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VETERANS DISABILITY BENEFITS CLAIMS MODERNIZATION ACT OF 2008

JULY 29, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 5892]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5892) to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to modernize the disability benefits claims processing system of the Department of Veterans Affairs to ensure the accurate and timely delivery of compensation to veterans and their families and survivors, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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69–006

PURPOSE AND SUMMARY

H.R. 5892 was introduced by Representative John J. Hall of New York, the Chairman of the Subcommittee on Disability Assistance and Memorial Affairs, on April 24, 2008. This legislation, as amended, would comprehensively overhaul the Department of Veterans Affairs (VA) claims processing system to ensure the accurate and timely delivery of compensation and pension benefits for veterans, their families, and survivors.

BACKGROUND AND NEED FOR LEGISLATION

There are nearly 24 million veterans and more than 2.7 million receive disability compensation benefits from the VA. Upon filing a claim for disability compensation benefits at VA, veterans and their beneficiaries face increased waiting times. As many veterans service organizations assert, a "benefit delayed is a benefit denied."

As of July 19, 2008, the number of pending disability compensation claims stood at nearly 630,000, with almost a quarter of these pending for longer than six months. In 2007, the VA Regional Offices (VAROs) took in more than 800,000 claims for disability compensation, up from 675,000 in 2006. The number of filed claims is likely to increase steadily as Operation Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) veterans return and veterans from previous conflicts age. Although the VA's fiscal year 2009 budget submission projected receipt of more than 872,000 claims, the actual number of claims received in the coming year could easily exceed one million.

As VA's inventory of claims increases, its realistic ability to process these claims in a timely fashion under its current system has been called into serious question. In 2007, the average claims processing waiting time increased by six days from 177 days in 2006 to 183 days. According to the VA Office of the Inspector General (OIG), VA failed to meet its 2007 performance goals or targets in all major compensation and pension rating related actions: compensation and pension rating related actions—target 160 days, actual 183 days (6-day increase); Dependency and Indemnity Compensation (DIC)—target 125 days, actual 132 days (7-day increase); non-rating pension actions—target 96 days, actual 104 days (8-day increase); burial reimbursements—target 60 days, actual 91 days (31-day increase); percent of applications for headstones and markers for the graves of veterans not buried in national cemeteries within 20 days—target 70 percent, actual 38 percent. Moreover, the Veterans Benefits Administration (VBA) consistently missed customer satisfaction targets and the time for seasoned raters to complete ready-to-rate claims (claims that are fully-developed) increased from 127 days to 135 days.[1]

The Veterans' Disability Benefits Commission (VDBC), established pursuant to Public Law 108–136, issued its report *Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century* on October 3, 2007. The VDBC found that two-thirds of compensation claims made each year are from veterans previously determined to have a service-connected disability and most are veterans

[1] Department of Veterans Affairs, *FY 2007 Performance and Accountability Report, See generally,* pp. 265–268.

of WWII, Korea and Vietnam. It concluded that as this population ages, the VBA can expect to see increases in the percentage of claims for worsening or chronic conditions. Currently, the average age of veterans who are filing claims for disability compensation is 55. The VDBC also found that in 2006, the large majority of claims (81 percent) were reopened claims (claims that were initially denied or the veteran was dissatisfied with the disability rating) and approximately 20 percent were original claims.

The Consolidated Appropriations Act of 2008 (Public Law 110–161) secured the largest increase in VA funding with a record $4.8 billion increase in VA discretionary funding above fiscal year 2007 enacted levels. This increase included additional resources for the VA to be able to secure more than 1,300 new VBA employees, in addition to the 1,700 full-time employees (FTEs) from recent funding cycles. However, the Committee has heard from some VBA employees that new hires often have no place to work and may be assigned to non-production duties due to space constraints.

The VA, in its fiscal year 2009 budget request, sought an additional 703 FTEs for the VBA. Although the Committee supports hiring additional employees to address the claims backlog, the Committee believes that adding them to a broken processing system will not necessarily eliminate the backlog or decrease lengthy processing times for veterans filing disability claims.

Dating as far back as the Bradley Commission Report of 1956, VA has been awash in informed recommendations on how to improve its claims processing system. Yet, despite the benefit of numerous well-informed and detailed reports, the Committee finds that VA leadership has consistently failed to implement most of the stated recommendations for reform and to develop its own strategic plan with proper forecasting and accountability.

The VDBC urged the VA to simplify and expedite the processing of disability claims. The President's Commission on Care for America's Returning Wounded Warriors (Dole-Shalala Commission) report, while lacking specifics on how to carry out the reinvention, called for revamping of VA's entire claims processing system. The Committee concluded, based on these and an innumerable number of other reports, as well as its own analysis and oversight, that the VA's disability claims processing system is heavily paper-based, relies on WWII-era processing and disability paradigms, is fraught with inefficiencies and is in need of 21st Century improvements.[2] The Committee believes that the linchpin to problems in claims processing begins with the failure to properly develop and adjudicate original claims at the VARO level within the VBA.

Moreover, as it has been every year since 2003, modernizing the VA's disability program again was placed on the Government Accountability Office's (GAO) high-risk list for 2007.[3] Finding that the current system has lagged behind economic and social changes, the GAO stated that VA should take a lead role in seeking the regulatory and legislative solutions needed to transform its programs so that they are aligned with the current state of science, medicine,

[2] The VDBC found that while, "[t]echnology offers opportunity for improvements, but it is unlikely to solve all problems. The Commission believes that increased reliance on best business practices and maximum use of information technology should be coupled with a simplified and expedited process for well-documented claims to improve timeliness and reduce the backlog." VDBC report at 15 (Executive Summary).

[3] GAO, *High Risk List: An Update,* GAO 07–310 (Washington, DC, January 2007).

technology, and labor market conditions. Due to continued variation experienced in the decisions made at the field level offices, the GAO recommended a comprehensive review of the structure and the division of labor in the VAROs. The Committee concurs in these findings.

The production challenges VA faces are not new problems for the VBA and there are several reasons for the failures of VA's claims processing system that the Committee's oversight has uncovered or reemphasized which led to the development of H.R. 5892.[4] While there may have been a few circumstances at play beyond VA's control (e.g., the OEF/OIF war efforts and influx of returning veterans), the Committee remains perplexed at the VA's inability to vigorously address managerial and systematic problems in the claims processing system.

H.R. 5892 would comprehensively modernize the VBA claims processing system and arm it with the up-to-date tools and paradigms it needs to process claims using integrated information technology and platforms, while improving the accountability, timeliness, and quality of adjudicated claims. Additionally, it would enhance the annual reporting requirements of the United States Court of Appeals for Veterans Claims as well as provide the Court with more discretion to decide all issues raised on appeal by appellate veterans. The Committee believes that H.R. 5892 will help VA update its claims processing system so that the VBA will become a 21st century, world-class entity that reflects the selfless sacrifices of those it serves—our veterans, their families, and survivors.

VA SCHEDULE FOR RATING DISABILITIES

Veterans' disabilities are evaluated in accordance with the VA Schedule for Rating Disabilities (VASRD). The VASRD was originally created in 1917 to address the needs of returning World War I veterans and avoid the economic devastation that the United States faced after the Civil War. The VASRD was last comprehensively revised in 1945, although modifications have been made to certain sections. Overall, the VASRD contains many outdated and archaic criteria and lacks more commonly accepted medical practices and procedures. Studies conducted in 2007 by the Institute of Medicine (IOM), entitled *PTSD Compensation and Military Service* and *A 21st Century System for Evaluating Veterans for Disability Benefits,* and the Center for Naval Analyses Corporation (CNAC) 2007, found it to be an inadequate instrument for compensating disabilities for the average impairments of earning capacity, especially in the areas of mental health, unemployability, and issues affecting younger severely injured veterans.[5]

The IOM further recommended the VASRD be revised using more modern medical concepts in order to interrelate with other commonly used codes or guides, such as the International Classification of Diseases published by the World Health Organization; the Diagnostic and Statistical Manual published by the American

[4] See, generally, VA Claims Processing Taskforce, *Report to the Secretary of Veterans Affairs*, October 2001.

[5] Christensen, E. McMahon, Et. Al. *Final Report for the Veterans' Disability Benefits Commission: Survey Results and Selected Topics.* CRM D0016570.A2/Final. Center for Naval Analyses, Alexandria, VA: August 2007. pp. 194–195.

Psychiatric Association, or the Guides to Evaluating Permanent Impairment published by the American Medical Association.

This provision of H.R. 5892, derived in part from the Veterans Quality of Life Study Act of 2007, H.R. 4084, introduced by the Honorable John J. Hall of New York on November 6, 2007, would require the Secretary to conduct a study on adjusting the VASRD to take into account the loss of quality of life and loss of earnings capacity as recommended by the IOM. VA also would need to submit a plan and timeline to Congress for the revision of the VASRD using current medical and technological concepts, practices, and standards. An implementation plan and biannual progress reports would be due to Congress not later than three years after enactment. Additionally, this provision requires the establishment of an 18-member Advisory Committee on Disability Compensation to consist of leading experts who will guide the Secretary on revising and readjusting the VASRD in the future.

Current law requires that VA compensate service-disabled veterans for loss of potential earnings. However, the aforementioned IOM and CNAC reports indicate that service-connected disabled veterans report lower quality of life than the average population. Currently, it is not clear whether the VA standard addresses the non-work-related effects of permanent physical and mental combat-related injuries, although special monthly compensation awards are currently made for veterans who qualify.

Following extensive research, the VDBC, the IOM, and the Dole-Shalala Commission all concluded that VA should compensate disabled veterans for their loss of ability to function in activities of daily life and, if possible, for the loss of quality of life. These entities further recommended that Congress direct VA to revise the VASRD to account for these additional effects of impairment. Answering the call of these recommendations, H.R. 5892 would require VA to commission a study to determine the appropriate level and duration of benefits that would compensate veterans for the full impact of their service-connected disability. VA policy officials informed the Committee that a study consistent with the requirement in H.R. 5892 is currently ongoing. It is the intention of the Committee that this provision inform VA's implementation of this study's findings.

EMPLOYEE WORK CREDIT SYSTEM OF THE VBA

The Committee finds that VBA's current work credit system does not take into account the correct or incorrect outcome of the claim, but rather focuses on the number of tasks completed by the individual claims rating personnel leading, ultimately, to very little individual accountability within the VBA.

Currently, each claim is given an "end product code," which estimates the amount of time it will take for an employee to complete their assigned tasks for each claim. After completing this task, the employee receives credit for their work. The time included in the product code for each task varies by difficulty of the task that was completed. This means that a member of the Post-Determination team may only work on three claims a day because of the level of difficulty while a member of the triage team may complete ten claims in a day. These end product codes are also linked to the difficulty level of the claims adjudicated. For example, the employee

(and ultimately the VARO) receives more credit if they complete an original compensation claim vs. an original pension claim. Even though these work credits and end product codes are not supposed to serve as part of the employee's, and VARO's, performance standards it has been shown that this is one of the first statistics VBA examines when it evaluates performance.

