long did it take you to create the appeals process?

Mr. HIPOLIT. The NICS Improvement Act was enacted in 2008, I believe. And to be honest with you, we just got the procedure in place last year. So it was a very slow start, I will admit that. I think now we are up to speed. We are doing it in a timely manner.

Mr. RUNYAN. Okay. And that being do you have a percentage of reinstatement as they go through this process? I mean, how many people are actually being reinstated?

Mr. MURPHY. I do. I have specific numbers.

Mr. RUNYAN. Not that I agree with it being taken away in the first place, but.

Mr. MURPHY. As of May 2011, VA received a total of 142 requests for relief. Of those, VA restored competency to 6 individuals, granted the relief for 1 individual, and denied 91 requests for relief. There is a specific set of detailed criteria, outlined in the letter, that these are the items that must be met in order to provide relief. What we have done is written this in a way that it is not taken in a personal light. It is taken as, "is the individual a risk to the safety, to society or not?" "Does the individual have a history of violence?" It is outlined by bullet in detail when we would grant relief and when we would not. And those are the numbers that we have as of today, or as of May, excuse me.

Mr. RUNYAN. And I am very hesitant in taking that right away from anybody. I know that the Social Security Administration has a similar kind of criteria, except it goes to a judicial forum not a bureaucratic forum, which I think is a more sound way to do it. Not that I would totally agree with that either. But here you are having bureaucrats taking away people's constitutional rights and it is very, very frustrating to me. I am almost at a loss for words I think, kind of like Mr. Walz is with his bill. And it being a Second Amendment right it is just mind boggling that a bureaucrat can take that away, let alone a judge having that ability. I am just at a loss for words.

Do either of the other two gentlemen have any further questions? Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Chairman. I would ask if Mr. Murphy, you would you be able to provide the fast letter to the Committee?

Mr. MURPHY. Yes, sir.

[The VA subsequently provided the Fast Letter 10–51, dated November 22, 2011, from Thomas J. Murphy, Director, Compensation and Pension Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs, to Director (00/21), All VA Regional Office Centers, which appears on p. 56.]

Mr. MCNERNEY. Thank you. Regarding H.R. 1826, under the previous statute, the prior enactment of P.L. 109–461. How many, what was the prevalence of folks being fined and found guilty of criminal, or committing acts of soliciting, contracting, charging, or so on? What was the prevalence of violation?

Mr. HIPOLIT. Really, I cannot recall a single prosecution in the time I was involved in overseeing attorney fee matters. I just do not think it was being enforced as a criminal matter. We did pull the accreditation of some attorneys to practice before VA based on misconduct, but as far as criminal prosecutions, I just do not think they were being done in the time that I have been involved in it.

Mr. MCNERNEY. And that, at that point that would have been done through the DOJ as it would be with the new provisions that we are considering, is that correct?

Mr. HIPOLIT. That is correct. Because it is a criminal statute, the Department of Justice would have to enforce it, not VA.

Mr. MCNERNEY. So we are looking at the same situation potentially, where violators really are not prosecuted?

Mr. HIPOLIT. I think it would be up to DOJ to do it, and based on their priorities, or how strong they thought a case might be, they would use their discretion whether or not to prosecute.

Mr. MCNERNEY. Okay. Thank you. I yield back.

Mr. RUNYAN. Mr. Walz, anything further? Well Mr. Murphy and Mr. Hipolit, thank you for your testimony. And you both are excused. Mr. McNerney do you have anything else? Closing statement or anything? Well, I thank all of our witnesses today for your testimony. And we always value your input and look forward to working with you to perfect these bills.

I will remind everyone that the Subcommittee on Disability Assistance and Memorial Affairs will hold a markup at 2:30 p.m. next Thursday, July 14th in Room 334. If there is no further business, we are adjourned.

[Whereupon, at 4:25 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Jon Runyan, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

Good afternoon. The legislative hearing on H.R. 1025, H.R. 1826, H.R. 1898, H.R. 923, and H.R. 2349 will come to order.

I want to thank you all for attending today's hearing.

As the first order of business, I ask unanimous consent that all Members present be allowed to sit at the dais.

Having heard none opposed, so ordered.

I realize that there was a short turnaround time for the witness invitations to this hearing due to the recent holiday.

However, I am disappointed that the VA is again considerably late in submitting their testimony for this hearing.

It is my understanding that the written testimony submitted does not address H.R. 2349.

I am hopeful that the VA will be able to provide us with written testimony on that bill by close of business Monday, July 11th, so that we might be able to weigh the VA's input on that bill before next week's mark-up meeting of this Subcommittee.

Before I recognize Ranking Member McNerney and other Members of the Committee, I wanted to briefly touch on H.R. 2349—which I have introduced.

H.R. 2349, the Veterans' Benefits Training Improvement Act of 2011, aims to improve benefit claims processing through focusing on individualized training and skills assessment.

The bill creates an individualized training program for all employees and managers who process or supervise the processing of disability claims.

Annually, these employees would take a test that assesses their skills relating to claims processing.

Following this test, VA will create an individualized training program for each employee who took the test. This individualized program will focus on the areas of the test where the employee showed the greatest deficiency or need for improvement.

This focus on individual deficiencies will avoid the redundant blanket training that many employees already endure.

There is no reason why an employee of 20 years should be taking the same training as an employee who has been in the VA for only 2 years.

I hope that by establishing this program we are able to encourage employees and managers alike to slow down and do the claim right the first time. Improving the number of claims sent out the door is not enough if the veteran is continually seeing mistakes being made on his claim. Quality must be improved, and the only way to improve quality is make sure that VA employees are properly trained.

While I understand that some believe this bill is very similar to the certification testing that Congress required a few years ago, it is different and needed because this bill provides the individualized metrics and required follow through with training and retesting necessary to be truly effective.

I ask all of today's witnesses to summarize your written statement within the 5 minutes allotted, and without objection, each written testimony will be made part of the hearing record.

Before we begin with testimony, I now yield to the distinguished Ranking Member from the great State of California for any remarks he may have.

Prepared Statement of Hon. Jerry McNerney, Ranking Democratic Member, Subcommittee on Disability Assistance and Memorial Affairs

The purpose of today's hearing will be to explore the policy implications of five bills, H.R. 923, H.R. 1025, H.R. 1826, H.R. 1898 and H.R. 2349.

The Pension Protection Act of 2011, H.R. 923, introduced by Mr. Alcee Hastings of Florida, would prohibit VA from counting casualty loss and pain and suffering payments as income for the purposes of determining eligibility for the non-service-connected pension benefit.

I think this is a worthwhile bill that is on track from a policy perspective and I look forward to advancing it to the Full Committee.

The second bill on today's agenda, **H.R. 1025**, sponsored by Mr. Walz, a hard-working Member of this Committee, would grant honorary veteran status to retired members of the Guard and Reserve who completed 20 years of service.

I support this bill but understand the reservations concerning moving the envelope on what type of service accords veteran status as outlined in VA testimony and in that of some of the VSOs.

H.R. 1826, introduced by Mr. Bilirakis, would provide criminal penalties against any person who solicits, contracts for, charges, or receives any fee or compensation from a veteran for advice on how to file a benefits claim or the preparation, presentation, or prosecution of a claim before the date on which a notice of disagreement is filed in a proceeding on the claim.

Our Nation's veterans have sacrificed so much and we must protect them from those bad actors looking to take advantage of the benefits they have earned and deserve.

However, I have heard concerns that this bill may create unintended negative effects on veterans seeking help from available sources, as well as whether imposition of criminal provisions are necessary in light of current law and regulations or even realistically enforceable.

Next, **H.R. 1898**, **the Veterans 2nd Amendment Protection Act,** sponsored by Mr. Denny Rehberg of Montana would require that a judicial authority adjudicate a veteran or other beneficiary in need of fiduciary assistance as mentally defective for the purposes of reporting to the DOJ National Instant Background Check System (NICS), instead of the current system which requires VA to report these individuals to NICS.

The final piece of legislation, **H.R. 2349**, **the Veterans' Benefits Training Improvement Act,** is your bill, Mr. Chairman which attempts to hold the VBA to greater testing and training requirements.

I applaud your effort. Nonetheless, I have concerns that its provisions may be duplicative or run counter to the law on testing, certification and training as established in P.L. 110–389.

However, I understand that VA reports that it received the bill in too late of a time frame to provide views and I want the Subcommittee to have the benefit of all stakeholders before making a final decision on this measure.

These are all worthwhile measures that deserve consideration by this Subcommittee.

I thank the Members for their thoughtful legislation.

I thank our other esteemed witnesses for joining us today and look forward to receiving their testimonies.

Thank you and I yield back.

Prepared Statement of Hon. Alcee L. Hastings, a Representative in Congress from the State of Florida

Chairman Runyan, Ranking Member McNerney, and Distinguished Members of the Subcommittee:

Exactly 1 year ago, I testified before this Subcommittee on H.R. 4541, the *Veterans Pensions Protection Act of 2010.* On July 27, 2010, the bill was marked up and forwarded to the Committee on Veterans' Affairs by voice vote. On September 28, 2010, the bill passed by voice vote as part of H.R. 6132, the *Veterans Benefits and Economic Welfare Improvement Act of 2010.*

Indeed, the *Veterans Pensions Protection Act* is a common sense and much-needed piece of legislation. It is also well supported by numerous veterans' organizations. I am grateful for the opportunity to once again testify in favor of this important legislation and thank the Subcommittee for holding today's hearing. However, I am saddened that the Senate did not consider this bill before Congress adjourned last year. It is my sincere hope that Congress can work together to pass this legislation in an effort to build better lives for all of America's veterans and their families.

I would also like to welcome and recognize the veterans in the room today and express my gratitude for their service to our Nation. Each of you has served our Nation with honor and dignity and for that I am truly humbled by your service. Furthermore, I would like to recognize and thank the countless veterans' organizations for their ongoing commitment to our veterans.

I decided to introduce the *Veterans Pensions Protection Act* after one of my constituents, Mr. Kerry Scriber, a navy veteran with muscular dystrophy, had his pension abruptly cancelled. Mr. Scriber did not break the law, nor did he commit any crime. In March 2008, he was hit by a truck when crossing the street in his wheelchair with his service dog on his way to the pharmacy. He flew 10 feet into the air and landed head-first on the pavement, suffering broken bones and teeth. Additionally, his service dog was injured and his wheelchair destroyed.

As a law-abiding citizen, Mr. Scriber reported the incident to the Veterans Administration (VA), including the insurance settlement payment that he received from the driver's insurance to cover his medical expenses and the replacement cost of his wheelchair. As a result, the VA cancelled his pension benefits for an entire year.

When assessing a veteran's eligibility for a pension, the VA considers a variety of sources of revenue to determine a veteran's annual income. If this amount exceeds the income limit set by the VA, the veteran does not qualify for a pension or loses their benefits. Currently, the VA considers any reimbursement that compensates a veteran for his or her expenses due to an accident, theft, or loss as income.

Under current law, if a veteran is seriously injured in an accident or is the victim of a theft and receives insurance compensation to cover their medical expenses; the replacement cost of the stolen items; or for pain and suffering, they will likely lose their benefits. In effect, the law punishes veterans when they suffer from such an accident or theft.

Mr. Scriber reached out to the VA several times, asking to have his pension reinstated because he could not cover his medical bills; replace his wheelchair; pay for daily expenses; or afford his mortgage without his pension. Each time, the VA refused to reinstate his pension. He had fallen below the poverty line and was on the verge of losing his home and joining the ranks of over 100,000 homeless veterans nationwide. In the spring of 2009, Mr. Scriber reached out to my office in desperate need of assistance. I contacted the West Palm Beach VA medical center and wrote several letters to Secretary Eric Shinseki, however they did not change their policy, nor did they restore Mr. Scriber's benefits for a whole year.