While a seemingly sound system in theory, The American Legion, National Veterans Legal Services Program (NVLSP) and many other veterans service organizations have informed the Committee repeatedly during hearings conducted during the 110th Congress, that the practical effects of the current system places a dangerous emphasis on quantity over quality where the accuracy of adjudicated claims suffers as a result. Since employees receive credit for the work they do, regardless of whether they did the work correctly, there is less of an incentive for any employee to do the work correctly the first time. For instance, when an employee makes a mistake where a decision is overruled by the Decision Review Officer (DRO), Board of Veterans Appeals (BVA) or the Court of Appeals for Veterans Claims (CAVC), there is little to no counseling with that individual employee to remediate the mistake to prevent future errors. Instead, when enough errors of a certain type have been made by a VARO, a remediation team comes in and trains the whole team on these deficiencies even if this training is only needed by a few members of the team.

Several witnesses have suggested that Congress direct VA to change this current system to create one where a VARO cannot receive credit for its work until one year after the adjudication of a claim occurs. This timeframe coincides with the statutory limit on how long a veteran can take to file an appeal with the BVA. The rationale is that lengthening the timeframe to receive credit would force the VARO to take more time examining the quality of their decisions in the first instance. H.R. 5892 does not capture this recommendation, but the Committee views it as a viable alternative for ensuring better accountability.

Moreover, the Committee believes that there is no reason why the VBA could not continue to use its current work credit system while the new system is being implemented. With increasing BVA and CAVC dockets, it is critically important that VA's 57 VAROs adjudicate claims correctly the first time. Improving VBA's work credit system is one way to do that. The Committee points out that the language of H.R. 5892 is not intended to preclude VA from using its current end product coding system for identifying and distinguishing workload.

H.R. 5892 would require the Secretary to conduct a study of the VBA's work credit system focusing on improving the quality, performance, accuracy of claims, and the enhanced use of information technology. VA would have to report to Congress on how it plans to implement a new system for measuring work production within 180 days of enactment. The legislation would require suspension of the current work credit system if VA fails to implement a new system for measuring work production of VBA employees.

VA WORK MANAGEMENT SYSTEM

In 2002, VA shifted its claims processing system from a case management model, where one employee was responsible for com-

pletion of a claims file, to the Claims Process Improvement (CPI) model which emphasizes specialization of processing. According to VA, the CPI model allows for specialization of processing through the use of six specialized teams. Four of these teams address specific cycles in claims processing: triage, pre-determination, rating, and post-determination. Two additional teams, public contact and appeals, address important areas related to operations. VA reasoned it would be easier to spot process or flow disruptions by shifting from an individual focus to a process focus. Additionally, training and development could be specific and focused and tools to monitor inventory would be more effective. However, the Committee concludes that to date, none of these projected efficiencies have been realized for VA's current claims processing system after adoption of the CPI.

The Committee finds that what the CPI model means to a veteran filing a claim is that, at the very least, six VBA employees handle the claim, none of whom are held accountable for any of the errors it may contain. If the case is appealed or remanded, it does not seem as if this error reverts back to the actual employee who committed the error for corrective action. When there is no accountability or consequence for poor quality, then employees may not have an incentive to focus the work product on quality outputs.

Between 2000 and 2007, the appeals rate on disability determinations has more than doubled to approximately 12 percent. According to VA, the current remand rate (cases sent back to VARO for further development) is approximately 57 percent. More importantly, both the backlog and processing times have increased dramatically since implementation of the CPI model in 2002 and quality and accuracy seem to have been dramatically sacrificed. This poor performance trend seems likely to continue for the foreseeable future and the Committee finds that VA needs to shift its claims processing system from this extremely unsuccessful paradigm.

During a Subcommittee on Disability Assistance and Memorial Affairs hearing concerning the VA claims backlog on February 14, 2008, the American Federation of Government Employees (AFGE) stated that it was "concerned that the claims process improvement pendulum had swung too far turning the claims process into an assembly line" with accountability being hard to pinpoint. AFGE further stated that "[t]here are many benefits when employees work the entire claim from the application to the appeal[.] Our members really feel the loss of weekly case management meetings that used to give them the opportunity to discuss challenging claims, changes in the laws and best practices."

H.R. 5892 would require the Secretary to conduct a study and report on the work management system of the VBA. The Committee finds that the current CPI model does not focus on accuracy and is overly geared towards production and output without regard to quality or accountability.

While this provision is not intended to compel VA to return to its pre-CPI claims processing model, the Committee does find that its current system fails to provide adequate training for raters, timely notification of changes in law, or opportunities to standardize best practices throughout all of its regional offices. As such, these lessons from the past should be used to inform VA's efforts

to improve the accountability and accuracy of its current claims processing paradigm.

The Committee believes that overall, VA needs to focus on making its disability claims processing system more veteran-focused and much less process-focused. CPI, as currently implemented, seems antithetical to meeting this need. H.R. 5892 would encourage VA to reevaluate and revise its current failed claims processing model.[6]

CERTIFICATION AND TRAINING OF EMPLOYEES OF VETERANS BENEFITS ADMINISTRATION RESPONSIBLE FOR PROCESSING CLAIMS

The training program for VBA employees seems to still present challenges for VA. The Committee applauds recent efforts by the VBA to require at least 80 hours of training for each employee and to centralize the training program at its National Training Academy in Baltimore. However, gaps in training and inconsistencies between the VAROs clearly persist. As pointed out by the Institute for Defense Analyses (IDA) in its study on VARO variances, points on which the Committee concurs, the VBA needs to standardize initial and ongoing training for rating specialists which includes implementing its Training and Performance Support System (TPSS), Rating Veteran Service Representative (RVSR) certification, and advanced development training for complex claims (like PTSD).[7] The VBA informed the Committee that it plans to reinstate its RVSR testing certification which it had suspended for over two years due to poor performance. However, disputes continue between management and labor on test contents.

The Committee believes that certification testing is an appropriate means to measure an employee's qualifications and skills and should be a part of the VA's human resources evaluation system.

The Systematic Technical Accuracy Review (STAR) is the VBA's national program for measuring compensation and pension claims processing accuracy. The STAR includes evaluation of work in three areas: claims that usually require a rating decision, claims that generally do not require a rating decision, and fiduciary work. Audit style case reviews are conducted after completion of all required processing actions on a claim. The review is outcome-based and includes all elements of processing the particular claim. STAR accuracy review results are generated for all 57 VAROs and are included in both the station and VARO Director's annual performance measures, but not an individual employee's performance measures.

The STAR review takes a sample size of ten cases requiring a rating decision, ten cases that do not require a rating decision, and three to ten cases of fiduciary work. The samples are reviewed monthly at each of VBA's 57 VAROs. These numbers are somewhat

[6] According to the VDBC and based on Committee assessments, the most time-consuming part of claims processing is the time it takes to begin development until the time the development has been received and the claim is referred to the rating board for a decision. When the average processing time was 181 days, the VDBC estimated that the development portion of the claims process takes approximately 111 days. Including the other 3–4 steps in the CPI Model, which all disability claims are subjected, it seems nearly impossible for VA to ever meet its current claims processing target of 145 days.

[7] Institute for Defense Analyses, *Analysis of Differences in VA Disability Compensation*, August 2007, p. 39.

different for smaller and larger stations. This means that roughly 19,000 claims or 2.4 percent are reviewed by STAR each year.

These cases are randomly selected for each area based on end product codes. When completing a review, raters use a special checklist that checks for everything from development to dates and completion of duty to assist letters. An answer of "No" to any of the questions on the checklist relating to the processing of the issue (end product) action under review will result in the case being classified as "in error." The last section of the rating, authorization and fiduciary checklists, contains an area for administrative questions that are not related to the accuracy of claims processing: an answer of "No" for one of these questions will not indicate error in the case.

It is unclear what the VBA actually does with STAR reviews once they are completed. If a claim is found to be in error, a readjudication is requested and is supposed to be completed by VARO staff. It is uncertain what additional training is conducted or whether or not there is any level of accountability for an individual VARO when mistakes are made.

In an August 2007 report, the IDA recommended that VA increase oversight and review rating decisions by increasing the STAR's staffing and sample size, by participation of STAR staff in site visits, and by using STAR results to clarify procedures and focus training activities and enhancements to the STAR database. Additionally, the report called for VA to improve and expand data capture and retention (a byproduct of transition from the legacy to its corporate system, VETSNET) with more robust data collection and better support for information management and analysis.[8]

As of July 2008, there were more than 162,000 appeals currently pending in VAROs and the VBA's Appeals Management Center, including cases requiring processing prior to transfer to the BVA and cases remanded to the VBA offices by the BVA or the CAVC. Also, there are nearly 40,000 additional appeals now pending at the BVA. By most accounts, this increase is due to a sharp increase in denials by the VBA and poorly adjudicated claims at the VARO in the first instance.

This "hamster wheel" appeal cycle adds years to the processing time for a veteran's claim and the OIG found that "all of these processes—initial decisions by VBA, pre-appellate reviews in VA regional offices, actions by VBA's Appeals Management Center, consideration at BVA, and ultimately consideration by the CAVC—present VA with a formidable challenge in terms of timeliness in providing monetary benefits to veterans."[9] The Committee believes the VBA should devote significant resources to addressing this growing crisis and continue to improve its training and accountability to reduce the avoidable remand rate.

The Committee is pleased that the VBA indicated in the VA's fiscal year 2009 budget submission that it plans to increase its STAR staff by approximately12 FTEs and insists that the STAR accuracy rating has improved since fiscal year 2004 to about 88 percent (although its stated goal is 98 percent). The Committee believes the VBA should increase the number of cases subject to STAR Review

[8] *Ibid*, p. 41.
[9] Department of Veterans Affairs, *FY 2007 Performance and Accountability Report*, p. 266.

and develop a system of accountability for improperly processed claims.

Lastly, there have been on-going problems with VA's ability to recruit and retain qualified rating officials and managers. In general, it takes two to three years to train a rater who will stay on the job for an average of five years. Senior employees are at retirement age and many are expected to leave the VA in the near future which will create a drain on the claims processing system. VA must ensure that it both develops the proper tools to train new employees and adopts retention policies that encourage employee stability at its regional offices where benefits claims are processed.

H.R. 5892 would require VA to redevelop this certification exam to test both appropriate VBA employees and managers and to include appropriate input from interested stakeholders in its development. It would also require the Secretary to contract with an outside entity to conduct an evaluation of VBA's training and quality assurance programs within 180 days of enactment.

ANNUAL ASSESSMENT OF QUALITY ASSURANCE PROGRAM

In a statement for the record presented to the Committee on Veterans' Affairs in December 2005, the GAO highlighted the lack of consistency and accuracy at VA's 57 VAROs. It has been widely reported that Regional Directors often make autonomous decisions regarding ratings, training, resource allocations, and production goals with very little oversight by the VA's Central Office. This persistent lack of accountability partially explains the great variances in disability compensation awards between the 57 VAROs.