I understand that the VA faces greater challenges as more servicemembers return from the battlefield, but we must do everything in our power to ensure that our veterans have the benefits they rightly deserve. I am distraught that the VA can move so expeditiously to cancel the pension of an unemployed and disabled veteran without notice. The VA has a moral obligation to care for our veterans and their families. It is disheartening that veterans are overlooked and mistreated at times due to flaws in VA regulations.

The *Veterans Pensions Protection Act* amends the U.S. Code to exempt the reimbursement of expenses related to accidents, theft, loss or casualty loss from being included in the determination of a veteran's income. This will guarantee the continuity of our veterans' pensions and that no veteran will have their benefits unfairly and abruptly depreciated or cancelled. My distinguished colleague from Montana, Senator Jon Tester, has introduced a companion bill after a similar incident happened to one of his constituents. The Senate Committee on Veterans' Affairs held a hearing on the bill last month.

Clearly, there is something wrong with our current law. It is imperative that the VA ensure that no veteran face the grave difficulties that Mr. Scriber did. We must enact regulations that help veterans live better lives, not hurt them, which includes issuing pension benefits to veterans who legitimately meet the income criteria and rely on such assistance to survive. Our veterans have shown their devotion to our Nation with their bravery and sacrifice. We must now prove our dedication to those heroes by treating them in accordance with the values and ideals upon which this great Nation was founded.

Mr. Chairman, Ranking Member McNerney, Distinguished Members of the Subcommittee, I ask for your support of this important legislation. This concludes my testimony. I am now pleased to answer any questions. Thank you.

Prepared Statement of Raymond Kelley, 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 Subcommittee for the opportunity to present its views on these bills.

H.R. 923, Veterans Pensions Protection Act of 2011

The VFW appreciates the intent of this legislation, but believes it will impose an undue burden on VA. It would require VA to make further determinations regarding replacement values in cases of insurance settlements, thus reducing resources available to the timely processing of other pension claims. These additional decisions will further delay and complicate a relatively simple benefit. We urge the Committee to craft a less burdensome method for accomplishing this laudable goal.

H.R. 1025, To amend title 38, United States Code, to recognize the service in the reserve components of certain persons by honoring them with status as veterans under law

The VFW strongly supports this legislation and its companion bill in the Senate, S. 491, which would give the men and women who choose to serve our Nation in the Reserve component the recognition that their service demands. Many who serve in the Guard and Reserve are in positions that support the deployments of their active duty comrades to make sure the unit is fully prepared when called upon. Unfortunately, some of these men and women serve at least 20 years and are entitled to retirement pay, TRICARE, and other benefits, but are not considered a veteran according to the letter of the law.

H.R. 1826, To amend title 38, United States Code, to reinstate penalties for charging veterans unauthorized fees

The VFW strongly supports legislation that would make it a crime for individuals or companies to charge veterans for assistance in applying for disability benefits. Federal law prohibits charging fees for a disability claim, but VA is currently unable to enforce the law as there are no penalties or fines imposed. H.R. 1836 would make it a misdemeanor with penalties and up to 1 year in prison. Protecting our veterans from companies looking to make a profit off their service and sacrifice will give many veterans peace of mind when filing a disability claim. The VFW applauds this change in law, and looks forward to its enactment.

H.R. 1898, Veterans 2nd Amendment Protection Act

The VFW supports H.R. 1898, which would provide a layer of protection for veterans who might be seeking or undergoing mental health care for service-related psychological disorders from losing their Second Amendment right. Adding a provision that will require a finding through the legal system that the veteran's condition causes a danger to him or herself or others will prevent a veteran's name from being automatically added to Federal no-sell lists.

H.R. 2349, The Veterans' Benefits Training Improvement Act of 2011

Chairman Runyan, thank you for seeing the importance of producing quality disability claims. The VFW agrees that to successfully reduce the backlog and to fix the claims processing system, producing a quality claim the first time is a critical part of that success. Your bill, H.R. 2349, begins the task of ensuring VA employees who process claims have core competencies and retain those competencies in an occupation that is always changing by evaluating their skills. However, much like the "Employee Certification Act of 2008," now section 7732A of title 38, U.S.C., this bill is a container that will be filled with a VA solution. As we have found with the Employee Certification Act, that training solution has not been beneficial in improving quality claims. The VFW's concern is that VA's solution will not be geared toward truly improving quality, but will only be training that conforms to the law, failing to achieve the goal of ensuring that claims processors have the tools they need to produce quality work.

A more specific evaluation and training system is needed to ensure our mutual goal of increasing quality claims. To do this, the VFW believes the training and evaluation should be based on the findings of the Systematic Technical Accuracy Review system (STAR). Each month, STAR reports on the quality of each Regional Office. To truly improve quality, training should be ongoing and based on the findings of the STAR report, and conducted monthly to correct deficiencies. Tying quality assurance with quality control will ensure that VA employees are being trained on issues that have negatively impacted quality claims. Also, the VFW suggests that

the report to Congress should have an explanation of how the assessments were conducted. This explanation should include the type of assessment that was conducted and who was responsible for the evaluations. Basing success of training on assessment results alone will not provide a full picture of the quality of the training.

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 Ian de Planque, Deputy Director, National Legislative Commission, American Legion

EXECUTIVE SUMMARY

- H.R. 923: American Legion supports
- H.R. 1025: American Legion neither supports nor opposes
- H.R. 1826: American Legion supports
- H.R. 1898: American Legion supports
- H.R. 2349: American Legion supports in principle with reservations

Chairman Runyan, Ranking Member McNerney, and Members of the Committee, thank you for this opportunity for The American Legion to present its views on the following pieces of pending legislation.

H.R. 923: Veterans Pensions Protection Act of 2011

This bill would exclude from annual income, for purposes of eligibility for pensions for veterans and their surviving spouses and children, reimbursements resulting from: (1) any accident; (2) any theft or loss; (3) any casualty loss; (4) medical expenses resulting from any such accident, theft, or loss; and (5) pain and suffering (including insurance settlement payments and general damages awarded by a court) related to such accident, theft, or loss.

Currently, any money received from an insurance claim, court judgment, or injury settlement counts toward a veteran's income when the VA determines pension eligibility. This means low-income veterans who are compensated even for small settlements risk losing their pensions. The bill seeks to change the rules surrounding the income eligibility rules. Veterans should not have to worry about losing their pensions because they became victims by some other person's actions.

The American Legion supports this bill.

H.R. 1025: To amend title 38, United States Code, to recognize the service in the reserve components of certain persons by honoring them with status as veterans under law

The purpose of this legislation is to "honor as a veteran" those servicemembers who complete 20 years of service in the Guard or Reserve components, yet "not for any purpose of benefits." This represents an unusual distinction which requires further clarification. "Veteran" as a legal status confers certain benefits. Title 38 is quite clear in providing specific definitions. There are legal considerations for "claiming veteran status improperly" here and elsewhere that carry serious consequences.

If someone serves in the reserve components and chooses to call themselves a veteran yet not hold out that distinction for any legal benefit, it should not take an act of Congress to allow them to. If instead a group of servicemembers are seeking recognition for their service and will derive benefit from that recognition, then this should be acknowledged. This bill seems squarely in a no-man's land between these two possible scenarios.

Certainly, the role of the Reserve Component service-member has changed since the Gulf War that began in 1990. Prior to that war the reserve component was regarded as a strategic force to be called upon when greater mobilization of the armed forces was required for our national security. However, much of the combat power that comprises our warfighting efforts now resides in the reserve component. For this reason, the reserve component has changed from a strategic force to an operational force. Thus, in a wartime era where we as a Nation are more reliant on the Guard and Reserve, it is imperative that earned benefits fairly reflect level of sacrifice. The American Legion will continue to review the issue of fair entitlements for Reserve and Guard members to develop a fair and complete organizational resolution that supports fair equity in benefits for all who have served.

However, in the case of this piece of legislation, there still remain too many unanswered questions, and as The American Legion is a grassroots organization deriving its operational mandate from the will of the 2.4 million members, we cannot support or oppose this legislation without a more clear position in the form of a resolution provided by membership.

The American Legion neither supports nor opposes this legislation.

H.R. 1826: To amend title 38, United States Code, to reinstate criminal penalties for persons charging veterans unauthorized fees

This bill does exactly what is stated in the title, reinstating criminal penalties for those who seek to exploit veterans with unauthorized fees. The American Legion supports this needed legislation, and recognizes its importance in the changing landscape of veterans benefits.

As a greater proportion of veterans are reaching retirement age and older, the group is growing increasingly vulnerable to predatory influences already preying on the segment of the population requiring elder-care. As this trend continues, the potential for fraud increases more and more. Already The American Legion has recognized anecdotal evidence of veterans being taken advantage of for profit. This practice is particularly despicable when it is considered the majority of veterans falling prey to predatory schemes are those in need of non-service-connected pension, and therefore the most financially needy of veterans. This practice cannot continue.

The American Legion does not and will not charge veterans for assistance with their claims for deserved benefits. While we recognize some parties may justly charge veterans for services, particularly at the higher court levels, this is indeed an area where the veterans most deserving of benefits are seeing their earned benefits leached away. Real consequences are needed to help curtail this practice.

The American Legion supports this legislation.

H.R. 1898: Veterans 2nd Amendment Protection Act

The American Legion firmly supports the right of all Americans to keep and bear arms as protected in the Bill of Rights. We support this legislation because it recognizes certain provisions of the veterans disability process are separate and distinct from those in other portions of the law, and there should not be an automatic transferability of findings.

Put simply, a veteran found incompetent to manage their own funds, as may be the case in fiduciary findings, is not necessarily incompetent to make other choices about their life, such as the responsible use of firearms. Often findings in a veterans disability case may reflect competency issues with finances which in no way reflect their rest of their capacity to make responsible and adult choices about behavior inherent to participation in polite society.

In some ways, an automatic structure to the law reinforces already negative stereotypes about "crazy post-traumatic stress disorder (PTSD) veterans" and "Rambo like sprees" when the facts clearly bear out the reality is far to the contrary. The vast and overwhelming majority of veterans suffering from mental disorder suffer only partially, and while they may have diminished emotional performance necessitating compensation, they are hardly unfit to make adult decisions and live their lives responsibly. When stigmas are reinforced, they unnecessarily contribute to the problem of veterans refusing to seek treatment because of associated stigma, and they therefore compound their disability by letting it remain untreated.

The law still allows for veterans to be found a by judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others, so this is not a wholesale removal of a bar to truly dangerous individuals. This merely removes the unjust situation wherein veterans are judged solely by a class to which they belong, and not due to the individual merits of their situation.

The American Legion supports this legislation.

H.R. 2349: Veterans' Benefits Training Improvement Act of 2011

This bill is intriguing in principle and addresses in some way a key concern of The American Legion regarding the operation of the claims benefits system, namely the lack of consequences to VA employees for failing to understand the system they are implementing. As it presently stands, veterans and veterans alone bear the lion's share of consequences from faulty decision-making. This is fundamentally unfair in a system ostensibly designed to compensate them for service derived disabilities.

While this proposal is intriguing, there are some concerns which, if properly addressed could make the overall proposal a helpful tool in moving the benefits system in the direction of providing the aid to veteran as intended.

The bill proposes an annual assessment of skills of appropriate employees and managers, with a required remedial development plan demanded when employees and managers prove deficient in areas identified by testing. While the concept behind this is laudable, there is already certain required testing, and perhaps the real question is a lack of enforcement or consequences for testing already in place. Certainly, there have been anecdotal complaints from employees of being managed by personnel with no knowledge of the required tasks. This is problematic in some senses, because in order to develop an effective management plan one should certainly have knowledge of the operations being performed.