These findings were also underscored in the IDA report which found that "in practice, regional offices are largely independent . . . and the quality assurance program is insufficient to promote consistency across regional offices." [10] The report came about as the result of an in-depth analysis of variances among VAROS that was prompted by a series of articles in the *Chicago Sun Times* which revealed that Illinois veterans receive less disability compensation than other veterans around the country. The range of compensation in 2003 for veterans with similar disabilities was $6,802 in Illinois to $10,852 in New Mexico. In 2005, the variance was $7,500 to $12,500.

This variability in ratings and awards is not a new problem for VA. In fact, the IDA found that historically the relative variability across states and VAROs has existed at or near the current level over the past 35 years. The Committee believes VA should focus on instituting the reforms set forth in the IDA's Report to promote uniformity in training and better accountability across its 57 VAROs.

Currently, VA does not review a statistically valid sample of a veteran's claim within its STAR program. Moreover, the STAR analysis is usually conducted in-house by VBA managers who may be reluctant to report real quality concerns.

H.R. 5892 would require the Secretary to contract for an annual quality assurance assessment that measures a statistically valid sample of VBA employees and their work product for accuracy, con-

[10] Institute for Defense Analyses, *Analysis of Differences in VA Disability Compensation*, August 2007, p. 37.

sistency, and reliability, and to track trends. H.R. 5892 contains language derived from H.R. 5709, a measure introduced by the Honorable Zachary Space of Ohio, on April 3, 2008, that would also require the VA to standardize its data collection and capture more meaningful data for comparative analysis. The Committee believes that expanding this collection to include race, sex, and other pertinent demographic information would also prove useful for comparative and oversight purposes. Furthermore, the information gathered during an objective quality assessment would be used to inform the development of training and certification goals under section 105 of the bill.

EMPLOYING MEDICAL PROFESSIONALS TO ASSIST EMPLOYEES OF VETERANS BENEFITS ADMINISTRATION

A study conducted by the CNAC found that, among VBA raters, more than 75 percent of rating personnel indicated they would benefit from having an expert health professional available to answer medical questions and to assist in their understanding of a disease or progression of injuries. Rating personnel receive medically-informed training in order to decide and adjudicate claims, but the overwhelming majority do not possess medical backgrounds, education, or experience. Having on-hand access to medical professionals would likely improve rating accuracy and consistency.[11]

H.R. 5892 would require the Secretary within 90 days of enactment to conduct a study to evaluate the use of medical professionals as a reference resource to assist its personnel responsible for processing and adjudicating claims. This assistance would be in addition to any assistance provided by medical professionals of the Veterans Health Administration and would also include medical professionals who are not physicians.

The Committee emphasizes the point that medical professionals are intended to serve as medical reference resources only; much as a medical reference guide might prove useful in informing decisions of rating personnel. None of the information provided by these medical professionals is to be used as a source to rate any disability or evaluate any claim. H.R. 5892 expressly forbids the use of medical professionals for these purposes. The Secretary would be required to provide a report to Congress within 180 days of enactment on its findings and conclusion. If the Secretary hires medical professionals pursuant to this Act, the Secretary must ensure that all rating specialists employed by its 57 VAROs have access to these medical professionals for reference purposes.

REVIEW AND ENHANCEMENT OF USE OF INFORMATION TECHNOLOGY AT VETERANS BENEFITS ADMINISTRATION

According to VA, 12 percent of the more than 800,000 claims filed are appealed. The remand rate as of 2007 is more than 56 percent and variances across the VAROs have generated investigations by the OIG (*Review of State Variances in VA Disability Compensation Payments*) and a study by the Institute for Defense Analyses previously mentioned. High staff turnover, improper training,

[11] Harris, Daniel, Findings from Raters and VSO Surveys. CRM D0015934.A2/Final. Center for Naval Analyses Corporation for the Veterans' Disability Benefits Commission. Alexandria, VA: May 2007. p. 134.

lack of resources, and lost, missing, and unassociated paper records have waylaid the system. Increased use of information technology, such as rules-based systems decision support software and fully relational databases, will promote three desired goals: timeliness, consistency, and accuracy.

VBA is in the process of reorganizing its Information Technology (IT) management and converting its legacy Benefits Delivery Network (BDN) system to the VETSNET platform. VETSNET is a group of applications that can perform payment, accounting, and workflow management functions. According to VA, as of January 2008, more than 850,000 veterans were receiving their benefits payment via VETSNET. The claims development and rating decision support component of VETSNET is fully functional at all the VAROs and the VAROs are incorporating imaging and electronic records into the disability compensation claims process.

Despite these achievements, the GAO noted in March 2007, "VA continues to experience significant service delivery challenges including lengthy processing times, and inaccurate and inconsistent decisions."[12] GAO further concluded, "VA lacks a consistent method for ensuring consistency of decision making within VA as a whole."[13]

VETSNET (unlike BDN) would allow for the use of decision-support and expert system applications, but these have not yet been integrated with BDN. These tools are available today and the Committee expects the VA to complete VETSNET and its enhancements on a priority basis. VA indicated during testimony before the Subcommittee on Disability Assistance and Memorial Affairs on January 29, 2008, that it intends to eventually process claims in an entirely electronic environment and would be employing a lead system integrator.

The Committee is concerned that VA has only recently, over the past year, begun development of a strategic plan for systematically processing claims using an integrated electronic platform.[14] The Committee received the results of the IBM study commissioned by VA in March 2008 to fully assess its claims processing system. The results were not surprising to the Committee and reiterated findings outlined in prior studies. Moreover, at least three private entities have apprised the Committee and VA of rules-based programs that will help process veterans' claims more efficiently and effectively, yet the VBA seems incapable of harnessing the value of these developments or other IT developments to improve its dysfunctional and outmoded claims processing system. The Committee firmly concludes that VA leadership should work on developing an internal, system-wide strategic plan in order to improve its claims processing outcomes, with appropriate organizational and individual accountability that employs rules-based IT platforms and decision-support software.

H.R. 5892 would require the Secretary to develop a plan to implement comprehensive information technology upgrades, including web portals, rule-based expert systems, and decision support soft-

[12] GAO, *Long-Standing Claims Processing Challenges Persist.* GAO–07–512T, p. 3.
[13] *Ibid*, p. 6.
[14] Information discussed during a VBA briefing to staff of the Committee on Veterans' Affairs in January 2007, VA testimony before the Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs hearing on *The Use of Artificial Intelligence in the VA's Claims Processing System*, January 29, 2008.

ware within one year to enhance its claims processing capabilities and to rate claims within the time period VA identifies in its Annual Performance Report to Congress. The technology exists for VA to be able to assist its rating personnel in effectively utilizing key word classifiers, scanning and indexing data, and employing other information architecture platforms and software. Electronic health records and examination templates currently used by the Veterans Health Administration (VHA), and electronically transferred Department of Defense records, along with an online application system could be integrated to improve the quality and timeliness of claims adjudication. The Committee believes that based on current technology, VA should be able to manage a claim from the point of application to the payment of compensation in an integrated electronic environment. Currently, it falls far short of this goal.

CLARIFICATION OF "ENGAGED IN COMBAT WITH THE ENEMY"

H.R. 5892 would amend section 1154(b) of title 38, United States Code, to ease the weighty evidentiary burdens VA imposes on combat veterans who may not have unit records or other documentation of exposure to stressful events, but whose injuries are consistent with the duties and hardships of their service and hence should be service-connected. This usually arises in the instance where a servicemember is separated from the assigned unit during the time a traumatic event occurs (for instance when a military police officer, a truck driver in a convoy, or other support personnel comes under attack while assigned temporarily to another unit).

These evidentiary hurdles become even more critical for conditions such as PTSD where the injury to the mind is not visible and the documentation, due to the unpredictable enemy fire lines and nature of battle, as well as frequent separation from units, may not exist. The Committee finds that these veterans are not the outliers and too many are improperly being denied service-connected benefits based on VA's overly stringent interpretation of the presumption of exposure clearly outlined in section 1154(b) of title 38, United States Code. While the provision in H.R. 5892 is not intended to solely ease the evidence hurdles that veterans suffering from PTSD face when trying to prove service-connection for exposure to stressors, this may be its practical effect.[15]

Incidences of PTSD are higher than anticipated in the current OEF/OIF conflicts and this number will likely only grow due to lengthy combat deployments. A recent RAND study concluded that approximately 18.5 percent of OEF/OIF veterans have PTSD or depression, which equates to approximately 300,000 veterans; only 53 percent sought some type of treatment partly due to the stigma surrounding mental health treatment. PTSD is not unique to OEF/OIF veterans. We know that many veterans from other wars were also afflicted, many of whom, according to testimony presented to the Committee, often are undiagnosed or have been denied benefits.

[15] The most prevalent conditions that are service-connected by VA are auditory with almost 840,000 veterans receiving compensation followed by musculoskeletal and arthritis. PTSD is the sixth most common condition with 269,399 service connected veterans. In 2006, the Veterans Health Administration (VHA) treated 345,713 veterans with PTSD, which represented an increase of 27,099 over 2005 and included 34,000 veterans who served after October 7, 2001. In June 2007, the Army reported an increase in suicide rates among its troops.

As noted, PTSD is the sixth most common service-connected condition with 269,399 veterans receiving benefits in fiscal year 2006. It is estimated that the societal costs (loss of productivity, treatment, suicide) of PTSD is $6.2 billion dollars. If all veterans and servicemembers who needed PTSD care were treated, it could save as much as $1.7 billion per year in societal costs and would cost only approximately $1,063 per veteran according to the RAND study. Additionally, the CNAC found that those with mental disabilities, especially veterans with PTSD and who were also unemployable were below economic parity when compared to other disabled peers.

Additionally, recent reports discussed during full Committee hearings indicate that the true number of veteran suicides could be as high as 1,000 per month, twice as high as for the general population.

The Committee finds that the evidentiary requirements to prove "engaged in combat with the enemy" found in VA's procedural manuals, the M–21–1s, are unrealistic and inconsistent with corresponding statute and regulations. As the Disabled American Veterans pointed out in testimony before the Subcommittee on Disability Assistance and Memorial Affairs hearing on the draft legislation of H.R 5892 conducted on April 10, 2008, "[n]either the statute or regulation requires validation by official military records of an in-service combat stressor . . . [t]hese internal instructions defy incredible supporting evidence that an in-service stressor occurred as evidence that specifically documents personal participation in the event[.]" The Committee also concurs with the Veterans of Foreign Wars' assessment, highlighted during this hearing, that the presumption afforded under Section 1154(b) for exposure to stressors should not require a combat medal to prove service-connection for PTSD or any other condition.

The Committee concludes that VA frustrates Congress' intent when the VA applies additional and unauthorized requirements contained in its internal M–21–1 manuals to determine eligibility for presumptions this provision of law is intended to afford combat veterans. H.R. 5892 would clarify the meaning of "engaged in combat with the enemy," which the Committee believes is already explicitly defined both in statute and in regulations in order to ensure more proper grants of presumption of service-connection to those veterans who also served in a theater of combat operations during a period of war or in combat against a hostile force during a period of hostilities.

EXPEDITED TREATMENT OF FULLY DEVELOPED CLAIMS AND REQUIREMENT FOR CHECKLIST TO BE PROVIDED TO INDIVIDUALS SUBMITTING INCOMPLETE CLAIMS

Pursuant to section 5103 of title 38, United States Code, VA must fulfill its duty to assist by providing the veteran with appropriate records and exams, and advising of incomplete applications and necessary evidence needed to process the claim. This also usually includes a medical exam, but not necessarily. The Veterans Claims Assistance Act of 2000 (VCAA) (Public Law 106–475) changed the burden of claim development from the veteran to VA. Prior to passage of VCAA, the veteran had the burden of proof in

producing the evidence necessary to establish the cause and extent of the disability, usually medical evidence.

VA contends that the implementation of VCAA notice requirements has significantly contributed to the time it takes to process disability claims. Based on VA's interpretation of notice requirements under VCAA, the processing timeline is extended by 90 days minimum (60 days after receipt of claims and an additional 30 if no response). Nonetheless, as recommended by the VDBC, the Committee supports efforts to further streamline the VCAA notice by possible implementation of an informed consent form when the claim has been fully developed and the veteran is satisfied with the evidence submitted before the 60–90 day window. This would likely allow well-developed claims to be adjudicated upon receipt, decreasing processing timeframes.

Furthermore, the Committee finds that it is essential that VA develop a detailed checklist to include with its VCAA letters that it sends to veterans. The Committee is absolutely confounded by VA's resistance and reluctance to make this move peremptorily. VA complains of the additional requirements that subsequent Court decisions have mandated. However, the Committee believes that VA has failed to embrace the spirit of the VCAA by not providing veterans with useful information to assist in their claims for benefits. In fact, during a Subcommittee on Disability Assistance and Memorial Affairs hearing conducted on April 10, 2008, William P. Greene, Jr., Chief Judge, U.S. Court of Appeals for Veterans Claims, stated in response to a question posed by Chairman John J. Hall: "In 2000, I thought the message was clear that all VA had to do was do a checklist and run down and make sure the veteran understood what it was that they had to present. And that is the message that the court has been trying to convey over the last seven years and the Federal Circuit." The Committee wholeheartedly concurs in the CAVC Chief Judge Greene's conclusion.

Allowing a veteran to state that a claim is ready to rate should reduce the amount of time it takes VA to adjudicate the claim since it will not have to wait the mandatory 60 days and potentially the additional 30 days for veterans to otherwise respond. Additionally, over the course of the development of this legislation, VA, with input from the House and Senate Committees on Veterans' Affairs, and in response to years of complaints from veterans and other stakeholders, voluntarily shortened the VCAA letters, simplified its verbiage, and made the waiver a more prominent part of the VCAA letter. The Committee commends VA for these efforts and encourages it to further embrace the goal of VCAA of better informing and assisting veterans with evidence and information needed to fairly adjudicate their claims.

H.R. 5892 would require the Secretary to set a policy that would allow veterans to submit claims and declare them fully developed and "ready to rate" at the time of submission and receive a rating within 90 days. This section would also amend VA's duty to notify and require the creation of a detailed checklist for claims for specific requests of additional evidence. VA has certain duties to assist the veteran in developing the claim.

ASSIGNMENT OF PARTIAL RATINGS

According to VA, in a hearing before the Subcommittee on Disability Assistance and Memorial Affairs on February 14, 2008, and in subsequent meetings with staff, it currently possesses the ability to issue partial ratings, although this authority is not expressly stated in statute. The Committee presumes VA believes it possesses this authority from section 501 of title 38, United States Code. H.R. 5892, also informed by provisions of H.R. 1490, introduced by the Honorable Joe Donnelly of Indiana on March 13, 2007, would expressly grant VA that authority and require VA to issue a partial rating in the instances where a veteran has sustained severe injuries (50 percent or above) and very serve injuries (100 percent) that can be promptly rated, while deferring other conditions that may not. VA and the Department of Defense have defined these conditions, and they include limb amputations, paralysis, TBI, severe burns, blindness, deafness, along with other radical injuries. Adoption of this section would help further ensure that those veterans returning from Iraq and Afghanistan are not asked to sacrifice their family's financial stability and well-being while recuperating from significant injuries. There have been too many cases of severely injured veterans with such injuries as amputations or paralysis that wait months or years for VA to adjudicate their complete claim as opposed to granting a rating for the parts of the claim that are indisputable and obviously attributable to military service.

The Committee also further clarified the language in this provision so that VA can rate the indisputable injuries based solely on the Department of Defense medical records, which would be extensive for these categories of injuries. This provision is intended to force VA to provide benefits to the nation's more severely disabled veterans without unnecessary delay while allowing it to retain the discretion of whether a Compensation and Pension exam is necessary. As presented in testimony in numerous hearings before the Committee during the 110th Congress, these processing delays cause veterans unnecessary emotional stress, financial burdens, and more often than not leave families in crisis.

H.R. 5892 would in no way affect VA's ability to render a permanent rating for any claimed conditions and would not interfere with the processing of a veteran's claim, a finding consistent with staff discussions with VA's policy experts. Nor would it impede a veteran from being granted special monthly compensation, aid and attendance, housing or auto grants, clothing allowances, or vocational rehabilitation—in fact it would likely expedite the availability of those benefits since they are contingent upon a grant of service-connection.

The Committee points out that a partial rating is different from a temporary rating, as a temporary rating is usually only assigned when a veteran experiences a prolonged hospitalization. A partial rating is also different from a pre-stabilization rating, in that the latter is usually assigned only to veterans that have conditions that are still undergoing treatment. These distinctions were made to Committee staff by VA policy officials. A partial rating is different from both the temporary or pre-stabilization rating, in that the rat-

ing is permanent but can be amended when other deferred conditions have evidence to warrant further adjudication.

H.R. 5892 would simply require VA to act more promptly for claims presenting undisputed severe and very severe injuries and in turn provide compensation more quickly where the service-connection link is indisputable. Whereas this provision uses the same scale for the partial rating as that outlined in the regulations for the pre-stabilization ratings, mostly for ease of administration purposes, its application is different and should not be confused. The Committee informs that this provision should be implemented by VA in a manner that provides the best outcome for the impacted veteran.

TREATMENT OF CLAIMS UPON DEATH OF A CLAIMANT

The provision in H.R. 5892 addressing the treatment of claims upon the death of a claimant is derived from H.R. 4084, introduced by Representative Honorable John J. Hall of New York on November 6, 2007, and H.R. 3047, introduced by Representative Doug Lamborn on July 16, 2007, which provide that in the event of the death of a veteran with a pending disability claim, an eligible dependent as identified under section 5121(a)(2) of title 38, United States Code, would be authorized to substitute for the deceased claimant at the point the claim had proceeded rather than being forced to re-file and restart the claim or appeal. This provision also would allow an eligible survivor to submit additional evidence for up to one year after the death of a veteran.

During a hearing conducted by the Subcommittee on Disability Assistance and Memorial Affairs on April 24, 2007, entitled, "Helping Those Left Behind: Are We Doing Enough for the Parents, Spouses and Children of Veterans?", the NVLSP apprised the Committee of the many instances where veterans die while awaiting resolution of a claim pending before the VARO, BVA, CAVC, or other reviewing court. This is due primarily to the fact that upon their deaths, survivors who are eligible to pursue a claim for accrued benefits are unable to continue that claim from the point it had progressed and essentially must restart the claim "at the back of the line." Additionally, upon re-filing a claim for benefits, survivors also are currently prohibited from submitting any additional information to help further develop the claim after the veteran's death.

The Committee finds this result both unfair and inefficient. Allowing substitution prevents unnecessary reworking of the same claim, allowing it to move forward from its current state of development to appropriate finality and saves families from facing unnecessary administrative hurdles.

H.R. 5892 would also allow the dependent, in order of priority as identified under 5121(a)(2) of title 38, United States Code, to designate another qualified survivor to pursue the claim for accrued benefits. This would likely prove to be a very helpful provision for aged and ailing survivors of deceased veterans who might not otherwise pursue the pending claim for accrued benefits for these reasons. VA should interpret this section so that only one qualified dependent at a time is deemed eligible to apply as the substitute claimant.

ANNUAL REPORTS ON WORKLOAD OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Currently the CAVC voluntarily provides an annual report to Congress which it also posts on its official Web site. H.R. 5892 would mandate reporting requirements to Congress upon enactment to include the number of petitions filed, number and types of dispositions, number of oral arguments, number and status of pending appeals and petitions, summary of service performed by retired judges, number of decisions by a single judge, multi-judge and full Court panels, number of cases pending longer than 18 months, and number of oral arguments. This information should better aid the Committee in conducting more focused oversight of the backlog of pending claims and in better assessing the needed resources.

The CAVC has indicated on numerous occasions to the Committee that it would like to establish a Veterans Courthouse and Justice Center Complex and expand the number of judges from seven to nine. The Committee applauds Chief Judge Greene's efficient and effective use of retired judges, but is concerned with its growing backlog of appeals. The additional reporting requirements would likely enhance the Committee's ability to determine the need for additional resources at the CAVC.

MODIFICATION OF JURISDICTION AND FINALITY OF DECISIONS OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

H.R. 5892 would modify the jurisdiction and finality of CAVC decisions on veterans' claims by providing the Court with additional discretion to decide all issues presented on appeal, except in the case of a reversal.

Pursuant to section 7251 of title 38, United States Code, the CVAC has exclusive jurisdiction to review decisions of the BVA. The Secretary of VA may not seek review of any of the CAVC's decisions. The Court has the power to affirm, modify, or reverse a decision, or remand the case back to the BVA for further review, but it does not have the ability to review the ratings of disabilities claims. The majority of the cases decided are remanded back to the Board. This has seemed to impact the effectiveness of the CAVC in providing intermediate res judicata and the result is often an overly elongated appeals process for veterans' claims.

In 2007, 4,644 new cases were filed with the CAVC, up from 3,729 in 2006. With a Court currently comprised of seven judges, the average caseload is approximately 663 cases per judge. This makes it one of the busiest federal appellate courts, where the average hovers around 263 cases. During the same period, 53 percent of these cases received were filed by unrepresented, pro se veterans, a decrease from 63 percent in 2006. Also in 2007, the CAVC decided 4,877 cases of which 1,666 were dismissed on procedural grounds. There were 3,211 merit decisions, the majority of which, more than 2000, were remanded (some in part only) and 1,098 were affirmed.