Any remedial program should be conducted with the ultimate aim of improving the overall operations. As The American Legion has previously stated on numerous occasions, there is a fundamental flaw in VBA's error reporting system in that it does not have a mechanism to direct training. If there is to be testing of skills, this also should naturally flow into directing a training mechanism. If a child fails all of the problems on a math test relating to binomial equations, a teacher or parent knows to work with that child on binomial equations. Similarly, if the entire class or a lion's share of the class fails the same problems, the teacher can realize there may be systemic inadequacy in how the portion of the class relating to binomial equations is being taught. This is what The American Legion believes must drive VBA's training regimen.

Whether though testing or examination of errors through STAR and evaluation of common errors at the Board of Veterans Appeals and the Appeals Management Center, VBA must find a way to identify their weak points and strengthen them.

In principle, The American Legion believes this legislation could, with some refinement to ensure it meshes more properly with existing testing structures, be helpful in changing the problem with training as outlined above. Follow through to ensure compliance will be essential, and as we have been previously critical of VBA's policy of granting bonuses while failing to meet mission goals, perhaps some mechanism could be devised to also tie knowledge of material to bonus criteria, in addition to meeting mission goals. We cannot afford a repeat situation, such as in 2010, where VBA saw a decrease in accuracy rate, and an increase in number of claims pending over 125 days, and yet the average Senior Executive Service bonus in VBA exceeded the annual income of a veteran living on pension.

The American Legion supports this bill with reservations, related to implementation.

As always, The American Legion thanks this Committee for the opportunity to provide commentary and to explain the position of the over 2.4 million veteran members of this organization.

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

EXECUTIVE SUMMARY

H.R. 2349—the *Veterans' Benefits Training Improvement Act of 2011* would direct the Secretary of Veterans Affairs to annually assess the skills of certain employees and managers of the Veterans Benefits Administration.

- DAV supports the intent of this legislation to train, test and hold accountable all employees and managers involved in claims processing, however Congress should first enforce existing testing requirements before moving new legislation.
- VBA training and testing programs must be fully integrated with existing and new quality assurance and quality control programs to ensure that claims are done right the first time.
- If new testing requirements are to be implemented, VBA must be required to consult with VSO stakeholders and employee representatives in developing such tests.

H.R. 1025—would recognize, as veterans, members of the reserves who retire due to age; however, these individuals would *not* be entitled to benefits by virtue of this status alone. DAV is concerned about creating misunderstanding in the American public about who is a "veteran", while also causing confusion amongst reservists as to their entitlement to veterans benefits.

H.R. 1826—would establish criminal penalties for persons unlawfully charging veterans unauthorized fees for claims representation. DAV supports this legislation in order to strengthen legal protection for disabled veterans' resources.

H.R. 1898—the *Veterans 2nd Amendment Protection Act* would prevent veterans from being adjudicated as mentally incompetent to purchase a firearm without an order or finding from a judge, magistrate or other judicial authority. DAV has no position on this legislation.

H.R. 923—the *Veterans Pensions Protection Act of 2011* would exclude from annual income calculations for non-service-connected pension benefits, insurance reimbursements resulting from accidents, theft or loss. DAV does not oppose passage of this legislation.

Chairman Runyan, Ranking Member McNerney and Members of the Subcommittee:

Thank you for inviting the Disabled American Veterans (DAV) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit organization comprised of 1.2 million service-disabled veterans focused on building better lives for America's disabled veterans and their families.

Mr. Chairman, at the Subcommittee's request, DAV is pleased to be here today to present our views on the bills under consideration by the Subcommittee.

H.R. 2349, the Veterans Benefits Training Improvements Act of 2011, would require appropriate Veterans Benefits Administration (VBA) employees and managers involved in processing claims for compensation or pension benefits to have their skills assessed annually. Any employee or manager who receives a less than satisfactory result on any part of the assessment would be subject to remediation to address each deficiency in their skills. The legislation also requires each of these employees and managers to have individualized training plans developed and implemented related to their skills or lack thereof. If after two opportunities for remediation, the employee or manager is still unable to receive a satisfactory result on their assessment, they would be subject to disciplinary actions. The legislation also requires an annual report detailing the results of the new annual skills assessments, including a summary of the remediation efforts and disciplinary actions.

Mr. Chairman, DAV has long supported the intent of this legislation: to require testing, training and accountability for all employees and managers involved in processing claims for veterans disability compensation benefits. Like you, we believe regular testing of all relevant employees and managers is an effective way to determine if they have the requisite skills to properly perform their jobs. When testing finds gaps or deficiencies in the skills or knowledge required to properly process veterans' benefit claims, it is imperative that additional, targeted training be provided to those employees or managers in order to bring their skills up to the level required by their positions. However, should repeated attempts to correct such identified deficiencies be unsuccessful, it is incumbent upon VBA to take appropriate personnel actions so that only qualified employees and managers are involved in processing claims. Only through such training and testing, as well as comprehensive quality control measures, can VBA develop a claims processing system that provides both accurate and timely results for disabled veterans, their loved ones and survivors.

DAV's employee training and development program includes significant training and testing requirements for each of our approximately 300 National Service Officers (NSOs) and Transition Service Officers (TSOs). Each of them are required to successfully complete our comprehensive 32-month Structured and Continued Training program approximately every 3 years, which includes numerous examinations that must be passed in order to continue moving forward. We hold our supervisors to the same high standards set for the personnel they manage, including all testing requirements.

However, while we agree that new testing requirements may be necessary at VBA, we would recommend that before attempting to enact new legislation, Congress should first examine how similar laws already on the books are being implemented and enforced. Perhaps more importantly, we believe it is imperative that all training and testing programs are made part of and fully integrated within existing and new quality assurance and quality control programs. The goal must be to create a continuous improvement program that identifies employee errors, as well as systemic flaws and weaknesses before they lead to inaccurate decisions for veterans.

Mr. Chairman, as you know Public Law 110–389, the Veterans Benefits Act of 2008, which was enacted on October 10, 2008, required VBA to put in place a certification examination process for VBA employees and managers involved in processing claims, which included some language very similar to language found in H.R. 2349.

Yet, almost 3 years after enactment of that legislation there are still gaps in and problems with this testing process. While certification exams were developed for Veterans Service Representatives (VSRs), Rating Veterans Service Representatives (RVSRs) and Decision Review Officers (DROs), there are not yet any examinations for coaches, supervisors or managers in VBA Regional Offices (ROs).

Although the law required it, VBA did not consult with "interested stakeholders" in developing these examinations; neither DAV nor other veterans service organizations involved in claims process were consulted. Considering DAV's role, experience and expertise in the processing of claims for disability compensation, we believe VBA would be well served to consult with DAV and other VSOs when developing tests or examinations for their employees and managers.

While the intention of P.L. 110–389 was to ensure that all relevant VBA employees had the requisite skills to do their jobs, we have been told that the examinations are primarily being done only when there is a GS-level grade increase or other promotion under consideration. We have also heard complaints that the examinations do not properly assess the skills or knowledge required for each position. There have also been some reports that early versions of the examinations resulted in extremely high failure rates. We would encourage the Subcommittee to require VBA to provide comprehensive information on the development and implementation of the certification examinations required by section 7732A of title 38, including examinations for managers. While there are still problems and questions related to the implementation of these certification examinations, DAV believes it would be premature to insert into title 38 a new section 7732B creating an annual employee assessment program without first fixing the problems with the existing testing program created by section 7732A.

While testing and training are essential to reforming the claims processing system they must be integrated into VBA's quality assurance and control programs to provide effectiveness. Results of employee testing do not just point out individual weaknesses that must be addressed; they also reveal systemic problems in both the claims process as well as employee training programs themselves. Unless there are direct linkages between training, testing and quality control, VBA will miss the opportunity to take full advantage of the myriad of data that exists, including STAR reviews, coaches reviews, Board of Veterans Appeals remands and other quality assurance programs. VBA may want to consider whether to consolidate training, testing, and quality control programs in a single location under the control of the Compensation Service.

Additionally, we offer the following recommendations to strengthen the language in H.R. 2349 should this or something similar be advanced by the Subcommittee. As introduced, the bill would require that the Secretary, ". . . annually assess the skills of appropriate employees and managers . . .". While we understand that the term "assess" is intended to be mean an objective test, the terminology is not specific enough and should be clear on the type of assessment required. Since section 7732A of the statute that would precede this new section uses the term "examination", we would recommend that more specific language be used to indicate exactly what type of assessment is intended in a new section 7732B.

We also recommend that the Subcommittee consider further defining who the "appropriate employees and managers" would be. In particular, DAV believes that coaches, supervisors and managers who have the authority to overrule the judgment of an employee should be held to the same testing standard as that employee. It is important for any new legislation to specify exactly which employees and managers to be tested annually, as well as what testing requirements for managers that are substantially similar to those taken by the employees they supervise.

Likewise, DAV strongly recommends that language about test development, similar to that already in section 7732A, be included in any new testing legislation. This would allow proper consultation with VSO stakeholders, as well as employee representatives, so that our input can be fully integrated in the development and implementation of new testing procedures.

Moreover, DAV recommends that the Subcommittee include new language to ensure that the results of any new testing be used to identify not just employee deficiencies, but also problems in the training and claims processing systems. All quality assurance and control measures, whether for employees, stations or the entire claims processing system, should be aggregated and analyzed together in order to identify error trends. For example, if a statistically relevant number of employees all fail a particular part of a skills test or exam, VBA must not just remediate those employees, but also consider whether there are system-wide problems related to this aspect of the job, or whether training modules need to be changed, or whether the test itself needs to be changed. The new Veterans Benefits Management System should serve as the backbone to bring together all of this separate data into a uni-

fied quality control system that is continuously using test results to strengthen training and to strengthen claims processing accuracy.

Finally, we strongly recommend that the Subcommittee change the term "disciplinary action" to "personnel action", which accurately conveys the importance of individual accountability without needlessly appearing to be punitive. Disciplinary actions imply misconduct or the breaking rules or laws. Employees who perform unsatisfactorily on tests or who are unable to properly perform their jobs may need to be moved out of their position, which should not be seen as a disciplinary action or punishment.

Mr. Chairman, like you, we believe that training and testing are important components of a benefits system designed to decide each claim right the first time. However, we believe Congress must first examine if and how current training and testing requirements are being implemented and enforced before adding new testing requirements,. More importantly, we believe that training and testing must be fully integrated with quality assurance and quality control programs to truly reform the claims processing system and would welcome the opportunity to work with the Subcommittee towards that goal.

H.R. 1025 would amend title 38, United States Code, by recognizing as veterans those members of a reserve component of the armed forces who are entitled to retired pay for nonregular service. Should this legislation be passed, it would honor this group of reserve component retirees with the status of veteran; however, this new status alone would *not* entitle these individuals to any benefit provided to those who served on active duty.

DAV does not have a resolution on this matter. We are concerned, however, that measures such as this may lead to a misunderstanding in the minds of the American public about those veterans who earned the designation of veteran by virtue of their active duty service, compared to those who would be granted the honorary title of veteran. Moreover, we feel a subsequent confusion might be created amongst reservists as to exactly what benefits they would be entitled to receive.

H.R. 1826 would institute criminal penalties for persons charging veterans unauthorized fees for representation before the Department of Veterans Affairs (VA). Specifically, this bill would establish penalties, including fines and/or imprisonment of not more than 1 year as provided under title 18, for anyone who solicits, contracts for, charges, receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation for advice on how to file a claim for benefits or the preparation, presentation, or prosecution of a claim before a claimant has submitted a "notice of disagreement" (NOD) in a proceeding on the claim.

While DAV has no specific resolution on this matter, we see the intent of legislation as vital to the protection of veterans' resources, which are often limited or fixed. The process upon which veterans, their families and beneficiaries receive benefits is designed so that they will receive the full measure of aid from disability compensation and other monetary payments without unnecessarily having part of that benefit diverted into the pockets of others who have no entitlement to them. Although current law only allows attorney's to collect fees for representation once a claimant enters into the appellate process, it *does not* include penalties for anyone who unlawfully collects fees for representation prior to an NOD being filed. If enacted, this legislation would codify criminal penalties in order to better protect veterans from such abuse.

Although DAV has not yet adopted a specific resolution on this particular matter, we support passage of H.R. 1826.

Mr. Chairman, we would also note that from the inception of a claim and through all phases of the process, a claimant can obtain professional quality representation at *no cost* from accredited Veterans Service Organizations (VSOs), such as DAV, or from other accredited organizations. Although the current process allows an attorney to collect fees from a claimant we continue to be concerned that there is no limitation on the amount of fees that may be charged by attorneys for representing a veteran. During our 2010 National Convention DAV's membership adopted resolution #288 calling for legislation to provide a reasonable cap on the amount of fees an attorney can charge veterans for benefits counseling and claims services before VA and we urge the Subcommittee to consider such legislation.

H.R. 1898, the Veterans 2nd Amendment Protection Act, would clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent without an order or finding from a judge, magistrate or other judicial authority. This legislation provides that, in the absence of a judicial determination of mental incompetency, VA would be prohibited from reporting an individual veteran's identity or competency status to any authority that could restrict that veteran's ability to purchase a firearm.

DAV has no resolution on this matter and takes no position on this bill.

H.R. 923, the Veterans Pensions Protection Act of 2011,would exempt or exclude reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to non-service-connected pension benefits. This legislation is intended to ensure those individuals who are in receipt of this income limited benefit will not have their benefit reduced because their loss was covered by insurance.

Although this issue is outside the scope of our mission we would not oppose passage of H.R. 923.

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

Prepared Statement of Al Garver, Executive Director, Enlisted Association of the National Guard of the United States

Chairman Runyan, Ranking Member McNerney, Members of the Committee, thank you for the opportunity to testify today.

As the Executive Director of the Enlisted Association of the National Guard of the United States (EANGUS), I am here to speak on behalf of the 412,000 soldiers and airmen currently serving in our Nation's National Guard. In this instance, I am also speaking on behalf of their families, as well as the hundreds of thousands of retired Guardsmen across America. I hope my testimony might have additional impact due to my 28 years of service—including 8 years on active duty and 20 years in the Guard and Reserve—and that I am still serving today as a Senior Master Sergeant in the U.S. Air Force Reserves at the Pentagon.

When I first learned of this bill last year, I frankly read it in disbelief. In the past 20 years of my service in the Guard and Reserve, I was completely unaware that there were retired Guardsmen and Reservists who were not considered "veterans" simply because they served their entire period of service without ever having been activated for a qualifying period of Federal active duty service. While the actual numbers of Guardsmen who fall into that category may be relatively small, I think it is safe to state it is likely that none of them—right now . . . today—even know that they are not considered "veterans."

When my father, a World War II veteran, died in 1996, I was in charge of his funeral arrangements. I was told by the funeral director what his veterans benefits included. I was asked if we would like to inter him in a veterans cemetery. He served for 4 years on active duty in the U.S. Navy, from 1941 to 1945, and I remember thinking how nice it was that our Nation wanted to honor his service in that way. Now imagine the shock of the family of a retired Guardsmen who served 20–40 years, being told by a funeral director and the Veterans Administration that they would not qualify for those same honors and that their loved one was "technically not a veteran." It is difficult to fathom how this loophole has gone on unnoticed and without remedy for so long.

EANGUS is truly indebted to Congressman Tim Walz, a retired Command Sergeant Major with 24 years of service in the National Guard, for championing this issue and EANGUS is proud to endorse his legislation, H.R. 1025.

The Guard has evolved over 375 years from a simple volunteer militia, to an operational reserve force that can be activated at both the State and Federal level. This makes for a rather interesting legal framework required to authorize and support a variety of missions. Everyone on this Committee clearly understands the difference between title 10 status, when the President is in command, and title 32 status, when a specific State governor exercises command over the Guard. This difference is not so simple when one takes into account title 38 and veteran status. As the Federal component of the Guard's legal structure, title 10 neatly dovetails into title 38 and veterans issues, but the same cannot be said between title 32 and title 38. H.R. 1025 bridges the gap between title 32 and title 38, by changing the definition of veteran in title 38, section 107(A) and by linking veteran status to title 10 retirement pay for non-regular service.

During last year's consideration of H.R. 3787, which was similar legislation sponsored by Congressman Walz in the 111th Congress, the Congressional Budget Office officially stated:

> *"Under H.R. 3787, those honorary veterans would not be eligible for additional benefits from the Department of Veterans Affairs based on this new status. Thus, CBO estimates that the bill would have no budgetary impact. Enacting H.R. 3787 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply."*

A similar endorsement was made by the Department of Veterans Affairs and H.R. 3787 moved easily through the House, but languished in the Senate at the end of last year. H.R. 1025 was carefully drafted to ensure that this broader definition of the term veteran would not be applicable for purposes of compensation; for purposes of dependency and indemnity compensation; or for purposes of hospital, nursing home, domiciliary and medical care. If enacted into law, this bill will be at NO COST to the Nation. Let me emphasize that this issue of bestowing veteran status is a matter of honor, nothing more . . . nothing less.

This year, the Senate companion bill to H.R. 1025, S. 491, was introduced by Senator Mark Pryor in March, and the Senate Committee on Veterans' Affairs recently held a hearing on the bill on June 8th. With movement on both the House and Senate versions, I am optimistic that both chambers of Congress can advance this worthy legislation before the end of the year, and hopefully in time for Veterans Day on November 11th.

The Enlisted Association of the National Guard of the United States respectfully requests that the Subcommittee favorably report the Honor America's Guard Reserve Retirees Act of 2011 to the full House Committee on Veterans' Affairs.

Thank you for the opportunity to testify today, and I look forward to your questions.

Prepared Statement of Jimmy F. Sims, Jr., Rating Veterans Service Representative, Veterans Benefits Administration Regional Office, Winston-Salem, NC, U.S. Department of Veterans Affairs, and AFGE Local 1738 Steward, American Federation of Government Employees, AFL–CIO, and AFGE National Veterans Affairs Council

EXECUTIVE SUMMARY

AFGE supports the goal of H.R. 2349 to improve the VBA training process by focusing on the skills of managers as well as employees. Managers are in great need of more subject matter expertise and hands-on experience to carry out their supervisory, quality assurance, and teaching roles. We also support individualized training plans that would give each employee a meaningful opportunity to improve the quality of his or her work and provide management with a valuable feedback loop for identifying deficiencies in training, supervision and information technology.

When employees and managers fail to make performance improvements after attempts at remediation, the appropriate response is a *personnel* action (e.g. reassignments, demotions, and terminations), not a disciplinary action.

We strongly urge the creation of a Joint AFGE–VSO Advisory Group that would consult regularly with VA officials on training, skills certification, performance standards and other aspects of the claims process.

The proposed assessment and remediation processes should leave less discretion to local managers to ensure consistency across ROs and reduce the risk of continued misuse of Performance Improvement Plans.

VBA's current training capability will not support this legislation. A stronger centralized training program and greater expertise among trainers and supervisors are essential first steps to effective implementation of H.R. 2349. To increase training consistency, the Subcommittee may also wish to consider centralized video training.

Annual assessments (Sec. 7732B(a)(1)), using skills certification tests, would be helpful for identifying both individual employee deficiencies as well as RO-wide and/or national deficiencies.

The proposed Individualized Training Plans (section 7732B(a)(2)) will only be effective if VBA addresses existing weaknesses in its training programs. Local managers under intense production pressures have full discretion to design training for 40 of the 85 hours, and too often, fixed hours of classroom training with significantly less "excluded time" to learn complex concepts online.

For remediation of deficient skills (section 7732B(b)(1), AFGE urges a clearer and more consistent use of "Performance Improvement Plans" (PIP) governed by 5 U.S.C. section 4302, to ensure that PIPs are used to employees with meaningful opportunities to overcome deficiencies, not as a tool to target disliked employees.

Dear Chairman Runyan, Ranking Member McNerney and Members of the Subcommittee:

Thank you for the opportunity to testify on H.R. 2349 on behalf of the American Federation of Government Employees and the AFGE National VA Council (hereinafter "AFGE"). AFGE is the exclusive representative of Department of Veterans Affairs Veterans Benefits Administration (VBA) employees who process disability claims.

AFGE commends the Chairman for introducing legislation that would improve the VBA training process by focusing on the skills of managers as well as employees. Given the growing complexity of VBA claims, any effort to improve the claims process must tackle the problem of managers who lack sufficient expertise and experience to carry out their supervisory, quality assurance, and teaching roles.

We also support the concept of individualized training plans that target deficiencies in specific skills. This approach would give each employee a meaningful opportunity to improve the quality of his or her work. Equally important, it would give management a valuable feedback loop for identifying deficiencies in training, supervision, information technology and other factors that are adversely impacting the workforce as a whole.

We have several general comments on the bill:

- We urge elimination of the proposal for disciplinary actions for employees and managers who fail to improve their performances. Rather, Federal employers use *personnel* actions (e.g. reassignments, demotions, and terminations) to address performance after attempts at remediation.
- We strongly support the creation of a Joint AFGE–VSO Advisory Group that would consult regularly with VA officials on training, skills certification, performance standards and other aspects of the claims process.
- We are concerned about the lack of specific details in the proposed assessment and remediation processes; too much local discretion will lead to great inconsistencies across regional offices (RO), and continued misuse of the performance improvement process, at the cost of workplace morale and missed opportunities for quality improvement.
- Currently, VBA lacks the training capability and sufficient subject matter experts to carry out the mandates of this bill. A stronger centralized training program and greater expertise among trainers and supervisors are essential first steps to effective implementation of H.R. 2349.

Section-by-Section Comments (referring to 38 U.S.C. 7732)

Sec. 7732B(a)(1): Annual Assessment

Annual assessments would be helpful for identifying both individual employee deficiencies as well as RO-wide and national weaknesses in training, supervision, information technology and other factors that impact quality and production.

We urge the Subcommittee to use the existing skills certification tests as an assessment tool rather than develop a new assessment tool. VBA already administers certification tests for VSRs, RVSRs and DROs. However, these certification tests have been plagued by longstanding problems with test design, test administration and test preparation curriculum.

Section 225 of P.L. 110–389 requires VBA to develop certification exams for "appropriate employees and managers" in consultation with stakeholders and employee representatives. Again, AFGE strongly supports the creation of the Joint AFGE–VSO Advisory Group to carry out these functions. With the regular input of front line employees and veterans service officers, who have critical expertise in both process and subject matter, the VSR, RVSR and DRO tests can better assess the skills that are *actually* needed to get the claims processed correctly the first time. Our members report that too often, these tests measure test taking skills rather than needed job skills, or that they are too basic and fail to assess skills needed to handle more complex issues.

H.R. 2389 requires that "appropriate employees and managers" undergo annual assessments. We urge the Subcommittee to include *all* managers involved in supervision, training, mentoring and quality assurance. We find it very troubling that VBA new supervisor training currently states in very specific terms that supervisors do not need to know the job of the employees they supervise!

AFGE was troubled to learn from the last consultant team working on skills certification tests that their goal was to develop strong test questions, rather than test knowledge. We are concerned that the current contractor (Camber) will continue to take this approach. Employees must be able to rely on these tests to maintain their

jobs. It is both unfair to the workforce and poor policy to judge employees based on the number of times they take an exam that does not adequately test knowledge.