Currently the median time from filing at the CAVC to disposition is 416 days, up from 351 days in 2006. The average disposition time for a claim appealed to the CAVC hovers around five to seven years. The Court can hear cases by a single judge or in panels of

no less than three judges. In 2005 the Court heard only 24 oral arguments, or one percent—the remaining cases pending were decided on brief, BVA decision, and the record available to the BVA. Since its inception, the CAVC has disposed of more than 25,000 cases. Currently, it receives approximately 300–500 cases each month. Pursuant to section 7299 of title 38, United States Code, the Court has the right to recall retired judges for 90 days of service and as noted above has made impressive progress through use of this provision.

The number of remands ordered by the CAVC concerns the Committee. While the Committee is aware that improved accuracy of adjudicated claims at the VARO and the BVA levels would significantly stem the need for the Court to remand the large number of claims, it also finds that the Court is not operating efficiently by remanding the majority of cases without addressing meritorious issues raised on appeal. The Committee does not accept the Court's judicial economy explanation for this high remand rate.

Further, remanding a majority of cases mostly for procedural reasons without reaching the merits of issues presented is not in the spirit of Congress' intent in creating the CAVC. Before the Court's inception in 1988, the only means of appeal for a veteran was an appeal with the BVA, a VA entity. Veterans had no recourse for judicial review of rating decisions outside of the VA.

Finding this system of no judicial review inadequate, Congress, after significant pressure from veterans service organizations, created the CAVC (created as the United States Court of Veterans Appeals). If the Court remands the majority of its cases on procedural grounds, it does not encourage the VAROs and the BVA to improve its accuracy, to inform of mistakes in interpretation of VA laws and regulations, or afford veterans a timely resolution of claims. As the NVLSP pointed out in its May 22, 2007, testimony before the Subcommittee on Disability Assistance and Memorial Affairs:

> The piecemeal adjudication policy adopted in *Best* [*Best* v. *Principi*, 15 Vet.App. 18, 19–20 (2001)] and *Mahl* [*Mahl* v. *Principi*, 15 Vet.App. 37 (2001)] may benefit the Court in the short term. By resolving only one of the issues briefed by the parties, a judge can finish an appeal in less time than would be required if he or she had to resolve all of the other disputed issues, thereby allowing the judge to turn his or her attention at an earlier time to other appeals. But the policy is myopic. Both disabled veterans and the VA are seriously harmed by how *Best* and *Mahl* contribute to the Hamster Wheel.
>
> Moreover, the CAVC may not be saving time in the long run. Each time a veteran appeals a case that was previously remanded by the CAVC due to *Best* and *Mahl,* the Central Legal Staff and at least one judge of the Court will have to duplicate the time they expended on the case the first time around by taking the time to analyze the case for a second time.

The Committee concurs with this conclusion. Section 202 is intended to encourage the CAVC to reach the merits of issues filed on brief, to stop the recycling of claims, and to provide a more time-

ly resolution that veterans deserve on appeal and Congress intended for them to receive.

The high percentage of remanded cases by the CAVC is not the only barrier to achieving appellate justice that our veterans face. In a statement before the Senate Committee on Veterans' Affairs, retired judges from the CAVC indicated that judicial review by the Federal Circuit has resulted in too much judicial review and contributed greatly "to the intertwined problems of delay and backlog in finalizing decisions." With four levels of appeals (one administrative to the BVA) and three possible levels of judicial appeal the judges noted that, "this is just more justice than the system can bear."[16] The retired judges also noted that judicial review of one Federal intermediate appeals court by another is unique as the judges all have similar qualifications, backgrounds, nominations, and selection procedures; the difference being that CAVC judges have far more expertise in veterans' law.[17] Further the retired judges have estimated that Federal Circuit Court review accounts for an increase of more than 35 percent in the CAVC caseload.[18] The Committee finds that these assessments warrant further oversight and policy consideration, but H.R. 5892 does not address these specific issues.

HEARINGS

On March 13, 2007, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled, "The Impact of Operation Iraqi Freedom/Operation Enduring Freedom on the U.S. Department of Veterans Affairs Claims Process." The following witnesses testified: Mr. Daniel Bertoni, Acting Director, Education, Workforce, and Income Security Issues, U.S. Government Accountability Office; Ms. Linda J. Bilmes, Professor, John F. Kennedy School of Government, Harvard University; Mr. Stephen L. Robinson, Director of Veterans Affairs, Veterans for America; Mr. Brady Van Engelen, Associate Director, Veterans for America; Mr. Patrick Campbell, Legislative Director, Iraq and Afghanistan Veterans of America; Ms. Ann G. Knowles, President, National Association of County Veterans Service Officers; Mr. Jon Soltz, Co-Founder and Chairman, VoteVets.org; Mr. Ronald R. Aument, Deputy Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Mr. Michael Walcoff, Associate Deputy Under Secretary for Field Operations, Veterans Benefits Administration, U.S. Department of Veterans Affairs.

On April 24, 2007, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled "Helping Those Left Behind: Are We Doing Enough for the Parents, Spouses and Children of Veterans?" The following witnesses testified: The Honorable Brad Ellsworth, on behalf of Ron Nesler, Caregiver of Adult Dependent, New Harmony, Indiana; The Honorable Tom Latham of Iowa; Ms. Susan Jaenke, Mother of Deceased Veteran and Guardian of Grandchild, Iowa Falls, Iowa; Mr. Matthew B. Heavrin, Father of Deceased Veteran, Redlands, California, accompanied by Ms. Barbara Jean Heavrin; Ms. Amy Clark, Spouse of Terminally-

[16] Statement of Retired Judges, Senate Committee on Veterans Affairs hearing, S. Hrg. 109–694.
[17] *Ibid.*
[18] *Ibid.*

Ill Veteran, Bartow, Florida; Ms. Kimberly Dawn Hazelgrove, Widow, Lorton, Virginia; Ms. Rose Elizabeth Lee, Chair, Government Relations Committee, Gold Star Wives of America, Inc.; Ms. Patricia Montes Barron, Deputy Director of Government Relations, National Military Family Association; Ms. Christine Cote, Staff Attorney, National Veterans Legal Services Program; Mr. Jack McCoy, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Mr. Thomas M. Lastowka, Director, Philadelphia Veterans Affairs Regional Office and Insurance Center, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Statements for the Record Included: Mr. Peter S. Gayan, Director, Veterans Affairs and Rehabilitation Commission, The American Legion; The Honorable Solomon P. Ortiz of Texas; and Ms. Priscilla Piestewa, Mother of Deceased Veterans and Guardian of Grandchildren, Flagstaff, Arizona.

On May 22, 2007, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled, "The Challenges Facing the Court of Appeals for Veterans Claims." The following witnesses testified: The Honorable William P. Greene, Jr., Chief Judge, U.S. Court of Appeals for Veterans Claims; Mr. Bart Stichman, Joint Executive Director, National Veterans Legal Services; Mr. Robert Chisholm, Former President, National Organization of Veterans' Advocates; Mr. Brian Lawrence, Assistant National Legislative Director, Disabled American Veterans; The Honorable James P. Terry, Chairman, Board of Veterans' Appeals, U.S. Department of Veterans Affairs, accompanied by Mr. Randy Campbell, General Counsel Group II, U.S. Department of Veterans Affairs.

On September 25, 2007, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled, "Board of Veterans' Appeals Adjudication Process and the Appeals Management Center." The following witnesses testified: Mr. Barton F. Stichman, Joint Executive Director, National Veterans Legal Services Program; Mr. Richard Paul Cohen, President, National Organization of Veterans Advocates, Inc.; Mr. Carl Blake, National Legislative Director, Paralyzed Veterans of America; Mr. Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Adrian Atizado, Assistant National Legislative Director, Disabled American Veterans; Mr. Eric A. Hilleman, Deputy Director National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Arnold Russo, Director, Appeals Management Center, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Honorable James P. Terry, Chairman, Board of Veterans' Appeals, U.S. Department of Veterans Affairs.

On October 9, 2007, the Subcommittee on Disability Assistance and Memorial Affairs conducted a field hearing in New Windsor, New York, entitled, "Personal Costs of the U.S. Department of Veterans Claims Backlog." The following witnesses testified: Mr. Anthony Zippo, Director, Orange County Veterans Service Agency; Mr. Ned Foote, New York State Council, Vietnam Veterans of America; Mr. R. Michael Suter, Chairman, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Alex Lazos, Veteran, Harriman, New York; Mr. John Rowan, President, Vietnam Veterans of America on behalf of Mr. Ted H. Wolf, Veteran,

Pomona, New York; Mr. Eddie J. Senior, Veteran, West Harrison, New York; Christopher Ryan, Veteran, Ellenville, New York, accompanied by Ms. Angela Ryan; Mr. Michael Walcoff, Associate Deputy Under Secretary for Field Operations, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Statements for the Record Included: Mr. Michael Tokarz, Legislative Counsel Member, The American Legion; and, Mr. Jerry Donnellan, Director, Rockland County Veterans Service Agency.

On October 10, 2007, the Committee on Veterans' Affairs conducted a full Committee hearing entitled, "Findings of the Veterans' Disability Benefits Commission." The following witness testified: James Terry Scott, LTG, USA (Ret.), Chairman, Veterans' Disability Benefits Commission.

On November 8, 2007, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on a number of bills introduced in the 110th Congress, including H.R. 3047, H.R. 3249, H.R. 3286, H.R. 3415, H.R. 1137, H.R. 3954, and H.R. 4084. The following witnesses testified: Mr. Richard Daley, Associate Legislation Director, Paralyzed Veterans of America; Mr. Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Mr. Richard J. Hipolit, Assistant General Counsel, U.S. Department of Veterans Affairs; Paul Tibbits, M.D., Deputy Chief Information Officer, Office of Enterprise Development, Office of Information Technology, U.S. Department of Veterans Affairs; and, Mr. David K. Schettler, Director, Communications Management Service, National Cemetery Administration, U.S. Department of Veterans Affairs. Statements for the Record Included: The Honorable Jim Langevin of Rhode Island; Mr. Raymond C. Kelley, National Legislative Director, American Veterans (AMVETS); Mr. Kerry Baker, Associate Legislative Director, Disabled American Veterans; Ms. Rose Elizabeth Lee, Chair, Government Relations Committee, Gold Star Wives of America, Inc.; Mr. Lesley Witter, Director of Political Affairs, National Funeral Directors Association; and, Mr. Ronald B. Abrams, Joint Executive Director, National Veterans Legal Services Program.