Finally, VBA has still not implemented the manager skills certification test. Public Law 110–389 required that that this test be developed by October 2009 and administered within 90 days after development (January 2010). If managers had been subject to a reliable skills certification test for the past year and a half, we would already be seeing improvements in the quality of claims, VBA training programs and production levels.

Sec. 7732B(a)(2): Individualized Training Plan

The proposed Individualized Training Plan will only be effective if VBA addresses existing weaknesses in its training programs. AFGE has longstanding concerns about the consistency and quality of training provided to meet the 85 hour yearly training mandate. Currently, only 45 of the 85 hours of training are designed centrally.

Consequently, local managers under intense production pressures who often lack training expertise have full discretion to design training for the remaining 40 hours. Our members report that managers regularly substitute fixed hours of classroom training on complex concepts with significantly less "excluded time" to learn this information online without any instruction.

Individualized training plans will only be effective if they are designed with the input of front line employees and their representatives and VSOs working with managers who possess adequate skills in claims processing *and* training. In some offices, simply being promoted to a Decision Review Officer or Super Senior VSR automatically qualifies the employee as a trainer who is immediately thrust into an instructor role.

VBA also needs to develop and update training curriculum on a timelier basis. Employees are forced to process complex new claims (e.g. in response to a court case or legislation) for months and sometimes years before receiving pertinent training and guidance.

Section 7732B(b)(1): Remediation of Deficient Skills

This bill provision generally describes a process similar to the "Performance Improvement Plan" (PIP) for Federal employees that is governed by 5 U.S.C. section 4302. Our members experience widely inconsistent uses of PIPs in their ROs, and far too often, managers use PIPs to get rid of employees they do not like, rather than provide employees with meaningful opportunities to receive training and assistance to overcome deficiencies. Abuse of the PIP process lowers morale, results in unnecessary terminations, and wastes VA human resource dollars.

Therefore, a remediation process must be clear and consistent regarding time frames and number of times that remediation is provided. Also, the manager assessing the deficient employee's progress during remediation must have sufficient expertise and be impartial. If not, RO managers will continue to let favored employees (and managers) succeed while depriving others of a fair chance to improve their skills and retain their jobs, leading to more errors and delays in the claims process.

Section 7732B(b)(2): Disciplinary actions for unsatisfactory performance

As noted, AFGE strongly objects to the use of disciplinary actions to address unsatisfactory performance. This approach is inconsistent with Federal personnel law and practice. Rather, after remediation efforts have failed, employees should be subject to personnel actions, e.g. reassignment, demotion or termination as a last resort.

Across the country, our members report that front line employees are working in good faith under intense pressure to meet production standards. They work through lunch, breaks, evenings and weekends to work claims and learn new skills. If they try, but fail to improve their skills in their current position, the proper and efficient response is to first attempt reassignment to a different position. These employees have already received training and have useful experience that can be put to use in another position at VBA.

Greater Oversight of VBA Training Is Critical

In the fall of 2010 I served as a member of a special Site Team that looked at the implementation of the final phase of new employee initial training. We found that this training phase was not being implemented consistently across the Nation. We also found that many employees were not receiving the training designed by the Central Training Staff. This report was provided to the Under Secretary for Benefits, yet to this date, no action has been taken to correct these discrepancies.

We also fear that efforts to improve VBA training will continue in the same path as the Systematic Technical Accuracy Review (STAR) program. In March 2009 the VA Office of Inspector General (OIG) identified numerous problems with the train-

ing and monitoring of the STAR staff. It was more than 1 year before VBA took steps to act upon the OIG findings. A 2010 Government Accountability Office investigation revealed that STAR continued to be plagued by significant problems that were directly linked to the issues identified in the 2009 OIG report.

Given VBA's poor track record at implementing needed changes, AFGE strongly encourages the creation of the Joint AFGE–VSO Advisory Group previously discussed that will regularly report back to Congress on the progress of VBA reforms.

Prepared Statement of Richard Paul Cohen, Executive Director, National Organization of Veterans' Advocates, Inc.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates, Inc. ("NOVA") concerning pending legislation.

NOVA is a not-for-profit § 501(c)(6) educational membership organization incorporated in 1993. Its primary purpose and mission is dedicated to train and assist attorneys and non-attorney practitioners who represent veterans, surviving spouses, and dependents before the Department of Veterans Affairs ("VA"), the Court of Appeals for Veterans Claims ("CAVC"), and the United States Court of Appeals for the Federal Circuit ("Federal Circuit").

NOVA has written amicus briefs on behalf of claimants before the CAVC, the Federal Circuit and the Supreme Court of the United States of America. The CAVC recognized NOVA's work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated in this testimony have been approved by NOVA's Board of Directors and represent the shared experiences of NOVA's members as well as my own 19-year experience representing claimants before the VBA.

H.R. 1826

This bill seeks to amend 38 U.S.C. § 5905 to impose a penalty of fine or imprisonment on those accredited attorneys and agents who are found to be soliciting, contracting for, charging or receiving fees or attempting to do so, for providing advice on how to file for VA benefits or for preparing a claim. It also penalizes unlawfully withholding any part of a benefit that is due the claimant.

It is unnecessary to create additional penalties for improper fee practices of accredited attorneys, because if such improper conduct occurs it will be sufficiently regulated by the VA and by State Bar Associations. Thus, the VA's regulations prohibit soliciting, contracting for or receiving fees from claimants prior to the filing of a Notice of Disagreement. An accredited attorney who violates the VA's regulations is subject to suspension or cancellation of accreditation, that is, the right to represent claimants before the VA. 38 CFR §§ 14.632 (c)(5), (c)(6), 14.633. Punishment of improper fee practices by accredited attorneys does not stop with losing accreditation because, most State Bar Associations have adopted variations of the ABA Model Rule 1.5(a), ABA Model Rules of Professional Conduct which prohibit unreasonable fees and which can result in disbarment, or loss of the privilege of practicing law. Even without State Bar Association rules, loss of VA accreditation may result in disbarment because of reciprocal enforcement of disciplinary findings and sanctions. See, for example, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement.

Similarly, accredited agents, who are not attorneys, are also subject to the VA's rules prohibiting improper fees and may be punished by removal of their privilege to represent veterans.

There may be, however, unregulated persons representing veterans who should be subject to criminal sanctions. For example, NOVA has been told that there are some insurance agents and "VA advisors", who are neither VA accredited attorneys nor accredited agents, and who have been receiving fees from elderly veterans and their families for legal advice regarding and for assistance with preparation of applications for aid and attendance benefits from the VA.

In order punish the conduct of those insurance agents NOVA recommends that the bill be rewritten to target the under regulated conduct of insurance agents and VA benefits advisors and to establish penalties for improper fees in a new chapter 60 added to title 38 and directed toward persons other than accredited agents and attorneys who are not now regulated.

H.R. 1898

This bill would add 38 U.S.C. § 5511 to insure that a veteran who is deemed mentally incapacitated or incompetent or who experiences extended loss of consciousness will not be automatically considered adjudicated as a mental defective under 18 U.S.C. § 922(d)(4) or (g)(4), and thus prohibited from purchasing or possessing a firearm, without a specific judicial finding that such person is a danger to himself or others.

This is important to prevent veterans from unjustly losing their right to a firearm merely because of a VA determination of incompetency. Presently, regulations from Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice define a person as a mental defective, who is prohibited from buying or possessing a gun, in 27 CFR § 478.11 as a person who has had:

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

1. Is a danger to himself or to others; or
2. Lacks the mental capacity to contract or manage his own affairs.

Although section 105 of the "NICS Improvement Amendments Act of 2007" P.L. 110–180 provides the opportunity for veterans who have been adjudged by the VA to be incompetent to request that the VA not report their adjudication, this right to request non-reporting by the VA is an unsatisfactory remedy.

The burden of proof is on the veteran to demonstrate by clear and convincing evidence that he is not likely to act in a manner dangerous to public safety, and that granting relief will not be contrary to the public interest. Receiving benefits for a mental disability rated at greater than 10 percent disabling, substance abuse or a hostile demeanor are all considered by the VA to be factors unfavorable to granting the requested relief. In addition, the usual principles of VA law do not apply to these determinations, and there is no duty to assist the veteran. Also, the benefit of the doubt does not apply and there is no right to appeal an unfavorable determination to the BVA. VA Fast Letter 10–51.

NOVA supports H.R. 1898 for its protection of veterans who have been found by the VA to be unable to manage their money, such as those who suffer from Traumatic Brain Injury, the signature injury of the Global War On Terror, yet who can still function as law abiding citizens and who do not present any danger to themselves and others.

H.R. 2349

The "Veterans' Benefits Training Improvement Act of 2011" would add 38 U.S.C. § 7732B to require the Secretary to develop and implement an individualized training program for each employee and manager who is responsible for claims processing and to annually assess their claims processing skills. Additionally, the Act provides for remediation of any deficiency in skills which is revealed in the assessment and for an annual report to Congress.

To the extent that H.R. 2349 requires the Secretary to assess the claims processing skills of each employee and manager who is responsible for claims processing, this legislation duplicates the existing provisions of 38 U.S.C. § 7732A(a) which require the Secretary to provide for an examination of appropriate employees and managers who are responsible for claims processing.

For that reason, although NOVA supports this bill, generally, NOVA recommends that the provisions of § 7732B be combined with those of § 7732A to create an amended § 7732A as follows:

§ 7732A Training in and annual assessment of claims processing skills

"(a) IN GENERAL.—The Secretary shall——

"(1) annually assess the skills of appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary; and

"(2) develop and implement an individualized training plan related to such skills for each such employee and manager.

"(3) consult with appropriate individuals or entities, including training and examination development experts, interested stakeholders, and employee representatives in order to develop suitable training and assessment tools.

"(b) REMEDIATION OF DEFICIENT SKILLS.

"(1) In providing training under subsection (a)(2), if any employee or manager receives a less than satisfactory result on any portion of an assessment under subsection (a)(1), the Secretary shall provide such employee or manager with remediation of any deficiency in the skills related to such portion of the assessment.

"(2) In accordance with this title and title 5, the Secretary shall take appropriate disciplinary actions with respect to any employee or manager who, after being given two opportunities for remediation under paragraph (1), does not receive a satisfactory result on an assessment under subsection (a)(1).

"(c) ANNUAL REPORT.—Not later than March 1 of each year, the Secretary shall submit to the Committee on Veterans' Affairs of the House of Representatives and the Committee on Veterans' Affairs of the Senate a report on the assessments and training conducted under this section during the previous year, including a summary of— "(1) the results of the assessments under subsection (a)(1); "(2) remediation provided under subsection 13(b)(1); and "(3) disciplinary action taken under subsection (b)(2)."

Although NOVA supports the idea, in general, of training and assessing, as contained in this legislation, NOVA urges this Subcommittee to concentrate on correcting the systemic problems with the present work credit system prior to or in addition to mandating that VA implement new training and assessment procedures. The present work credit system has created an environment in which the employees and supervisors are rewarded based upon the number of actions they take each day, and not the quality or those actions nor whether the action will ultimately lead to correct decision-making. Thus, currently there is no incentive for these employees or supervisors to take time away from their duties, and thus, their production time, to invest in training, quality control and job improvement.

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. Joining me today is Richard Hipolit, Assistant General Counsel.

H.R. 923

H.R. 923, the "Veterans Pensions Protection Act of 2011," would expand the existing exemption in 38 U.S.C. § 1503(a)(5) by excluding from determinations of annual income, for purposes of determining eligibility for improved pension, two types of payments: (1) payments regarding reimbursements for expenses related to accident, theft, loss, or casualty loss and reimbursements for medical expenses resulting from such causes; and (2) payments regarding pain and suffering related to such causes. This bill is identical to S. 780, on which we provided testimony before the Senate Committee on Veterans' Affairs on June 8, 2011.