On January 29, 2008, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled, "The Use of Artificial Intelligence to Improve the U.S. Department of Veterans Affairs Claims Processing System." The following witnesses testified: Tai Cleveland, GySgt, USMC (Ret.), Disabled Veteran, accompanied by Ms. Robin Cleveland; Mr. John Roberts, National Service Director, Wounded Warrior Project; Tom M. Mitchell, Ph.D., E. Fredkin Professor and Chair, Machine Learning Department, School of Computer Science, Carnegie Mellon University; Randolph A. Miller, M.D., Donald A.B. and Mary M. Lindberg University Professor of Biomedical Informatics, Vanderbilt University School of Medicine; Marjie Shahani, M.D., Senior Vice President of Operations, QTC Management, Inc; Mr. Ned M. Hunter, President and Chief Executive Officer, Stratizon Corporation; Mr. John F. McGarry, Senior Vice President of Benefits, Chief Risk Officer Unum; Mr. Gary A. Christopherson, Former Senior Advisor to the Under Secretary for Health and Chief Information Officer, Veterans Health Administra-

tion, U.S. Department of Veterans Affairs, and Former Principal Deputy Assistant Secretary for Health Affairs, U.S. Department of Defense; Ms. Kim Graves, Director, Office of Business Process Integration, Veterans Benefits Administration, U.S. Department of Veterans Affairs; and, Mr. Stephen W. Warren, Principal Deputy Assistant Secretary for Information Technology, Office of Information and Technology, U.S. Department of Veterans Affairs. Statements for the Record Included: Mr. Raymond C. Kelley, National Legislative Director, American Veterans (AMVETS); Mr. Kerry Baker, Associate National Legislative Director, Disabled American Veterans; Mr. Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; and, the Paralyzed Veterans of America.

On February 14, 2008, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled, "Examining the U.S. Department of Veterans Affairs' Claims Processing System." The following witnesses testified: Ms. Joyce McMahon, Ph.D., Managing Director, CNA Corporation; Mr. Michael McGeary, Senior Program Officer and Study Director, Committee on Medical Evaluation of Veterans for Disability Benefits, Board on Military and Veterans Health, Institute of Medicine; Mr. Daniel Bertoni, Director, Education, Workforce, and Income Security Issues, U.S. Government Accountability Office; Mr. Richard Paul Cohen, Executive Director, National Organization of Veterans' Advocates, Inc.; Mr. Ronald B. Abrams, Joint Executive Director, National Veterans Legal Services Program; Mr. J. David Cox, R.N., National Secretary-Treasurer, American Federation of Government Employees, AFL–CIO; Mr. Gordon Erspamer, Senior Counsel, Morrison and Foerster; Mr. Adrian Atizado, Assistant National Legislative Director, Disabled American Veterans; Mr. Paul Sullivan, Executive Director, Veterans for Common Sense; Mr. Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Gerald T. Manar, Deputy Director, National Veterans Service, Veterans of Foreign Wars of the United States; Mr. John Roberts, National Service Director, Wounded Warrior Project; Mr. Michael Walcoff, Deputy Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Ms. Diana Rubens, Associate Deputy Under Secretary for Field Operations, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs. Statements for the Record Included: Ms. Linda J. Bilmes, Professor, Kennedy School of Government, Harvard University; and, Master Sergeant Kurt Priessman, Veteran, USAF (Ret.).

On February 26, 2008, the Subcommittee on Disability Assistance and Memorial Affairs held a hearing entitled, "The U.S. Department of Veterans Affairs Schedule for Rating Disabilities." The following witnesses testified: Dennis Vincent McGinn, VADM, USN (Ret.), Member, Veterans' Disability Benefits Commission; Lonnie Bristow, M.D., Chair, Committee on Medical Evaluation of Veterans for Disability Compensation, Board on Military and Veterans Health, Institute of Medicine; Dean G. Kilpatrick, Ph.D., Member, Committee on Veterans' Compensation for Posttraumatic Stress Disorder, Institute of Medicine and National Research Council;

Jonathan Samet, M.D., M.S., Chairman, Committee on Evaluation of the Presumptive Disability, Decision-Making Process for Veterans, Board on Military and Veterans Health, Institute of Medicine; Joyce McMahon, Ph.D., Health Care Operations and Policy Research Center, Center for Naval Analyses Corporation; Mark H. Hyman, M.D., Presenter, American Academy of Disability Evaluating Physicians; Sidney Weissman, M.D., Member, Committee on Mental Healthcare for Veterans and Military Personnel and Their Families, American Psychiatric Association; Mr. Ronald B. Abrams, Joint Executive Director, National Veterans Legal Service Program; Mr. Dean Stoline, Assistant Director, National Legislative Commission, The American Legion; Mr. Kerry Baker, Associate National Legislative Director, Disabled American Veterans; Mr. Gerald T. Manar, Deputy Director, National Veterans Service, Veterans of Foreign Wars of the United States; Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Tom Pamperin, Deputy Director for Policy and Procedures, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Steven H. Brown, M.D., M.S., Director, Compensation and Pension Exam Program, Veterans Health Administration, U.S. Department of Veterans Affairs; Patrick Joyce, M.D., Chief Occupational Health Clinic, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Richard Hipolit, Assistant General Counsel, U.S. Department of Veterans Affairs, and, Joseph Kelley, M.D., Deputy Assistant Secretary of Defense for Clinical and Program Policy (Health Affairs), U.S. Department of Defense, accompanied by Horace Carson, M.D., Senior Medical Advisor, Air Force Review Boards Agency (SAF/MRB), U.S. Department of Defense. Statement for the Record Included: the American Medical Association.

On April 10, 2008, the Subcommittee on Disability Assistance and Memorial Affairs held a legislative hearing entitled, "The Veterans Disability Benefits Claims Modernization Act of 2008." The following witnesses testified: The Honorable William P. Greene, Jr., Chief Judge, U.S. Court of Appeals for Veterans Claims; Mr. Kerry Baker, Associate National Legislative Director, Disabled American Veterans; Mr. Ronald B. Abrams, Joint Executive Director, National Veterans Legal Services Program; Mr. Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Mr. Eric A. Hilleman, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Carl Blake, National Legislative Director, Paralyzed Veterans of America; and, Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Mr. Richard J. Hipolit, Assistant General Counsel, and Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, U.S. Department of Veterans Affairs. Statements for the Record Included: Mr. Raymond C. Kelley, National Legislative Director, American Veterans (AMVETS); Ms. Rose Elizabeth Lee, Chair, Executive Director, National Organization of Veterans' Advocates, Inc.; Mr. Richard Paul Cohen, Executive Director, National Organization of Veterans' Advocates, Inc.; and, Mr. Richard Weidman, Executive Di-

rector for Policy and Government Affairs, Vietnam Veterans of America.

SUBCOMMITTEE CONSIDERATION

On April 24, 2008, the Subcommittee on Disability Assistance and Memorial Affairs met in open markup session and ordered favorably forwarded to the full Committee H.R. 5892, by voice vote.

COMMITTEE CONSIDERATION

On April 30, 2008, the full Committee met in open markup session, a quorum being present, and ordered H.R. 5892 favorably reported to the House of Representatives, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 5892 reported to the House. A motion by Mr. Hall of New York to order H.R. 5892 reported favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 5892 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 5892 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 5892 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 2008.

Hon. BOB FILNER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5892, the Veterans Disability Benefits Claims Modernization Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

ROBERT A. SUNSHINE
(For Peter H. Orszag, Director).

Enclosure.

H.R. 5892—Veterans Disability Benefits Claims Modernization Act of 2008

Summary: H.R. 5892 would increase the number of veterans eligible for disability compensation by modifying the requirements for eligibility. The bill also would require the Department of Veterans Affairs (VA) to conduct several studies and complete several reports on various matters relating to the delivery of veterans disability benefits and the Court of Appeals for Veterans Claims (CAVC), and for other purposes. CBO estimates that enacting H.R. 5892 would increase direct spending by $60 million in 2009, by $1.5 billion over the 2009–2013 period, and by $4.8 billion over the 2009–2018 period. In addition, CBO estimates that implementing H.R. 5892 would increase discretionary costs by $5 million over the 2009–2013 period, assuming appropriation of the necessary amounts. Enacting the bill would have no impact on revenues.

H.R. 5892 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—											
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total 2009–2013	Total 2009–2018
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	60	165	360	420	480	540	600	670	730	800	1,485	4,825
Estimated Outlays	60	165	360	420	480	540	600	670	730	800	1,485	4,825

Note: In addition, H.R. 5892 would increase spending subject to appropriation by $5 million over the 2009–2013 period.

Direct spending

To receive disability compensation from VA, veterans must demonstrate, generally through documentation in official records, that their disabilities are related to their service in the military. Veterans who have engaged in combat with the enemy face a much lower burden of proof. Those veterans' disabilities can be presumed to be service-connected if any type of evidence—verification from other members of the veteran's unit, for example—is consistent with the circumstances of the veterans' service. According to VA regulations, engaging in combat with the enemy means personal participation in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. It includes presence during such events either as a combatant or servicemember performing duty in support of combatants, such as providing medical care to the wounded.

Section 101 would expand the definition of combat with the enemy to include service on active duty in a theater of combat operations—as determined by VA in consultation with the Secretary of Defense—during a period of war. Many veterans cannot have their disability presumed to be service-connected because they cannot prove that they engaged in combat with the enemy. Section 101 would alleviate the evidentiary burden of proof of personal participation as long as the veteran could prove that he or she served in a theater of combat operations during a period of war.

Based on data from VA, CBO expects that most of the population affected would be veterans seeking disability compensation for post-traumatic stress disorder (PTSD). VA reports that 50 percent of disability claims for PTSD are approved and that the majority of denials are because of lack of evidence of service-connection.

In total, CBO estimates that enacting section 101 would increase direct spending by $4.8 billion over the 2009–2018 period; those costs would include amounts for new accessions (newly approved beneficiaries), veterans currently on the rolls, and surviving spouses and dependents.

New Accessions. CBO expects that implementing section 101 would increase both the number of disability claims that VA would receive for PTSD, and the approval rate for such claims. Over the 2002–2006 period, VA received about 188,000 (on average) initial claims for disability compensation each year. About 80 percent of those claims were approved. Of those new accessions to the disability compensation rolls, about 15 percent involved PTSD (about 20,000 per year).

Based on data from VA, CBO estimates that enacting H.R. 5892 would increase applications for disability compensation for PTSD by 20 percent and the approval rate for such claims by 25 percent. Thus, CBO estimates that about 11,000 additional veterans would be eligible to receive compensation in 2009. Of those, CBO further estimates that 25 percent would apply and be approved for benefits in 2009—the remainder would be approved over the next two years—and that, on average, they would receive one-half of the annual benefit. Consistent with CBO' s baseline assumptions for new accessions, CBO estimates that the number of veterans who would be newly eligible each year would decline to about 6,800 by 2018.

In 2006 (2007 data are unavailable), the average disability rating for a veteran with PTSD was 40 percent and the average annual

benefit payment for a disability rated at 40 percent was $6,516 (or $543 monthly). Adjusting for cost-of-living increases, the annual payment for a veteran rated at 40 percent in 2009 would be about $7,080. After accounting for mortality and cost-of-living adjustments, CBO estimates that, under section 101, direct spending for new accessions would increase by $10 million in 2009, by about $770 million over the 2009–2013 period, and by $3 billion over the 2009–2018 period.

Veterans Currently on the Rolls. Section 101 also would make some veterans who are currently receiving disability compensation for other disabilities eligible to receive compensation for PTSD as well. Many veterans who are receiving a disability compensation payment are rated for more than one disability. The average rating for veterans on the disability compensation rolls in 2007 was 40 percent and the average combined rating—a combination of all disabilities for which a veteran is receiving compensation—for veterans with PTSD was 70 percent.

About 12,600 veterans who are currently receiving compensation, and who served in Iraq, Afghanistan, and/or elsewhere in the war on terrorism, had disability claims for PTSD denied over the period from October 2001 through March 2008, because their PTSD could not be verified as service-connected. Of those, CBO estimates 80 percent (or about 10,000 veterans) would be eligible for an increase in their disability payment under H.R. 5892. CBO expects that such veterans would see their disability ratings increase from 40 percent to 70 percent.

In 2006, the average annual disability payment for a veteran rated at 40 percent was $6,516 and the average payment for a veteran rated at 70 percent was $22,326—a difference of $15,810. CBO estimates that, in 2009, the annual difference between a 40 percent and a 70 percent rating would be $17,175 and that it would increase with cost-of-living adjustments to about $20,800 by 2018. After also adjusting for mortality, and assuming a three-year phase-in of veterans re-applying for benefits, CBO estimates that enacting section 102 would increase direct spending for existing recipients by about $1.6 billion over the 2009–2018 period.

Surviving Spouses and Dependents. VA provides dependency and indemnity compensation (DIC) payments to the surviving spouses of certain deceased veterans. CBO expects that some of the veterans who would become eligible for disability compensation under H.R. 5892 would die over the 2009–2018 period, leaving survivors who would be eligible for DIC payments. Currently, about 25 percent of veterans' deaths result in new accessions to the DIC rolls. Assuming an average age for a DIC accession of 63 years and accounting for mortality of surviving spouses, CBO estimates that about 30 surviving spouses would receive a DIC payment in 2009, increasing to about 1,800 in 2018. The average annual DIC benefit payment in 2007 was $13,667. After adjusting for cost-of-living increases, CBO expects the annual DIC benefit payment would average about $14,430 in 2009 and would increase to about $17,500 in 2018. We estimate that enacting section 101 would increase direct spending for surviving spouses by about $120 million over the 2009–2018 period.

Discretionary spending

H.R. 5892 includes several provisions that, in total, would increase discretionary costs by $5 million over the 2009–2013 period, assuming appropriation of the necessary amounts.

Reports. The bill would require VA to complete a series of reports and studies for the Congress on varying topics. Those studies include: an overhaul of the disability compensation ratings system; the employee work credit system of the Veterans Benefits Administration (VBA); the work management system of VBA, which is designed to improve claims processing times for benefits delivery; an assessment of VBA's quality assurance program; the employment of medical professionals to provide expert medical advice in evaluating disability claims; a review of VA's information technology systems for processing claims and a comprehensive plan for improving those systems; and workload reports for the CAVC. Based on information from VA, CBO estimates that completing those reports would cost about $3 million over the 2009–2013 period.

Advisory Committee on Disability Compensation. Section 102 would establish the Advisory Committee on Disability Compensation. The committee would provide recommendations and advice to the Congress and the Secretary about maintaining and periodically adjusting the schedule for VA disability ratings. Based on information from the General Services Administration on the cost of administering and staffing an advisory committee, CBO estimates that implementing section 102 would cost about $2 million over the 2009–2013 period, assuming availability of appropriated funds.

Intergovernmental and private-sector impact: H.R. 5892 contains no intergovernmental or private-sector mandates as defined in the UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Dwayne M. Wright; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Daniel Frisk.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5892 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

Regarding section 5(b) of the Federal Advisory Committee Act, section 102 of the bill requires the establishment of an advisory committee. The Committee finds that establishing the advisory committee is the most efficient way of carrying out the policies involved.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional au-

thority for H.R. 5892 is provided by Article I, section 8 of the Constitution of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section provides the short title of H.R. 5982 as the "Veterans Disability Benefits Claims Modernization Act of 2008," and the table of contents.

Section 2. Findings

This section provides a number of findings related to the VA claims processing system.

TITLE I. MATTERS RELATING TO MODERNIZING THE DISABILITY COMPENSATION SYSTEM OF THE DEPARTMENT OF VETERANS AFFAIRS

Section 101. Clarification of meaning of "combat with the enemy" for purposes of service-connection of disabilities

This section would expand the definition of "combat with the enemy" under section 1154(b) of title 38, United States Code, to include active service in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war; or in combat against a hostile force during a period of hostilities. This would be effective upon enactment of this act.

Section 102. Study on readjustment of schedule for rating disabilities

This section would require the Secretary to conduct a study on adjusting the VA Schedule for Rating Disabilities (VASRD) taking into standards, practices and codes in common and current use by the medical, psychiatric and disability communities. The study would take into account loss of quality of life and loss of earnings capacity and examine the nature of the disability. Furthermore, the study would examine potential disparities between physical and mental disability ratings and be adjusted to ensure parity, especially in regard to employability, as needed. VA would be required to consult with other stakeholders and the veteran service organizations and also take into consideration reports from previous commissions and task forces.

The study would be required to be completed within 180 days after enactment. A report to Congress would be due 60 days after the completion of the study. A plan would be due to Congress 120 days after the report had been submitted that would outline alignment of the VA Rating Schedule with commonly used medical codes, would bridge gaps between the current schedule and current state of medical knowledge, would give priority to certain common

disorders, ensure continuous updates, and ascertain transition. A timeline, not to exceed three years, for the plan would be required.

Additionally, this section would require the establishment of an 18-member Advisory Committee on Disability Compensation of leading experts who would advise the Secretary on revising and readjusting the VASRD on an on-going basis and provide annual reports to the VA Secretary which would be required to be submitted to Congress within 90 days after receipt by the Secretary.

Section 103. Study on employee work credit system of Veterans Benefits Administration

This section would require the Secretary to conduct a study on its work credit system focusing on performance standards and accountability, objectivity, accuracy, consistency, and efficiency, timeliness, prioritization of the severely injured, and documenting lessons learned.

A study report would be due to Congress not later than 180 days after enactment of H.R. 5892 along with a plan for implementing a new system for evaluating work production. If a new system is not implemented, this section would require the Secretary to suspend the current work credit system.

Section 104. Study on work management system

This section would require Secretary to conduct a study and report on the work management system of the VBA (currently CPI) focusing on increasing accountability, quality, accuracy, and timeliness of the VBA claims processing system. A report to Congress would be due within 180 days of enactment.

Section 105. Certification and training of employees of Veterans Benefits Administration responsible for processing claims

This section would mandate a certification examination of appropriate VBA claims processing personnel and managers. Development of a certification examination would be required to take place not later than one year after enactment of this act. Implementation procedures would be required 90 days later. In addition, a contract with an outside entity to conduct an evaluation of VBA's training would be required to evaluate its process, continuing education needs, and centralization requirements. A training study report would be due to Congress within 180 days enactment with annual reports and plans due thereafter.

Section 106. Annual assessment of quality assurance program

This section would amend section 7731 of title 38, United States Code, to require the Secretary to contract with an independent entity to conduct an annual quality assurance assessment that measures a statistically valid sample of VBA employees and their work product for accuracy, consistency, and reliability and to track trends. An annual report to Congress would be required.

Section 107. Expedited treatment of fully developed claims and requirement for checklist to be provided to individuals submitting incomplete claims

This section would require the Secretary to set a policy within 180 days of enactment for veterans to be able to submit claims and

declare them fully developed and "ready to rate" at the time of submission and receive a rating within 90 days.

This section would also amend VA's duty to notify under section 5103(a) of title 38, United States Code, by obligating the Secretary to create a checklist for claims specific requests of additional evidence. The checklist would need to be completed within 180 days of enactment and submitted to Congress within 60 days.

Section 108. Study and report on employing medical professionals to assist employees of Veterans Benefits Administration

This section would require the Secretary evaluate the need for the VBA to hire medical professionals (including those who are not physicians) to assist its personnel responsible for processing and adjudicating claims as a reference resource and report to congress within 180 days of enactment. This section requires the study to include a statistically significant sample of VBA employees to ascertain their views on such assistance. If hired by the VBA as advisors, medical professionals would not be permitted to contribute to the rating or to influence rating decisions. If implemented by VA this section would require that all VBA rating personnel would have access to such professionals.

Section 109. Assignment of partial ratings to qualifying veterans

This section would amend chapter 11 of title 38, United States Code, to provide authority for the VA to provide partial ratings for qualified severely (50 percent service-connected) and very severely (100 percent service-connected) injured veterans who are 365 days or less from discharge from active duty and gainful employment is not feasible. A partial rating would be rendered on the most obvious conditions not requiring a medical examination while deferring other issues for which a rating is not immediately assignable until such ratings can be established.

Section 110. Review and enhancement of use of information technology at Veterans Benefits Administration

This section would require the VA to conduct a review and to develop a plan to implement comprehensive information technology upgrades, including web portals, rule-based expert systems, and decision support software within one year to enhance its claims processing capabilities and to rate claims within the time period VA identifies in its Annual Performance Report to Congress. This information technology capability would also include the integration of exam templates with the VASRD and bi-directional access to medical records from VA and the Department of Defense. In carrying out this review, information technology best practices and lessons learned by the Veterans Health Administration and other entities would be incorporated. A report to Congress with a plan would be due not later than January 1, 2009.

Section 111. Treatment of claims upon death of claimant

This section would allow an eligible survivor to become a substitute claimant upon the death of a veteran in order to continue the claim and to submit additional evidence up to one-year after death of veteran. Only one person at a time may be treated as the

claimant to processing a claim to completion. This section would be effective upon the date of enactment of H.R. 5892.

TITLE II. MATTERS RELATING TO UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Section 201. Annual reports on workload of United States Court of Appeals for Veterans Claims

This section would mandate the chief judge of the CAVC to report annually to Congress, providing additional workload data on appeals, petitions, applications, dispositions, oral arguments and other measures.

Section 202. Modification of jurisdiction and finality of decisions of United States Court of Appeals for Veterans Claims

This section would amend section 7252(a) of title 38, United States Code, regarding the jurisdiction and finality of CAVC decisions on veterans' claims to give the CAVC greater discretion to decide all issues presented except in the case of a reversal. This section would apply to decisions of the BVA made on or after the date of enactment of H.R. 5892.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART I—GENERAL PROVISIONS

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CHAPTER 5—AUTHORITY AND DUTIES OF THE SECRETARY

SUBCHAPTER I—GENERAL AUTHORITIES

Sec.
501. Rules and regulations.

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SUBCHAPTER III—ADVISORY COMMITTEES

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546. Advisory Committee on Disability Compensation.

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SUBCHAPTER III—ADVISORY COMMITTEES

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§ 546. Advisory Committee on Disability Compensation

(a) ESTABLISHMENT.—(1) There is in the Department the Advisory Committee on Disability Compensation (hereinafter in this section referred to as the "Committee").