The exemption for payments received to reimburse Veterans for medical costs and payments regarding pain and suffering is an expansion of the current exclusions. VA opposes excluding from countable income payments received for pain and suffering because such payments do not constitute a reimbursement for expenses related to daily living. This provision of the bill would be inconsistent with a needs-based program. Payments for pain and suffering are properly considered as available income for purposes of the financial needs test for entitlement to improved pension.

VA does not oppose the remaining provisions of this bill, which would exempt payments for reimbursement for accident, theft, loss, casualty loss, and resulting medical expenses, subject to Congress identifying offsets for any additional costs. Current law exempts from income determinations reimbursements for any kind of "casualty loss," which is defined in VA regulation as "the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature." H.R. 923 would broaden the scope of this exemption by including reimbursements for expenses resulting from accident, theft, and ordinary loss.

VA cannot determine the potential benefit costs related to the exemption for payments for pain and suffering related to accident, theft, loss, or casualty loss because

insufficient data are available regarding the frequency or amounts of such payments to the population of pension beneficiaries.

H.R. 1025

H.R. 1025 would add to chapter 1, title 38, United States Code, a provision to honor as Veterans, based on retirement status, certain persons who performed service in reserve components of the Armed Forces but who do not have qualifying service for Veteran status under 38 U.S.C. § 101(2). The bill provides that such persons would be "honored" as Veterans, but would not be entitled to any benefit by reason of the amendment.

Under 38 U.S.C. § 101(2), Veteran status is conditioned on the performance of "active military, naval, or air service." Under current law, a National Guard or Reserve member is considered to have had such service only if he or she served on active duty, was disabled or died from a disease or injury incurred or aggravated in line of duty during active duty for training, or was disabled or died from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident during inactive duty training. H.R. 1025 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for Veteran status.

VA recognizes that the National Guard and Reserves have admirably served this country and in recent years have played an important role in our Nation's overseas conflicts. Nevertheless, VA does not support this bill because it represents a departure from active service as the foundation for Veteran status. This bill would extend Veteran status to those who never performed active military, naval, or air service, the very circumstance which qualifies an individual as a Veteran. Thus, this bill would equate longevity of reserve service with the active service long ago established as the hallmark for Veteran status.

VA estimates that there would be no additional benefit or administrative costs associated with this bill if enacted.

H.R. 1826

H.R. 1826 would amend 38 U.S.C. § 5905 to reinstate in modified form an earlier provision that had provided criminal penalties for charging improper fees in connection with representation in a claim for benefits before VA. In particular, it would impose such penalties for anyone who, in connection with a proceeding before VA, solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation in connection with either the provision of advice on how to file a claim for VA benefits or the preparation, presentation, or prosecution of such a claim before the date on which a notice of disagreement is filed.

In 2006, Congress enacted Public Law 109–461, which amended VA's statutory scheme relating to attorney or agent representation in Veterans benefit cases before VA. Among other things, Public Law 109–461 authorized attorneys and agents to charge fees for services provided to claimants after the filing of a notice of disagreement with respect to a case. The law also amended 38 U.S.C. § 5905 by deleting a provision imposing criminal penalties for soliciting, contracting for, charging, or receiving improper fees for representation in a benefit claim.

In the past few years, VA has received complaints from various sources about individuals and companies charging, or attempting to charge, fees for providing advice or assistance concerning the VA claims process before the filing of a notice of disagreement. VA is also aware that certain individuals or firms may have charged Veterans for financial services, which later proved to be ineffective, designed to assist them in qualifying for VA benefits by transferring or shielding assets that would otherwise disqualify them.

The bill would subject to criminal penalty the solicitation or receipt of any fee or compensation for providing "advice on how to file a claim for benefits." Because this bill involves criminal penalties, courts are likely to interpret the phrase "advice on how to file a claim for benefits" narrowly as referring to advice on how to complete an application for VA benefits or where to submit such an application. Consequently, the bill would be unlikely to deter the solicitation or receipt of any fee or compensation for the provision of advice on how to transfer or shield financial assets in order to become eligible for certain VA benefits. Further, the proposed penalty provision could seemingly be easily circumvented by charging for services other than those specified in the bill, while also providing services that the bill is intended to cover. The criminal penalties contemplated by H.R. 1826 may provide some deterrent to persons who would take advantage of claimants for VA benefits, and VA supports in principle the protection of claimants from unscrupulous fee practices, but

we doubt that this bill would effectively address the entire scope of the problem. In addition, we defer to the Department of Justice (DoJ) on whether the new provision imposing criminal penalties would be enforceable as a practical matter, and whether DoJ would devote scarce resources to its enforcement.

H.R. 1898

H.R. 1898, the "Veterans 2nd Amendment Protection Act," would provide that a person who is mentally incapacitated, deemed mentally incompetent, or unconscious for an extended period will not be considered adjudicated as a "mental defective" for purposes of the Brady Handgun Violence Prevention Act in the absence of an order or finding by a judge, magistrate, or other judicial authority that such person is a danger to himself, herself, or others. The bill would have the effect of excluding VA determinations of incompetency from the coverage of the Brady Handgun Violence Prevention Act.

We understand and appreciate the objective of this legislation to protect the firearms rights of veterans determined by VA to be unable manage their own financial affairs. VA determinations of mental incompetency are based generally on whether a person because of injury or disease lacks the mental capacity to manage his or her own financial affairs. We believe adequate protections can be provided to these veterans under current statutory authority. Under the NICS Improvement Amendments Act of 2007 (NIAA), there are two ways that individuals subject to an incompetency determination by VA can have their firearms rights restored: First, a person who has been adjudicated by VA as unable to manage his or her own affairs can reopen the issue based on new evidence and have the determination reversed. When this occurs, VA is obligated to notify the Department of Justice to remove the individual's name from the roster of those barred from possessing and purchasing firearms. Second, even if a person remains adjudicated incompetent by VA for purposes of handling his or her own finances, he or she is entitled to petition VA to have firearms rights restored on the basis that the individual poses no threat to public safety. Although VA has admittedly been slow in implementing this relief program, we now have relief procedures in place, and we are fully committed going forward to implement this program in a timely and effective manner in order to fully protect the rights of our beneficiaries.

We also note that the reliance on an administrative incompetency determination as a basis for prohibiting an individual from possessing or obtaining firearms under Federal law is not unique to VA or veterans. Under the applicable Federal regulations implementing the Brady Handgun Violence Prevention Act, any person determined by a lawful authority to lack the mental capacity to manage his or her own affairs is subject to the same prohibition. By exempting certain VA mental health determinations that would otherwise prohibit a person from possessing or obtaining firearms under Federal law, the legislation would create a different standard for veterans and their survivors than that applicable to the rest of the population and could raise public safety issues.

VA estimates that there would be no additional benefit or administrative costs associated with this bill if enacted.

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

Statement of Paralyzed Veterans of America

Chairman Runyan, Ranking Member McNerney, and Members of the Subcommittee, Paralyzed Veterans of America (PVA), thanks you for the opportunity to submit a statement for the record regarding the proposed legislation being considered today. PVA appreciates the fact that this Subcommittee is addressing these important issues with the intention of improving benefits for veterans. We particularly support any focus placed on meeting the complex needs of the newest generation of veterans, even as we continue to improve services for those who have served in the past.

H.R. 923 the "Veterans Pensions Protection Act of 2011"

PVA supports H.R. 923, the "Veterans Pensions Protection Act of 2011." This legislation would exempt reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to pensions for veterans and surviving spouses and children of veterans. Our Nation's veterans should not have to claim incidental insurance compensation as income that would

inadvertently reduce their pension payment. This is a common sense amendment to current law.

H.R. 1025

PVA supports H.R. 1025, legislation to amend title 38, United States Code, to recognize the service of the men and women that have served in the reserve components of the armed forces. This legislation will allow those that have served in a reserve component and qualified for retirement pay under title 10 to be recognized as a veteran under law.

H.R. 1826

PVA supports H.R. 1826, legislation that would allow criminal penalties for charging a fee to veterans for assisting with claim preparation and filing. Although this procedure is currently prohibited by Federal law, individuals and organizations continue to seek out veterans that are in need of assistance and proceed to assist for a fee. There have been no repercussions for these violations of the law. Every State government, most county governments, and most veterans' service organizations have designated persons who are trained to help veterans file claims without charging a fee. This legislation will help eliminate individuals that are profiting from such activity.

H.R. 1898

H.R. 1898, the "Veterans 2nd Amendment Protection Act". PVA has no position on this legislation.

H.R. 2349

PVA cautiously supports H.R. 2349, legislation to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to annually assess the skills of certain employees and managers of the Veterans Benefits Administration. PVA believes that assessments should be administered to all positions at all levels in a regional office, including the Rating Board Specialists and Decision Review Officers. This would determine if their knowledge is sufficient for performing the difficult tasks that these positions require. These results will indicate areas that need more attention for an individual or perhaps a basic review course in some areas. However, training should be provided to improve their knowledge and skills to a proficient level, not as a punishment for a low score. Moreover, testing only for selective positions or individuals would not foster good will in a system that currently presents a difficult environment to work in.

Many programs within the VA have allocated training staff members as a goal in future plans. But, often because of workloads, shortage of staff and a fast paced environment of most departments in the VA, the proposed training becomes a low priority. Training of these important positions should have a high priority and be professionally conducted in time that is aside from the day-to-day work.

Mr. Chairman and Members of the Subcommittee, PVA would like to once again thank you for the opportunity to provide our views on the proposed legislation. We look forward to working with you to improve benefits for veterans.

Statement of Reserve Officers Association of the United States, and Reserve Enlisted Association of the United States

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, the Reserve Officers Association (ROA) and the Reserve Enlisted Association (REA) would like to thank the Subcommittee for the opportunity to testify. ROA and REA applaud the ongoing efforts by Congress to address issues facing veterans and serving members such as veteran status, mental health assessments, tax exemptions, and claims processing.

Though contingency operations in Afghanistan and Iraq are expected to drawdown, currently there are still high levels of mobilizations and deployments, and many of these outstanding citizen soldiers, sailors, airmen, Marines, and Coast Guardsmen have put their civilian careers on hold while they serve their country in harm's way. As we have learned, they share the same risks as their counterparts in the Active Components on the battlefield. Recently we passed the 800,000th mark for the number of Reserve and Guard servicemembers who have been activated

since post-9/11. More than 275,000 have been mobilized two or more times. The United States is creating a new generation of combat veterans that come from its Reserve Components (RC). It is important, therefore, that we don't squander this valuable resource of experience, nor ignore the benefits that they are entitled to because of their selfless service to their country

PROPOSED LEGISLATION

H.R. 923, Veterans Pensions Protection Act of 2011, introduced by Rep. Hastings (D–Fl), better defines the types of casualty losses that could impact a veteran, or surviving family receiving a pension. **ROA and REA support this clarification.**

Personal injury or property loss can have a devastating impact on any family. This just further aggravates the situation faced by veteran families that are living on a pension. Improving U.S. Code to address potential losses in advance prevents administrative complications in the future.

H.R. 1025, introduced by Reps. Tim Walz (D–Minn.), Tom Latham (R–Iowa) and Jon Runyon (R–N.J), amends title 38 and would recognize the honorable service of National Guard and Reserve members who qualify for military retirement, but have never been activated for a long enough period to be Federally defined as a veteran. **ROA and REA support such legislation including the bill passed by the House in the 111th Congress which failed to be considered in the Senate.**

Most Reserve Component members believe they are veterans after serving their country, especially for20 years or more. Unfortunately, this is not the case. They are not considered "Veterans" if they have not served the required number of uninterrupted days on Federal active duty (defined as active duty other than for training).