(2) The Committee shall consist of not more than 18 members appointed by the Secretary from among individuals who—

(A) have demonstrated significant civic or professional achievement; and

(B) have experience with the provision of disability compensation by the Department or are leading medical or scientific experts in relevant fields.

(3) The Secretary shall seek to ensure that members appointed to the Committee include individuals from a wide variety of geographic areas and ethnic backgrounds, individuals from veterans service organizations, individuals with combat experience, and women.

(4) The Secretary shall determine the terms of service and pay and allowances of the members of the Committee, except that a term of service may not exceed two years. The Secretary may reappoint any member for additional terms of service.

(b) RESPONSIBILITIES OF COMMITTEE.—(1) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the maintenance and periodic readjustment of the schedule for rating disabilities under section 1155 of this title.

(2)(A) In providing advice to the Secretary under this subsection, the Committee shall—

(i) assemble and review relevant information relating to the needs of veterans with disabilities;

(ii) provide information relating to the nature and character of disabilities arising from service in the Armed Forces;

(iii) provide an on-going assessment of the effectiveness of the schedule for rating disabilities; and

(iv) provide on-going advice on the most appropriate means of responding to the needs of veterans relating to disability compensation in the future.

(B) In carrying out its duties under subparagraph (A), the Committee shall take into special account the needs of veterans who have served in a theater of combat operations.

(c) ANNUAL REPORT.—(1) Not later than March 31 of each year, the Committee shall submit to the Secretary a report on the programs and activities of the Department that relate to the payment of disability compensation. Each such report shall include—

(A) an assessment of the needs of veterans with respect to disability compensation;

(B) a review of the programs and activities of the Department designed to meet such needs; and

(C) such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

(2) Not later than 90 days after the receipt of a report under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(3) The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate.

(4) The Secretary shall submit with each annual report submitted to the Congress pursuant to section 529 of this title a summary of all reports and recommendations of the Committee submitted to the Secretary since the previous annual report of the Secretary submitted pursuant to that section.

(d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—(1) Except as provided in paragraph (2), the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the activities of the Committee under this section.

(2) Section 14 of such Act shall not apply to the Committee.

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PART II—GENERAL BENEFITS

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CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

SUBCHAPTER I—GENERAL

Sec.
1101. Definitions.

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SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

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1156. Partial disability ratings.

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SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

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§ 1154. Consideration to be accorded time, place, and circumstances of service

(a) * * *

(b)*(1)* In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

(2) For the purposes of this subsection, the term "combat with the enemy" includes service on active duty—

(A) in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war; or

(B) in combat against a hostile force during a period of hostilities.

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§ 1156. Partial disability ratings

(a) ASSIGNMENT OF PARTIAL RATINGS.—For the purpose of providing disability compensation under this chapter to a qualifying veteran, the Secretary shall assign a partial disability rating to the veteran as follows:

(1) In the case of a qualifying veteran described in subsection (b)(3)(A), a rating of 100 percent.

(2) In the case of a qualifying veteran described in subsection (b)(3)(B), a rating of 50 percent.

(b) QUALIFYING VETERAN.—For the purposes of this section, a qualifying veteran is a veteran—

(1) who has been discharged from active duty service for 365 days or less;

(2) for whom a permanent disability rating is not immediately assignable under the regular provisions of the schedule for rating disabilities under section 1155 of this title or on the basis of individual unemployability; and

(3) who has—

(A) a severe disability for whom substantially gainful employment is not feasible or advisable; or

(B) a wound or injury, whether healed, unhealed or incompletely healed for whom material impairment of employability is likely.

(c) EXAMINATIONS.—A medical examination of a qualifying veteran is not required to be performed before assigning a partial disability rating to the veteran under this section, but the fact that such an examination is conducted shall not prevent the Secretary from assigning such a rating.

(d) TERMINATION OF PARTIAL RATING.—(1) Except as provided in paragraph (2), a partial disability rating assigned to a veteran under this section shall remain in effect until the earlier of the following dates:

(A) The date on which the veteran receives a permanent disability rating based on the schedule for rating disabilities under section 1155 of this title.

(B) The date that is 365 days after the date of the veteran's last separation or release from active duty.

(2) The Secretary may extend a partial disability rating assigned to a veteran under this section beyond the applicable termination date under paragraph (1), if the Secretary determines that such an extension is appropriate.

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER I—CLAIMS

Sec.
5100. Definition of "claimant".

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5109C. Expedited treatment of fully developed claims.

SUBCHAPTER III—PAYMENT OF BENEFITS

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5121A. Death of claimant.

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SUBCHAPTER I—CLAIMS

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§ 5103. Notice to claimants of required information and evidence

(a) * * *

(b) PROVISION OF CHECKLIST.—In providing notice of required information and evidence to a claimant and a claimant's representative, if any, under subsection (a), the Secretary shall provide to the claimant and any such representative a checklist that includes a detailed description of information or evidence required to be submitted by the claimant to substantiate the claim.

[(b)] *(c)* TIME LIMITATION.—(1) * * *

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§ 5109C. Expedited treatment of fully developed claims

(a) EXPEDITED TREATMENT REQUIRED.—The Secretary shall take such actions as may be necessary to provide for the expeditious treatment by the appropriate regional office of the Veterans Benefits Administration of any fully developed claim to ensure that any such claim is adjudicated not later than 90 days after the date on which the claim is submitted.

(b) NOTICE OF REQUIRED INFORMATION AND EVIDENCE.—Nothing in this section shall affect the responsibility of the Secretary to provide notice under section 5103 to a claimant and a claimant's representative of required information and evidence that is necessary to substantiate a fully developed claim.

(c) FULLY DEVELOPED CLAIM DEFINED.—For purposes of this section, the term "fully developed claim" means a claim for a benefit under a law administered by the Secretary—

(1) for which the claimant—

(A) received assistance from a veterans service officer, a State or county veterans service officer, an agent, or an attorney; or

(B) submits along with the claim an appropriate indication that the claimant does not intend to submit any additional information in support of the claim and does not require additional assistance with respect to the claim; and

(2) for which the claimant submits a certification in writing that is signed by the claimant stating that at the time of signa-

ture, no additional information is available or needs to be submitted in order for the claim to be adjudicated.

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SUBCHAPTER III—PAYMENT OF BENEFITS

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§ 5121A. Substitution in case of death of claimant

(a) SUBSTITUTION.—If a veteran who is a claimant dies while a claim for any benefit under a law administered by the Secretary, or an appeal of a decision with respect to such a claim, is pending and awaiting adjudication, the person who would receive any accrued benefits due to the veteran under section 5121(a)(2) of this title shall be treated as the claimant for the purposes of processing the claim to completion, except that such person may only submit new evidence in support of the claim during the one-year period beginning on the date of the death of the veteran.

(b) LIMITATION.—Only one person may be treated as the claimant under subsection (a).

(c) DESIGNATION OF THIRD PARTY.—If the person who would be eligible to be treated as the claimant under subsection (a) certifies to the Secretary that the person does not want to be treated as the claimant for such purposes, such person may designate the person who would receive the benefits under section 5121(a)(2) upon the death of the person who would otherwise be treated as the claimant under subsection (a) to be treated as the claimant for the purposes of processing the claim to completion.

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PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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CHAPTER 72—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SUBCHAPTER I—ORGANIZATION AND JURISDICTION

Sec.
7251. Status.

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SUBCHAPTER III—MISCELLANEOUS PROVISIONS

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7288. Annual report.

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SUBCHAPTER I—ORGANIZATION AND JURISDICTION

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§ 7252. Jurisdiction; finality of decisions

(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision.

[The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.] *The Court shall have power to affirm, modify, reverse, remand, or vacate and remand a decision of the Board after deciding all relevant assignments of error raised by an appellant for each particular claim for benefits. In a case in which the Court reverses a decision on the merits of a particular claim and orders an award of benefits, the Court need not decide any additional assignments of error with respect to that claim.*

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SUBCHAPTER III—MISCELLANEOUS PROVISIONS

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§ 7288. Annual report

The chief judge of the Court shall annually submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report summarizing the workload of the Court during the last fiscal year that ended before the submission of such report. Such report shall include, with respect to such fiscal year, the following information:

(1) The number of appeals filed.

(2) The number of petitions filed.

(3) The number of applications filed under section 2412 of title 28.

(4) The number and type of dispositions, including settlements.

(5) The median time from filing to disposition.

(6) The number of oral arguments.

(7) The number and status of pending appeals and petitions and of applications described in paragraph (3).

(8) A summary of any service performed by recalled retired judges during the fiscal year.

(9) The number of decisions or dispositions rendered by a single judge, multi-judge panels and the full Court.

(10) The number of cases pending longer than 18 months.

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CHAPTER 77—VETERANS BENEFITS ADMINISTRATION

SUBCHAPTER I—ORGANIZATION; GENERAL

Sec.
7701. Organization of the Administration.

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SUBCHAPTER II—QUALITY ASSURANCE

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7735. Employee certification.

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SUBCHAPTER II—QUALITY ASSURANCE

§ 7731. Establishment

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(c)(1) The Secretary shall enter into a contract with an independent third-party entity for the conduct of an annual assessment of the quality assurance program under this section. Each such assessment shall—

(A) evaluate a statistically valid sample of employees of the Veterans Benefits Administration and a statistically valid sample of the work product of such employees to assess the quality and accuracy of such work product;

(B) measure the performance of each regional office of the Veterans Benefits Administration;

(C) measure the accuracy of the disability ratings assigned under the schedule for rating disabilities under section 1155 of this title;

(D) compare disability ratings and evaluate consistency between regional offices;

(E) assess the performance of employees and managers of the Veterans Benefits Administration; and

(F) produce automated categorizable data to help identify trends.

(2) The Secretary shall use information gathered through the annual assessments required under this section in developing the employee certification required under section 7735 of this title.

(3) Nothing in this subsection shall require the Secretary to replace the quality assurance program under this section, as in effect on the date of the enactment of the Veterans Disability Benefits Claims Modernization Act of 2008.

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§ 7734. Annual report to Congress

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

(1) * * *

(2) information with respect to the accuracy of decisions, including trends in that information; **[**and**]**

(3) the results and findings of the most recent annual assessment conducted under section 7731(c) of this title; and

[(3)**]** *(4)* such other information as the Secretary considers appropriate.

§ 7735. Employee certification

(a) DEVELOPMENT OF CERTIFICATION EXAMINATION.—The Secretary shall develop a certification examination for appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for benefits under the laws administered by the Secretary. The Secretary shall develop such examination in consultation with examination development experts, interested stakeholders, including such appropriate employees, employee

representatives, and managers, and appropriate public and private entities, including veterans service organizations and other service organizations.

(b) EMPLOYEE AND MANAGER REQUIREMENT.—The Secretary shall require appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for benefits under the laws administered by the Secretary to take a certification examination.

(c) LIMITATION.—The Secretary may not satisfy any requirement of this section through the use of any certification examination or program that exists as of the date of the enactment of the Veterans Disability Benefits Claims Modernization Act of 2008.

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