While a commonly accepted definition is serving more than 180 days, not all service qualifies. To gain a veterans preference when applying for a Federal job, a former member of the armed forces has to have either earned a campaign badge, or served on active duty, either since September 11, 2001, or served between August 2, 1990 and January 2, 1992, or after January 31, 1955 and before October 15, 1976, or have been in a war, earned a campaign or expeditionary ribbon, orserved between April 28, 1952 and July 1, 1955, as defined by title 5 U.S.C. section 2108. And if medically discharged through no fault of their own during the first 180 day period, the servicemember is considered a veteran.

Yet, as defined in law, Reserve Component members who have completed 20 or more years of service become military retirees and are eligible for all of the Active Duty military retiree benefits once reaching 60 years of age. Whereas Active Duty retirees are veterans, without the active service Reserve retirees are not.

Those Reserve Component members who have been called to serve in Operation Enduring Freedom or Operation Iraqi Freedom will qualify as veterans. Many others who stand in front of and behind these men and women, preparing them and supporting them for and on overseas missions, are individuals who are also ready to deploy but because of assigned duties may never serve in an active capacity. Nevertheless they serve faithfully.

Twenty or more years of service in the reserve forces and eligibility for reserve retired pay should be sufficient qualifying service for full Veteran status under the law. And as written, this legislation will not increase their benefits.

This issue is a matter of honor for those who through no fault of their own were never activated, but who still served their Nation faithfully for 20 or more years.

H.R. 1826, introduced by Reps. Gus Bilirakis (R–Fla.) and Walz reinstates criminal penalties for persons charging veterans unauthorized fees. **ROA and REA support this reinstatement.**

Because of the backlog of benefit claims being processed by the Department of Veteran Affairs, veterans have been taken advantage by unscrupulous businesses claiming to be able to shortcut the process. Individuals or businesses who try to take unethical advantage of veterans should be penalized for their actions.

H.R. 1898, Veterans 2nd Amendment Protection Act, introduced by Rep. Denny Rehberg (R–Mont.), which would create a new section 5511 to chapter 55 of title 38, provides protection to serving members who could be discharged for mental defectiveness from restrictions under section 922 of title 18 on the subject of gun ownership. **ROA and REA support such legislation that would require a review by authorities outside the Departments of Defense or Veteran Affairs to corroborate mental incompetence for handling civilian matters.**

There is a risk of growing public distrust of sufferers of Post-Traumatic Stress and Traumatic Brain Injury as the media and certain clinicians label these ailments as disorders. For many veterans, the transition between military and civilian life is a critical juncture marked by acute feelings of flux and dislocation. It does not need to be further hampered by labels affixed at the time of discharge.

Anyone who fights in combat is changed by it, but few are beyond a cure. This Nation can ill afford to stereotype current veterans the way they did the veterans from Vietnam as being dysfunctional. Legislation like Rep. Rehberg's will provide another protection for the veteran.

Additionally, the Army routinely dismissed hundreds of soldiers at the height of war from the Afghanistan and Iraq theaters for having personality disorders when they more likely suffering from the traumatic stresses of war. Defined as a "deeply ingrained maladaptive pattern of behavior," a personality disorder was considered a "pre-existing condition" relieving the military from paying combat-related disability pay, and providing adequate health care treatment. Later, the Army shifted discharges from "personality disorder" to "adjustment disorder" dismissing hundreds more. The symptoms can be the same as for post-traumatic stress: flashbacks, nightmares, anger, sleeplessness, irritability and avoidance.

The military (or the Department of Veterans Affairs) should not be the determining agency on a veteran's mental capacity. Rep. Rehberg's legislation provides veterans protection from being mislabeled.

H.R. 2349, the Veterans' Benefits Training Improvement Act of 2011 by Rep. Jon Runyon (R–N.J.) helps ensure standards by assessing annually those Department of Veteran Affairs (VA) employees who process claims and by making sure these employees have core competencies. This assessment will help them retain those competencies in an occupation where new perspectives on disabilities arise bringing about constant change. Congressional oversight will remain in order to ensure that the VA meets expectations and provides the needed tools to keep the processers current.

With a goal of quality and efficiency in processing VA claims, ROA and REA can support this legislation.

Conclusion

ROA and REA appreciate the opportunity to submit testimony. ROA and REA look forward to working with the Subcommittee on Disability Assistance and Memorial Affairs and the House Veterans' Affairs Committee, where we can present solutions to these and other issues, and offer our support, and hope in the future for an opportunity to discuss these issues in person.

MATERIAL SUBMITTED FOR THE RECORD

U.S. Department of Veterans Affairs
Washington, DC.
September 6, 2011

The Honorable Jon Runyan
Chairman
Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter provides the Department of Veterans Affairs' (VA) views on a revised version of H.R. 2349, the "Veterans' Benefits Training Improvement Act of 2011" you provided in your letter dated July 26, 2011. This bill would amend 38 U.S.C. § 7732A to establish an annual skills assessment of employees and managers responsible for processing claims for compensation and pension, and would establish an individualized training plan related to such skills for each employee and manager responsible for processing such claims.

For the reasons set forth in the enclosed summary, VA does not support the proposed amendments. The development and implementation of these assessments would be redundant with the robust training and skills assessment program that the Veterans Benefits Administration already has which sets performance requirements for each employee, and manages such performance. The assessments and the remediation required along with the development of individualized training plans would be costly, would remove key personnel from the act of claims processing, and produce no benefit over current procedures.

Thank you for the opportunity to provide our views and cost estimates on the revised version of H.R. 2349.

Sincerely,

Eric K. Shinseki
Secretary

Enclosure

Views and Costs on H.R. 2349, as revised

Section 7732A of title 38 U.S. Code. currently requires employees and managers of the Veterans Benefits Administration (VBA) who are responsible for processing claims for compensation and pension benefits to undergo a certification examination. H.R. 2349 would amend 38 U.S.C. § 7732A to establish an annual skills assessment of those same employees and managers and would require establishment of an individualized training plan related to such skills for each employee and manager responsible for processing such claims. Additionally, the bill would require that any employee or manager that receives a less than satisfactory result on the initial examination be given additional training, and require such employees or managers to re-take the examination up to two times. H.R. 2349 requires that the Secretary take appropriate personnel action with respect to any employee or manager who does not receive a satisfactory result on the examination. Lastly, the bill requires the Secretary report to Congress the results of the assessments, remediation provided, any personnel actions taken, and any changes made to the training program.

VBA already has a robust training and skills assessment program that sets performance requirements for each employee, and manages such performance. VBA's National Training Curriculum consists of approximately 85 hours of annual mandatory training for each employee. This includes three separate curricula for entry-, intermediate-, and journey-level employees. Every curriculum is kept current through an annual topic reassessment. Training on emerging topics and procedural and policy changes are added as needed throughout the year. Each employee must record completed courses within one of the curricula in the Talent Management System (TMS), and the Compensation Service training staff verifies completion of the mandatory training requirements at each regional office by reviewing and analyzing learning history reports from TMS.

VBA also currently maintains a high degree of accountability through performance appraisal ratings. Performance requirements must be stated in a performance

plan tailored to each employee's position and work assignments. Nationwide performance standards are in place for Veterans Service Representatives (VSRs), Rating VSRs, and Decision Review Officers. These national performance plans standardize the evaluation process for these claims processing positions. In the event that an employee does not meet acceptable performance standards, remedial training courses are provided along with biweekly mentoring by their supervisor. If after at least 90 days, the employee's performance is still deemed unacceptable, the employee will be reassigned, reduced to a lower grade, or removed.

There has been significant attention given to VA's quality assurance and training programs in recent years. In 2009, the Center for Naval Analyses reviewed VA's training efforts for the Veterans' Disability Benefits Commission and was highly complimentary of VA's training efforts in testimony before the Commission. Also, in response to section 224 of the Veterans Benefits Improvement Act of 2007 (Public Law 110–389), VBA tasked the Institute for Defense Analyses with an independent assessment of the quality assurance program. The findings of their 3-year review are due to Congress on October 10, 2011.

The proposed assessments are unnecessary in light of existing VBA training, assessment and performance evaluation programs. Moreover, the bill would potentially remove every claims processor and manager from their job for at least one full day every year for these additional preparation and testing requirements. If the employee does not pass the proposed assessment, additional time would be spent in the remediation process and away from claims processing. The bill would also require VBA to establish an individualized training plan for these employees. Time currently spent by supervisors on workload management would instead be spent ensuring that employees completed this additional preparation, testing, and possible remediation training as well as overseeing individualized training plans. The loss of one full day would result in a loss in production of, at a minimum, 13,500 claims annually.

Section 2(c)(2)(B) would amend 38 U.S.C. § 7322A to require the Secretary to take appropriate personnel action in the case of an employee or manager who, after being given two opportunities for remediation, does not receive a satisfactory result on an assessment. This amendment mandates VA to take a personnel action, intruding on VBA's responsibility and authority to take such action when it deems appropriate. Such intrusion undermines VBA's managerial discretion. In addition, there would be labor relations implications with implementation of the bill. Accordingly, obtaining the views of the union as an important stakeholder would be appropriate and their input useful.

The proposed amendment requires the Secretary to report to Congress the results of the assessments, remediation provided, any personnel actions taken, and any changes made to the training program. 38 U.S.C. § 7734 already provides that the Secretary report to Congress on the quality assurance activities carried out in 38 U.S.C. §§ 7731 et seq. Accordingly, it would be more appropriate to amend 38 U.S.C. § 7734 to add the additional reporting requirements proposed in H.R. 2349.

VA estimates that costs associated with the legislation would be approximately $4.8 million during the first year and over $22.2 million over 5 years.

FY	Additional Contract Cost ($000s)	Cost of Production Loss to Support Additional Assessments ($000s)	Cost of Loss in Production due to Testing ($000s)	Total Cost ($000s)
2012	$ 1,000	$ 131	$ 3,700	**$ 4,831**
2013	$ 500	$ 46	$ 3,700	**$ 4,246**
2014	$ 500	$ 46	$ 3,800	**$ 4,346**
2015	$ 500	$ 46	$ 3,800	**$ 4,346**
2016	$ 500	$ 46	$ 3,900	**$ 4,446**
Total	**$ 3,000**	**$ 314**	**$ 18,900**	**$ 22,214**

If the bill were enacted, VBA would work with a contractor to develop, assess, and maintain assessments for at least eight categories of employees. Because six current skills assessments would be incorporated into the proposed assessments, resources devoted to the current skills assessment contract would be devoted to the proposed assessments. The chart above reflects costs over and above the current contracting cost to conduct skills assessments for all employees.

An additional 60 field subject matter experts (over and above the field subject matter experts supporting the current skills assessment program) would be needed for 1-week sessions to help develop the proposed assessments during FY 2012. In subsequent years, an additional 25 subject matter experts would be needed for 1-week sessions each year to evaluate and maintain the proposed assessments. Each subject matter expert would participate in workshops to draft questions, assess and finalize tests, score tests, and design the test process. VBA would need to hire full time employees (FTE) to make up for the claims that are not completed by subject matter experts while they are providing contract support.

To make up for claims not completed due to a day of lost production during the mandatory annual assessment, VA would need to hire additional FTE. The chart above reflects costs associated with hiring these FTE to complete claims that would be completed during the proposed mandatory assessment.

U.S. Department of Veterans Affairs
Veterans Benefits Administration
Washington, DC.
November 22, 2010

Director (00/21)
Fast Letter 10–51
All VA Regional Offices and Centers

SUBJ: Processing Requests for Relief from the Reporting Requirements of the National Instant Criminal Background Check System (NICS)

This letter provides new information on the National Instant Criminal Background Check System (NICS) relief program and procedures for processing relief requests.

Within 30 days of date of this letter, the Compensation and Pension (C&P) Service will return all pending requests for relief in its possession, with their associated claim folders and principle guardianship folders (PGFs), to regional offices (ROs) and centers for action in accordance with this letter. Please conclude all actions within 90 days of receipt of the claims folder.

Background

The Brady Handgun Violence Prevention Act of 1993, Public Law 103–159 (The Brady Act), prohibits the sale of firearms to certain people. The NICS Improvement Amendments Act (NIAA) of 2007 sets new requirements for Federal and state agencies, and contains an amendment to the Brady Act that obligates VA to allow beneficiaries the opportunity to request relief from the reporting requirements imposed by the Brady Act. VA is also obligated to provide beneficiaries both written and oral notification of the firearms prohibitions, penalties for violating them, and information regarding the availability of the relief program.

NICS Relief Program

The NIAA places the responsibility for administering the relief program on the agency that provided the information to NICS. The primary focus regarding relief provisions outlined in this letter is public safety. Further, relief from the reporting requirements is not a benefit under Title 38 and as such, principles common to the VA adjudication process, such as benefit of the doubt and duty to assist (as demonstrated in ordering examinations or securing private medical records) do *not* apply to this program. The burden of proof for these relief requests resides with the claimant, and failure to meet that burden is sufficient to deny the request. Decisions that deny relief are not subject to review by the Board of Veterans' Appeals, but VA denials of requests for relief under the NIAA are subject to review in Federal district court. Accordingly, it is important that all denials contain a detailed explanation of the basis for denial.

Handling Requests for Relief

Requests for relief from the Brady Act reporting requirements must be clear and explicit. Do not infer or interpret a request for relief as a claim for reconsideration of incompetence or a claim of competency as a request for relief.

Development

If the request for relief is received following the final rating of incompetency, establish end product (EP) 290 using the "NICS Relief Request" claim label. If the evidence of record is sufficient to grant relief according to the criteria outlined below,

follow the procedures under *Administrative Decision.* If the evidence is insufficient to grant relief, send the attached development letter (Enclosure 1). Allow the beneficiary 30 days to respond to the letter.

The beneficiary may submit a request for relief prior to the final incompetency rating. If the request for relief is received prior to the final rating of incompetency, send the development letter (Enclosure 1), but do not render a decision on the request for relief until the rating of incompetency is final and the 30-day development response time has expired. Then follow the procedures under the *Administrative Decision* section below.

If the beneficiary submits a claim for reconsideration of competency in conjunction with the request for relief, establish EP 020. After any appropriate development, refer the claim to the rating team. If the rating veterans service representative confirms and continues incompetency, do not address the issue of relief in the rating decision. Instead, follow the procedures under *Administrative Decision* outlined below.

Note: We will program all NICS development and decision letters in PCGL as soon as possible. In the interim, copy and paste the text of the enclosures into a free text document.

Deciding Relief

In deciding requests for relief, decision makers must consider the beneficiary's record and reputation, as well as the beneficiary's mental and physical status. To grant relief, the record must show affirmatively, substantially, and specifically that the beneficiary is not likely to act in a manner dangerous to public safety, and that granting relief will not be contrary to the public interest.

In making determinations, consider not just the beneficiary's desire to own firearms and/or ammunition, but the safety of himself, his family, and the community. As VA's determinations on requests for relief have the potential to affect public safety, grant relief on the basis of clear and convincing evidence.

In determining whether to grant relief, relevant records may include:

- A statement from the primary mental health physician assessing the beneficiary's mental health status over the last 5 years.
- Medical information addressing the extent of mental health symptoms and whether or not the beneficiary is likely to act in a manner dangerous to himself/herself or to the public.
- Information documenting that a court, board, or commission that originally determined incompetence has restored competency status or otherwise determined that the beneficiary has been rehabilitated through any procedure available under the law.
- Statements or records from law enforcement officials, such as the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, and Firearms (ATF), or the Attorney General, showing that the granting of relief would not be contrary to the public interest.

When determining relief requests, consider if any of the following unfavorable factors are manifest over the past 5 years:

- The presence of any mental disability that has been evaluated at more than 10-percent disabling. (If there is no rating of record, consider whether evidence indicates that any current mental disability causes no more than mild or transient symptoms observable only during periods of significant stress, or whether symptoms of mental disability are completely alleviated through the use of continuous medication (38 CFR 4.130). Also, consider the presence of any personality disorder when determining relief requests.
- Evidence of recurring substance abuse or any substance abuse within the last year.
- Local, state, or Federal convictions for felonies and/or violent offenses (including, but not limited to, menacing, stalking, assault, battery, burglary, robbery, rape, murder, and attempts thereof).
- Demonstration of overtly aggressive or hostile behavior and/or demeanor.
- Presence of suicidal or homicidal ideations.

Administrative Decision

The RO or center will handle all requests for relief by preparing an administrative decision (see M21–1MR, Part III, Subpart v, Chapter 1, Section A, Topic 2). The RO Director must approve all administrative decisions after concurrence by the Veterans Service or Pension Management Center Manager, or designee.

Inform the beneficiary of the determination by sending the NICS relief grant or denial letter (Enclosure 2 or 3). If relief is granted, notify the NICS Manager within three days at VAVBAWAS/CO/NICS under the subject "NICS relief grant." The notification must include the beneficiary's name, claim number, Social Security number (if different than claim number), date of birth, contact information (including address and telephone number), and the date of the grant of relief. Upon granting relief, the C&P Service will notify the FBI, which manages the NICS database for the Department of Justice, to remove the beneficiary from the NICS database. The FBI will remove the beneficiary's name from the database within approximately 2 months after notification by the NICS Manager.

If a beneficiary who was formerly found incompetent is found competent, the request for relief becomes moot. In the final competency rating, include the following statement under *Reasons for Decision* for the competency issue:

> "We received your request for relief from the Department of Justice (DoJ) reporting requirements contained in the Brady Handgun Violence Prevention Act. We have determined you are competent for VA purposes, so it is not necessary to render a decision on that request. VA will inform DoJ of your changed status."

File all documents exclusive to this relief decision on the right side of the claims folder.

Questions

Questions concerning information contained in this letter should be e-mailed to VAVBAWAS/CO/NICS.

***Rescission*:** At the earliest opportunity, we will incorporate into the M21–1MR the provisions of oral and written notice from pages 4 and 5 of Fast Letter (FL) 09–08, *National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007,* which is otherwise rescinded.

Thomas J. Murphy
Director
Compensation and Pension Service

Enclosures

Enclosure 1—NICS Relief Development Letter

XXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXX

In reply, refer to:
File Number: XXXXXXX

IMPORTANT—reply needed

Dear Mr./Ms.:

We received your request for relief from the Department of Justice reporting requirements contained in 18 U.S.C. § 922(d)(4) and (g)(4). VA must report to the National Instant Criminal Background Check System (NICS) individuals whom VA determines to be unable to contract or manage their own affairs.

Pursuant to 18 U.S.C. § 925(c) and § 101(c)(2)(A) of the *NICS Improvements Amendment Act of 2007,* Public Law 110–180, VA is obligated to decide whether you are eligible to receive relief from the reporting requirements of the Brady Handgun Violence Prevention Act. This letter contains information about what we will do with your request and what you can do to help us decide it.

We may grant relief if clear and convincing evidence shows the circumstances regarding your disability, and your record and reputation are such, that you are not likely to act in a manner dangerous to yourself or others, and the granting of relief is not contrary to public safety and/or the public interest.

What Can You Do?

To support your claim for relief, you may submit such evidence as:

- A statement from your primary mental health physician assessing your mental health status over the last 5 years.
- Medical information addressing the extent of your mental health symptoms and whether or not you are likely to act in a manner dangerous to yourself or to public.

- Information documenting that a court, board or commission that originally determined incompetence has restored your competency status or otherwise determined that you have been rehabilitated through any procedure available under the law.
- Statements or records from law enforcement officials, such as the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, and Firearms (ATF), or the Attorney General, which show that the granting of relief would not be contrary to the public interest.

Please put your VA file number on the first page of every document you send us.

Where Should You Send Your Evidence?

Please send all documents to this address: (include RO address)

How Soon Should You Send What We Need?

We strongly encourage you to send any information or evidence as soon as you can. If we do not hear from you within 30 days, we will make a decision on your request based on the evidence of record.

How Can You Contact Us?

Please give us your VA file number, **XXXXXXXXXX**, when you do contact us.

- Send written correspondence to the address above.
- Send us an inquiry using the Internet at *https://iris.va.gov*.
- Call us at 1–800–827–1000. If you use a Telecommunications

Device for the Deaf (TDD), the number is 1–800–829–4833.

We look forward to resolving your request in a timely and fair manner.

Sincerely yours,

Veterans Service Center Manager

Enclosure 2—NICS Relief Grant Letter

XXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXX

In reply, refer to:
File Number: XXXXXXX

Dear Mr./Ms.:

We received your request for relief under the *National Instant Criminal Background Check System (NICS) Improvement Amendments Act (NIAA) of 2007* (Public Law 110–180).

What We Decided

We decided that you are eligible for relief from the Department of Justice reporting requirements imposed by the Brady Handgun Violence Protection Act.

We reviewed the following evidence in considering your claim:

- (enter evidence)

Our review of this evidence reveals that your disability, record, and reputation are such that you are not likely to act in a manner dangerous to yourself or others. Further, the granting of relief is not contrary to public safety or the public interest. Please allow the Department of Justice up to 8 weeks to update its records in accordance with our decision.

If You Have Questions or Need Assistance

You may find more information about the Relief from Disabilities program in 18 U.S.C. § 925(c). If you have any questions regarding this decision, you may contact us by letter, Internet, or telephone. In all cases, be sure to refer to your VA file number, XXXXXXXX.

To Contact VA by	Here is what to do.
Mail	Send inquiries to the address at the top of this letter
Internet	Send an inquiry via VA's Web site at https://iris.va.gov.
Telephone	Call 1–800–827–1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1–800–829–4833.

We sent a copy of this letter to your representative, XXXXXX, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Veterans Service Center Manager

cc:

Enclosure 3—NICS Relief Denial Letter

XXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXX

In reply, refer to:
File Number: XXXXXXX

Dear Mr./Ms.:

We received your request for relief under the *National Instant Criminal Background Check System (NICS) Improvement Amendments Act (NIAA) of 2007* (Public Law 110–180).

What We Decided

We determined you are *not* eligible for relief from the Department of Justice reporting requirements imposed by the Brady Handgun Violence Protection Act.

We considered the following evidence:

- (enter evidence)

Based on this review, we are unable to conclude through clear and convincing evidence regarding your disability, record, and reputation that

- you will not likely act in a manner dangerous to yourself or others, and
- the granting of relief would not be contrary to the public interest.

Your Right for Review

NIAA relief requests are not matters which fall within the scope of title 38 of the United States Code and denial of such requests are not subject to review by the Board of Veterans' Appeals. However, denials of requests for relief under the NIAA are subject to review in Federal district court. See 18 U.S.C. § 925(c) for more information concerning appellate rights.

If You Have Questions or Need Assistance

You may find more information about the Relief from Disabilities program in 18 U.S.C. § 925(c). If you have any questions regarding this decision, you may contact us by letter, Internet, or telephone. In all cases, be sure to refer to your VA file number, XXXXXXXX.

To Contact VA by	Here is what to do.
Mail	Send inquiries to the address at the top of this letter
Internet	Send an inquiry via VA's Web site at https://iris.va.gov.
Telephone	Call 1–800–827–1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1–800–829–4833.

We sent a copy of this letter to your representative, XXXXXX, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Veterans Service Center Manager

cc: