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REVIEW OF VETERANS' CLAIMS PROCESSING: ARE CURRENT EFFORTS WORKING?

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JULY 14, 2010

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REVIEW OF VETERANS' CLAIMS PROCESSING: ARE CURRENT EFFORTS WORKING?

WEDNESDAY, JULY 14, 2010

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m., in room 418, Russell Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Brown of Ohio, Webb, Tester, Begich, Burris, Burr, Johanns, and Brown of Massachusetts.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII

Chairman AKAKA. This hearing of the Senate Committee on Veterans' Affairs will come to order. Aloha and good morning to all of you here.

This morning, the Committee continues our work on reviewing the VA Disability Compensation System. Having had several hearings on many aspects of the claims problem, I can say with certainty that it is the most challenging problem facing VA today.

Compensating disabled veterans is among VA's most solemn obligations, and fixing the current system demands our very best thinking. VA's Veterans Disability Compensation System consists of two separate but linked elements: one, how VA compensates veterans with service-connected disabilities; and two, how VA processes claims from individuals regarding those disabilities. Today, we will focus on claims processing and hear about the several of VA's short- and long-term claims processing improvement initiatives, some of which are showing process.

Agreeing on the desired outcome of claims processing is easy. Timely and accurate resolution of claims, how VA meets that goal is, of course, the issue. We cannot continue to accept a flawed system because we have not been able to agree on the perfect solution or because changing the system will be difficult.

Last month, I introduced a bill intended to move the discussion forward. The proposed Claims Processing Improvement Act of 2010, which is S. 3517, draws from recommendations from veterans service organizations, years of Committee oversight, and proposals from the administration. Since we have ample discussion on the bill during today's hearing and in the time before the Committee considers the bill in early August, I will highlight just a few of its elements.

The central part of S. 3517 is a pilot program that is intended to have VA test some significant modifications to the current sys-

tem for rating disabilities. This provision would require VA to use universally accepted medical codes to identify disabilities and develop a new method of rating claims. The current system is outdated and frequently overly complicated. Because over 50 percent of veterans from the current conflicts who have received VA health care have muscle and skeletal conditions, the pilot program would begin with conditions in this area.

S. 3517 would also allow VA to issue partial ratings so veterans with multiple disabilities can start to get compensation and health care earlier. The bill also would establish a fast track for fully developed claims, so claims that are ready for approval do not have to wait to be completed. VA would also give equal deference to private medical opinions during the rating process. Right now, private medical opinions carry little weight.

The bill also includes a number of other changes to cut down delay and replace red tape with common sense solutions. I look forward to hearing from the witnesses and my colleagues on how we can improve or add to those provisions. I am open to workable changes.

Finally, I note that a year and one-half into this administration, VBA lacks a confirmed Under Secretary for Benefits. This lack of leadership comes at a very pivotal time for VBA and must be resolved quickly.

Again, I welcome everyone to today's hearing. I look forward to testimony from our two panels and to continuing to work with the many interested parties as we seek to craft a workable reform of the VA Disability Compensation System.

And now I will call on our Ranking Member, Senator Burr, for his opening remarks. Senator Burr?

STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Thank you, Mr. Chairman. Aloha.

Chairman AKAKA. Aloha.

Senator BURR. Mr. Chairman, good morning. Welcome to our witnesses, our VA panel. We thank all of you for joining us today to discuss the ongoing efforts to improve VA's delivery of benefits to our Nation's veterans, their families, and their survivors.

It is clear that many of our veterans and their survivors are not well served by the current claims process system, which has been plagued by backlogs, delays, and inaccurate decisions. As the Government Accountability Office put it, and I quote, "VA has faced challenges not only in decreasing the time it takes to decide claims, but also with improving accuracy and consistency."

In recent years, Congress has mainly responded to these problems by adding additional funding for more claims processing staff, which has more than doubled in the last 10 years. But as staff indicated, individual productivity has dropped. Quality has dropped, and the backlogs have been increasing. And with even more staff increases requested for fiscal year 2011, VA is expecting the backlog to nearly double and the delays to increase by almost 30 days.

I have said this before and I will say it again, that staffing alone is not the answer to this chronic problem. We must try new approaches.

As we will hear today, VA has a number of initiatives underway to try to find a different solution. I appreciate these efforts and look forward to hearing more about them. For starters, I want to discuss how to determine if these initiatives are, in fact, successful, when those determinations should be made, and more importantly, when veterans and their families will start to see improvements in the delivery of their benefits.

Also, in delivering a path forward, I think it is important to rely on the knowledge and experience of the individuals who deal with the VA system every day. That is why in April I held a roundtable-style meeting with a number of stakeholders to discuss how they think the system should be improved. They provided a number of constructive suggestions, such as simplifying the Disability Rating Schedule and improving the communications with veterans. I have also heard suggestions from service officers in North Carolina such as focusing additional resources on the front end of the process so more of the incoming claims will be accurate and complete. Today, I hope to discuss those and other ideas for bringing timely, quality decisions to our Nation's veterans.

To that end, we should also consider whether there are any common sense legislative changes that could help streamline this cumbersome system. But in doing so, we should carefully consider whether legislation will lead to lasting improvements in the delivery of benefits and whether it will have any undue impact on veterans or on the claims process and appeal system.

Mr. Chairman, finding ways to fix the chronic problems with VA's claims processing must be a top priority so the men and women who have sacrificed for our Nation will not face hassles and delays in accessing the benefits they need, and more importantly, that they deserve.

To do this right, the Committee, VA, the veterans service organizations, and other stakeholders must work together to identify the best approaches for updating and streamlining the system. So, I look forward to a productive discussion today and to working closely and collectively to make this system work better for our veterans and for their families in North Carolina and across the Nation. Again, I welcome our witness.

I thank the Chair.

Chairman AKAKA. Thank you very much, Senator Burr.

Now we will hear the opening remarks of Senator Brown of Ohio.

STATEMENT OF HON. SHERROD BROWN,
U.S. SENATOR FROM OHIO

Senator BROWN OF OHIO. Thank you, Mr. Chair. Aloha and thank you for your work on this important issue. Your leadership, particularly with the introduction of the Claims Processing Improvement Act of 2010, illustrates the commitment needed to end this ongoing injustice. I understand you are continuing to make improvements in the bill. I look forward to working with you on its passage.

Unfortunately, we know that the backlog problem is not new. Eight years ago, June 6, 2002, Under Secretary for Benefits Daniel Cooper testified before the House Subcommittee on Benefits and he said, "The three priority areas where we are focusing our attention

are, one, reducing the size of the backlog and the time veterans must wait for decisions on their claims; two, ensuring high-quality decisions while producing large numbers of claims; and three, establishing greater accountability and consistency in regional office operations," unquote. It is either back to the future or we never left the past.

Today, we look forward again to hearing about reducing the backlog, ensuring quality decisionmaking, establishing greater consistency and accountability.

Veterans have a right to be skeptical. Like us, they have heard this before. For too many years, we have heard the bureaucratic fast talking about how VA had a plan to solve the backlog, but it apparently never did and we know, painfully, the backlog continues.

Claims that are easier for the veteran to understand and for the VA to process will result in fairer and clearer results. It would help reduce the appeals backlog and provide veterans better answers on the front end. We know what happens when this doesn't happen.

A veteran in Dayton, Ohio, contacted my office in December 2007 for help with his VA claim. After two and one-half years of appeals, paperwork, Congressional intervention, bureaucratic runaround, he was finally awarded 80 percent service-connected disability from the VA. His conditions included diabetes, cancer, mellitus Type 2, hypertension, and diabetic retinopathy. While he is finally getting his earned benefits, the system clearly isn't working when it delays and compounds the physical and emotional stress that too many veterans already experience.

This is one veteran. We have heard it from constituents with similar stories in Nebraska, North Carolina, Hawaii, and all over this country. All of our reactions are the same. This can't be allowed to happen. It must never happen.

I have talked many times with Secretary Shinseki about his plan to end the backlog by 2015. Unlike the other plans we have heard in the past, he is attacking this with skills and vigor that made him such a great general. Instead of bureaucratic double-speak, he has brought a sense of purpose and dedicated needed to end the backlog. It is clear we have a lot of work in front of us.

During a recent meeting with a group of Ohio veterans that came to my Senate office, I heard about how excited veterans are in my State about the plan to eliminate the backlog in 5 years. But they also recognize the urgency. One veteran told me, "We don't have 5 years."

In just a year and one-half, the VA, with the support of this Committee, has taken bold steps to reduce the backlog. Pilot projects will help find the best and most efficient ways to handle claims. Electronic filing and reduced size of claim forms will make filing claims easier and more user friendly. Done right, filling out a thorough, accurate, and easily understood claim can lead to a more timely review and fewer appeals.

I expect the VA to be back in front of this Committee to give us updates on progress made as we attack this problem and finally do it right for veterans in our country.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Brown.

Senator Johanns, your opening statement.

STATEMENT OF HON. MIKE JOHANNS,
U.S. SENATOR FROM NEBRASKA

Senator JOHANNS. Thank you, Mr. Chairman. Mr. Chairman and Ranking Member, I want to say thank you for holding this hearing. We all agree on one thing: this is about as important an issue as we could deal with on the Committee.

I want to say thanks to the witnesses for coming to testify. Michael, let me say thank you for stopping by my office. I appreciate that immensely.

As you know, we spoke about some of the steps and the pilot projects that VA is doing to help with the backlog problem, as well as the request for the additional staffing. One of the things that I am anxious to hear about, because it caught my attention and it has caught the attention of others, is the productivity of the raters, because that seems to have slipped some. There may be an explanation for that, but I would like to have some more information.

I want to say that I found when Michael and I met and when I met with the Secretary, there really is commitment to trying to get through the backlog. I appreciated the honesty in what you are dealing with. It is daunting. I like the commitment of the leadership and the staff to getting this right and figuring out the best combination.

I have been impressed with the dozens of claims pilot projects that VA has got up and running.

I do know from my own experience at the local level that innovative policy solutions most easily begin not here in Washington, but back on the front lines, in this case the VA regional offices and other smaller facilities. I say with some degree of pride that, for example, the Lincoln office in my home State of Nebraska is well ahead of the VA's national average for processing claims. These folks do a great job, and if they are listening today, way to go. I am proud of you. It is not one of VA's pilot projects, but it does show that in specific cases with maybe a mixture of good people and procedures, the backlog can be attacked and reduced.

I also have to say, and I know it is a relatively small part of VA's initiatives, that I commend your Pittsburgh pilot program for exploring phone calls to veterans about their cases. I can't tell you how reassuring that must be for a veteran to get a call out of the bureaucracy saying, "You are important to us." It really drives home to me how personal these issues are.

So there are some good initiatives out there and I want to applaud those. But I also want to be very candid in expressing my concern. We are all concerned. We have to spend the time on these initiatives and pilot programs to try to figure out what is the right combination. What is making this work or not work, and then try to see if we can replicate that.

Well, I will wrap up my comments and just say that I do appreciate the dedication. I am anxious to hear from the witnesses and try to work with you to figure out what the best approaches are. Thank you.

Chairman AKAKA. Thank you very much, Senator Johanns.

Now I would like to welcome the first panel. Our first witness is Michael Walcoff, the Acting Under Secretary for Benefits. Joining him at the table are Tom Pamperin, Associate Deputy Under Secretary for Policy and Management; Diana Rubens, Associate Deputy Under Secretary for Field Operations; Mark Bologna, Director, Veterans Benefits Management System Initiative; Peter Levin, Ph.D., Chief Technology Officer; and Richard Hipolit, Assistant General Counsel.

In addition to those who are witnesses at today's hearing, other VA employees who are significantly involved in the overall claims process are with us in the audience. I would like to acknowledge James P. Terry, who is Chairman of the Board of Veterans Appeals; Donnie Hachey, Chief Counsel for Operations at the Board of Veterans Appeals; Phillip Matkovsky, VHA's Deputy Chief Business Manager Officer; and Susan Perez, a Benefits Program Officer for the Office of Information and Technology. I want to thank all of you for being here.

Of course, VA's full testimony will appear in the record. Under Secretary Walcoff, will you please begin.

STATEMENT OF MICHAEL WALCOFF, ACTING UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY THOMAS J. PAMPERIN, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT; DIANA M. RUBENS, ASSOCIATE DEPUTY UNDER SECRETARY FOR FIELD OPERATIONS; MARK BOLOGNA, DIRECTOR, VETERANS BENEFITS MANAGEMENT SYSTEM INITIATIVE; RICHARD HIPOLIT, ASSISTANT GENERAL COUNSEL; AND PETER L. LEVIN, PH.D., CHIEF TECHNOLOGY OFFICER

Mr. WALCOFF. Thank you, sir. Chairman Akaka, Ranking Member Burr, Members of the Committee, thank you for the opportunity to appear before you today to discuss VA's disability and compensation programs.

You have already introduced the witnesses that are accompanying me and you have also introduced some of the other VA employees in the audience. I want to point out that having those individuals with us from VBA, from VHA, from the IT organization, I think is an example of the commitment that all organizations in VA have made toward this goal of "breaking the back of the backlog." The Secretary has emphasized over and over throughout VA that this is not a VBA problem, it is a VA problem, and I think you will see that several of the initiatives that we are undertaking involve the cooperation and support of these other agencies. Maybe during this hearing, we will talk a little bit about that so you can see how the organization as a whole is unifying behind this goal of getting rid of this backlog.

VA leadership fully shares the concerns of this Committee, Congress as a whole, VSOs, the larger veteran community, and the American public regarding the timeliness and accuracy of disability benefits claims processing. As you know, Secretary Shinseki has set the critical goals of eliminating the disability claims backlog by 2015 and of processing disability claims so no veteran has to wait

more than 125 days for a quality decision. And by a quality decision, he defines that as a 98 percent level of quality.

We are attacking the claims process and backlog through a focused, multi-pronged approach. At its core, our approach relies on changing our culture, reengineering current business processes, and developing our infrastructure with technology that supports a paperless claims environment. Throughout VA, we are rededicating ourselves to the mission of being advocates for our veterans.

Before going further, let me give you an update on our current disability claims workload. Our pending claims inventory is rising due to the unprecedented volume of disability claims being filed. In 2009, for the first time, we received over one million claims during the course of a single year. We expect that growth to continue this year and in 2011. The growth is driven by our successful outreach efforts, improved access to benefits, increased demand as a result of nearly 10 years at war, and the impact of a difficult economy. We now average over 97,000 new disability claims added to the inventory each month and we project to receive 1.2 million disability claims this year.

These projections do not take into account important decisions made by Secretary Shinseki to establish presumptions of service connection for veterans exposed in service to certain herbicides, including Agent Orange, for three particular diseases based on the latest evidence presented by the Institute of Medicine of an association between those diseases and exposure to the herbicides.

On July 2, VA awarded a contract to IBM to develop an online application system by November. This system will permit veterans easier and faster access to VA and more accurate and quick claims processing, and hopefully we will talk more about that during this hearing.

VA's transformation strategy for the claims process leverages the power of 21st century technologies applied to a redesigned business process. We are examining our current process to be more streamlined and veteran focused. We are harvesting the knowledge, energy, and expertise of our employees, VSOs, and the private and public sectors to bring to bear ideas to accomplish this transformation.

Our end goal is a smart, paperless, IT-driven system which empowers VA employees and engages our veterans. While we work to develop this system, we are making immediate changes to improve our business process and simultaneously incorporating the best of these changes into the larger effort, our signature program, the Veterans Benefits Management System.

VA has developed a plan to break the back of the backlog, which includes short- and long-term initiatives running in parallel and feeding into continuous improvement efforts. Some of these initiatives are quickly implemented changes to build momentum and reach out to veterans. For example, in an effort to speed up our work and connect with veteran clients, VBA now requires staff to call veterans during the claims process rather than just solely rely on written communication. The results of the short-term efforts feed directly into the long-term high-impact technological solution, VBMS, to support paperless processing in an electronic management system to process claims from start to finish.

Contributing to the components of VBMS and as a part of the overall strategy to eliminate the backlog, we have four main pilot initiatives that are integral to our overall transformation plan. Two of the four pilots, the Little Rock Compensation Claims Processing Pilot and the Virtual Regional Office, are complete. The other two pilots, the Business Transformation Lab in Providence and the Pittsburgh Case Management Development Pilot, are underway. Each pilot functions as a building block and test bed for the development of an efficient and flexible paperless claims process. The results of all four pilots will be incorporated in the nationwide deployment of VBMS in 2012.

I have outlined a plan in my written testimony highlighting the many different improvement initiatives that are ongoing. VBA recently partnered with the Department of Defense to create the eBenefits portal, providing servicemembers, veterans, families, and care providers with a secure, single sign-on process to online benefits information and related services. We recently met separately with VSOs, our labor partners, and out-of-the-box thinkers from various organizations to brainstorm new ways to improve the services that we provide to our veterans. We will continue to examine every new idea that may assist us in our mission.

Secretary Shinseki's goal is to transform VA into an organization that is veteran-centric, results driven, and forward looking. VA must deliver first rate and timely health care, benefits, and other services to the Nation's veterans, families, and survivors. We look forward to working with Congress, VSOs, and other partners to meet the needs of 21st century veterans and their families.

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

[The prepared statement of Mr. Walcoff follows:]

PREPARED STATEMENT OF MICHAEL WALCOFF, ACTING UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Chairman Akaka, Ranking Member Burr, and Members of the Committee: Thank you for the opportunity to appear before you today to discuss the Department of Veterans Affairs (VA) disability compensation and pension programs. Accompanying me today are Ms. Diana Rubens, Associate Deputy Under Secretary for Field Operations; Mr. Tom Pamperin, Associate Deputy Under Secretary for Policy and Program Management; Mr. Mark Bologna, Director for the Veterans Benefits Management System (VBMS) initiative; Dr. Peter Levin, Senior Advisor to the Secretary and Chief Technology Officer; and Mr. Richard Hipolit, Assistant General Counsel. My testimony will provide preliminary views on the Chairman's bill, the Claims Processing Improvement Act of 2010. I will also focus on the Secretary's goal to eliminate the claims backlog by 2015 so as to ensure timely and accurate delivery of benefits and services to our Veterans and their families.

S. 3517: THE CLAIMS PROCESSING IMPROVEMENT ACT OF 2010

First, let me commend you Mr. Chairman and your staff for your efforts to put forward ideas on how to improve the disability claims processing system. I would like to acknowledge your work and we appreciate your staff keeping the Department informed as you developed the legislation.

S. 3517, the "Claims Processing Improvement Act of 2010," would establish a pilot program on evaluation and rating of service-connected musculoskeletal disabilities and would revise a number of statutes affecting VA's adjudication of claims and appeals. The Department is in the final stages of coordinating the Administration's full position and developing cost estimates on the legislation. However, I will provide you with a brief overview of VA's initial reactions to Title I of the bill and, with

your permission, we will provide more detailed information on the entire bill in writing for the record.

Title I of S. 3517 would direct the Secretary of VA to conduct a 4-year pilot program in 6 to 10 regional offices using an alternative rating schedule to assign ratings to service-connected disabilities of the musculoskeletal system. Under this program, VA would establish an alternative method of rating claims taking into account the use of the International Classification of Diseases (ICD) as adopted by the Secretary of Health and Human Services under the Social Security Act. This type of assessment would focus on the impact of the disability and specifically consider the frequency, severity, and duration of symptoms of the disability in rating the claim. Each Veteran who opted to participate in the pilot program would be assigned a single residual functional capacity rating for all limitations of the musculoskeletal system.

VA does not support this section of the bill for several reasons. First and foremost, this bill, on its face, would not treat Veterans equally. This pilot program is only available to a select group of Veterans based on their geographic location and it is possible that individuals rated under the pilot could potentially receive higher ratings than similarly situated Veterans not in the pilot. While VA has supported other pilot programs that focused on processing changes, this pilot program focuses on substantive changes, thus creating a potential equity issue.

In addition, VA does not support using the ICD to rate musculoskeletal disabilities. While use of the ICD would provide more specificity in naming disabilities, its adoption in an alternative rating schedule would result in a far more cumbersome and complex system of ratings, particularly given the sheer number of ICD codes for musculoskeletal disabilities. Further, the pilot program would require extensive efforts on the part of VA to develop a comprehensive computer tracking system, draft detailed regulations governing the alternative rating schedule, and then train frontline adjudicators on the specifics of the new system all within an extremely short time period. All of these efforts would divert VA resources from working on existing disability claims and appeals as well as our transformation initiatives, while at the same time creating a new area of potential litigation with the end result being additional delay in the claims and appeals process, and an increase in the backlog.

Title II of this bill addresses several matters relating to the adjudication process for claims and appeals. We appreciate the inclusion of a number of provisions drawn from Secretary Shinseki's proposed legislation, known as the Veterans Benefit Programs Improvement Act of 2010, which he submitted to Congress for consideration on May 26, 2010. We look forward to the opportunity to provide our views on the legislation in the coming weeks.

MISSION, TRANSFORMATION STRATEGY AND GOALS

Our mission at VA is to fulfill President Lincoln's promise—"To care for him who shall have borne the battle, and for his widow, and his orphan"—by serving and honoring the men and women who are America's Veterans. VA is also to transform into a 21st Century organization that is Veteran-centric, results-driven, and forward-looking. This transformation is demanded by a new era, emerging technologies, the latest demographic realities, and renewed commitments to today's Veterans. To this end, VA must deliver first-rate and timely health care, benefits, and other services to our Nation's Veterans, families, and survivors.

Secretary Shinseki, the Veterans Benefits Administration (VBA), and the entire VA leadership fully share the concerns of this Committee, Congress as a whole, the Veterans Service Organizations (VSOs), the larger Veteran community, and the American public regarding the timeliness and accuracy of disability benefit claims processing. As you know, Secretary Shinseki has set the critical goals of eliminating the disability claims backlog by 2015 and of processing disability claims so no Veteran has to wait more than 125 days for a quality decision (98% accuracy rate) on that claim. In short, timeliness and accuracy are the goals, and achieving them is our unwavering commitment. We are collaborating across the Department and with our partners in the Department of Defense to achieve these important goals on behalf of our Nation's Veterans.

Under the leadership of Secretary Shinseki, we are attacking the claims process and backlog through a focused and multi-pronged approach. At its core, our approach relies on three pillars:

1. Culture: A culture change inside VA to one that is centered on accountability to and advocacy for our Veterans;

2. Reengineering business processes: Collaborating with internal and external stakeholders (VA employees, administrations and staff; Congress; VSOs; public and

private entities) to constantly improve our claims process using best practices and ideas; and

3. Technology and infrastructure: Deploying leading edge, powerful 21st century IT solutions to create a smart, paperless claims system which simplifies and improves claims processing for timely and accurate completion the first time.

Transforming our disability claims processing system involves identifying short-term changes with immediate impact to streamline the way we currently do business, improving business processes, enabling practices which will best leverage technology, and hiring staff to bridge the gap until we fully implement our mid-range plan. We expect these transformational approaches to begin yielding performance improvements in 2011 and gain in significance beyond; nonetheless, it is important to mitigate the impact of the increased workload until that time.

Our aggressive efforts are at the heart of our requirements for the large increase in our 2011 budget request for the VBA. The President's 2011 budget request for VBA is $2.1 billion in discretionary funding, an increase of $460 million, or 27%, over the 2010 enacted level of $1.7 billion. The 2011 budget supports an increase of up to 4,048 FTEs, including maintaining some of the temporary employees funded through the American Recovery and Reinvestment Act of 2009. Importantly, the budget also includes $145.3 million in information technology (IT) funds in 2011 to support the ongoing development of a 21st Century smart, paperless claims processing system. We greatly appreciate this Committee's consideration and support for our fiscal year (FY) 2011 budget request as we continue this important work for our Veterans.

All of us working inside VA are well aware that from the outside, Congress and the VSOs are not yet seeing sufficient external results, but we are confident that that will change by the end of 2011. Our budget request is central to our disability claims process transformation initiatives.

We recognize the frustration of many Veterans and our employees over the time it takes to reach a decision on Veterans' disability claims. Throughout VA we are rededicating ourselves to the mission of being advocates for our Veterans. This agency-wide commitment flows from the Secretary down to the VA leadership to our dedicated employees in the field. Our leadership team is deeply committed to improving our relationship with Veterans and other stakeholders, so that we are seen as their advocates and partners, no matter the circumstance. Before going further, let me provide an update on our current disability claims workload.

CURRENT WORKLOAD

Our pending claims inventory is rising due to the unprecedented volume of disability claims being filed. In 2009, for the first time, we received over one million claims during the course of a single year. The volume of claims received has increased from 578,773 in 2000 to 1,013,712 in 2009 (a 75% increase). Original disability compensation claims with eight or more claimed issues increased from 22,776 in 2001 to 67,175 in 2009 (nearly a 200% increase). Not only is VA receiving substantially more claims, but the claims have also increased in complexity. We expect this level of growth in the number of claims received to continue in 2010 and 2011. VBA experienced a 14.1% increase in annual claims received in 2009, while we projected an increase of 13.1 % and 11.3% in 2010 and 2011, respectively. This substantial growth is driven by a number of factors including our successful outreach efforts, which is a priority of the Secretary as well as this Committee and Congress; improved access to benefits through initiatives such as the Disability Evaluation System, Quick Start, and Benefits Delivery at Discharge Programs; increased demand as a result of nearly ten years at war; and the impact of a difficult economy prompting America's Veterans to pursue access to the benefits they earned during their military service. As a result, we now average over 97,000 new disability claims added to the inventory each month, and we project to receive an astounding nearly 1.2 million disability claims this year.

The projections listed above do not take into account important decisions made by Secretary Shinseki over the last year. On October 13, 2009, Secretary Shinseki announced his decision to establish presumptions of service-connection for Veterans exposed in service to certain herbicides, including Agent Orange, for three particular diseases based on the latest evidence presented by the Institute of Medicine of an association between those diseases and exposure to herbicides.

Due to this policy change alone we expect the number of compensation and pension claims received to increase from 1,013,712 in 2009 to 1,318,753 in 2011 (a 30% increase). Without the significant investment requested for staffing in the FY 2011 budget request, the inventory of claims pending would grow from 416,335 to 1,018,343, and the average time to process a claim would increase from 161 to 250

days. If Congress provides the funding requested in our budget, we will be able to increase production in order to lower the inventory to a projected level of 804,460 claims pending with an average processing time of 190 days. This Agent Orange decision, which is the right decision for our Veterans, will add to the disability claims inventory in the near term but with the aggressive actions VA is taking, will not prevent us from eliminating our backlog by 2015.

Through 2011, we expect over 186,000 claims related to the new presumptions, and we are dedicated to processing this near-term surge in claims as efficiently as possible. Included in the claims projected through 2011 are approximately 93,000 claims from Vietnam Veterans and survivors previously denied for these conditions. We have a plan to re-adjudicate these decisions, as required under the court orders in the U.S. District Court for the Northern District of California case of *Nehmer* v. *U.S. Department of Veterans Affairs*. VA is also soliciting private-sector input to design and develop an automated system for faster processing of new Agent Orange presumptive claims—we already have over 40,000 new claims and are receiving about 8,000 more per month.

While the volume and complexity of claims have increased, so too has the overall production effort of our claims processing workforce. In 2009, the number of claims processed was 977,219, an increase of 8.6% over the 2008 level of 899,863. The average time to process a rating-related claim was reduced from 179 to 161 days in 2009, an improvement of 11 percent. We recognize that these improvements are not enough. VA currently has approximately 508,000 pending disability claims, 35% of which have been pending for longer than our strategic target of 125 days, and are therefore considered to be part of VA's claims backlog. VBA continues to aggressively hire and train claims processing staff across the Nation, and we currently employ over 11,600 full-time claims processors.

Hiring more employees is not a sufficient solution. The need to better serve our Veterans requires bold and comprehensive business process changes to transform VBA and therefore VA into a high-performing 21st century organization that provides the best services available to our Nation's Veterans, survivors, and their families. That is exactly the effort currently underway in VA.

IMPROVEMENT INITIATIVES

VA's transformation strategy for the claims process leverages the power of 21st century technologies applied to redesigned business processes. We are examining our current processes to be more streamlined and Veteran-focused. We are also applying technology improvements to the new streamlined processes so that the overall service we provide is more efficient, timely and accurate. We are harvesting the knowledge, energy, and expertise of our employees, VSOs, and the private and public sectors to bring to bear ideas to accomplish this claims process transformation.

Our end goal is a smart, paperless, IT-driven system which empowers our VA employees and engages our Veterans. While we work to develop this system, we are making immediate changes to improve our business processes and simultaneously incorporating the best of those changes into the larger effort, our signature program, the Veterans Benefits Management System (VBMS). Our efforts are also synchronized and coordinated with VA's Virtual Lifetime Electronic Record (VLER) and Veterans Relationship Management (VRM) System programs.

VA has developed a plan to "break the back of the backlog" which includes short, medium, and long term initiatives running in parallel and feeding into continuous improvement efforts.

SHORT-TERM INITIATIVES

There are a number of claims process improvement initiatives in various stages of concept development or execution. Some of the initiatives are quickly implemented changes to build momentum and reach out to our Veterans. For example, in an effort to speed up our work and to connect with our Veteran-clients, VBA now requires staff to reach out and call Veterans more often during the claims process rather than to rely solely on written communication. VA is also currently working to develop over 60 new medical questionnaires to take the place of current VHA examination templates to improve rating efficiency.

Another initiative is being conducted at our St. Petersburg Regional Office (RO) to identify and pay Veterans at the earliest point in time when claimed disabilities are substantiated by evidence we already have on record. In addition, four ROs are testing the concept of an "Express Lane" to expedite single-issue claims to improve overall processing efficiencies and service delivery. Yet another initiative will allow employees and Veterans to communicate regarding VA benefits using on-line live chat capabilities through the new portal called e-Benefits. All of the initiatives I

have described and a number of others are being tracked by a Program Management Office within VBA for impact on timeliness and quality, and we will launch the successful initiatives nationally if they produce results and use resources efficiently. For example, VA just initiated a new shorter application form—cutting the previous 23-page form down to 12 pages. We expect to see significant increases in Veterans' satisfaction with the improvements to our application process.

On October 10, 2008, then President Bush signed the Veterans' Benefits Improvement Act of 2008, Public Law 110–389. Members of this Committee played an integral role in developing that legislation. Section 221(a) of the Act directed VA to carry out a one-year pilot program to assess the feasibility and advisability of expeditiously processing fully developed compensation and pension claims within 90 days after receipt of the claim. In 2009, ten ROs implemented the fully developed claim program. Gathering the information and evidence needed to support a Veteran's disability claim often takes the largest portion of the processing time. If VA receives all of the available evidence when the claim is submitted, the remaining steps in the claims-decision process can be expedited without compromising quality. VA has expanded this program for implementation at all ROs.

MID- TO LONG-TERM INITIATIVES

The results of the short term efforts feed directly into our mid-range high-impact technological solution, VBMS, to support paperless processing and an electronic management system to process claims from start to finish.

To inform the components of VBMS and as a part of our overall strategy to eliminate the backlog, we have four main pilot initiatives underway that are integral to our overall transformation plan. Each pilot functions as a building block and test bed for the development of an efficient and flexible paperless claims process. The results of all four pilots will be incorporated into the nationwide deployment of VBMS in 2012.

The Little Rock Compensation Claims Processing Pilot began in July 2009 following completion of the VBA Claims Development Study by Booz Allen Hamilton. The Little Rock pilot focused on a "Lean Six Sigma" approach to streamlining current processes and procedures. The Veterans Service Center converted from the VBA's existing claims processing model into new fully integrated claims processing teams or pods. The pilot concluded in May 2010, and VBA is evaluating the outcomes to determine next steps.

The Business Transformation Lab (BTL) in Providence, RI, serves as a "test ground" for defining processes and testing functionality that will be incorporated into the development and deployment of VBMS. The primary purpose of the BTL is to utilize a structured approach to identify the most efficient way to process claims in an electronic environment incorporating current technology. As part of this process, the Providence RO is testing paperless claims processing using a small population of claims. The business process improvements identified by the BTL will be supported by technology enhancements and be integrated into VBMS.

The Pittsburgh RO began the Case-Managed Development Pilot in January 2010. The purpose of the pilot is to identify opportunities to reduce the time required to request and receive evidence, providing direct assistance to Veterans in compiling the necessary documentation for their claims. A second important aspect of the pilot is to enhance relationships and partnerships with our Veteran-clients through personal communications. Goals of the pilot include more personalized service to Veterans and greater advocacy on their behalf; more accurate decisions; and a more transparent understanding of VA's claims process.

The fourth pilot, the Virtual Regional Office (VRO), has already produced excellent results. The single and focused purpose of the VRO was to deliver the specifications for an implementable, professional-grade technical user interface of the new VBMS system. In other words, this pilot developed the specifications for the software screens that VBMS users will interface with as they process claims more efficiently and effectively. Based on the business process role of that individual user, the software will provide relevant information about a Veteran's claim that will enable faster and more accurate processing of claims. The VRO enabled developers to work side-by-side with VBA employees to create a living demonstration of the specification. The initial field use of a production version of VBMS is scheduled to begin in November 2010, and will be primarily focused on testing the software. Each iterative version of the software will add improved functions and tools. In 2012, we will begin nationwide deployment of the end-to-end paperless claims process and software platform, VBMS. As mentioned earlier, VBMS is a critical business transformation initiative supported by the latest technology, and designed to improve VBA's ability to deliver important benefits to our Veterans, their families and sur-

vivors. VBMS is a holistic solution that integrates both a business transformation strategy (BTS) and a web-based, 21st Century paperless claims processing system which will significantly reduce VBA's reliance on the receipt, movement, and storage of paper. By eliminating the dependence on paper, VBA will be best positioned to make better use of available resources, regardless of geographic location.

As noted earlier, VBMS will also provide services to other critical initiatives underway at VA including the VRM initiative and the VLER. Data captured through VBMS will be used to provide information to Veterans through VRM on the status of their claims and to update VLER. Integration of the various initiatives will allow us to provide our Veterans with new ways of interacting with VA in ways that meet their needs and are convenient for them.

We recognize that technology is not the sole solution for our claims-processing challenges; however, it is the hallmark of a forward-looking organization and must be at the core of our efforts. Combined with a renewed commitment and focus toward increasing advocacy for our Veterans, the VBMS strategy combines a business transformation and re-engineering effort with enhanced technologies, giving an overarching and clear vision for improving service delivery to our Nation's Veterans.

PARTNERSHIPS

VBA recently partnered with the Department of Defense (DOD) to create the eBenefits portal (www.ebenefits.va.gov). The portal provides Servicemembers, Veterans, families, and care providers with a secure, single sign-on process to on-line benefits information and related services (such as military personnel records and status of VA claims). Servicemembers can use this eBenefits account while on active duty and as Veterans following separation, allowing both DOD and VA to provide benefit updates and to deploy the right benefit information at the right time. Future eBenefits releases will provide additional self-service capabilities that empower users to electronically communicate with VA and DOD about their benefits and services from anywhere at anytime.

VBA continues to meet with stakeholders to improve communication and to promote innovation. On April 8, 2010, VBA met with several of the largest VSOs to partner on ideas to help eliminate the backlog and increase quality. In June 2010, several VSOs traveled to Pittsburgh and Providence to observe pilot operations. We continue to meet with VSOs on a regular basis to collaborate and develop proposals that have potential to boost our overall strategy. On June 8, 2010, we met with "out of the box" thinkers from various organizations to brainstorm new ways to improve the services that we provide to our Veterans. On June 10, 2010, we also met with our union partners, the American Federation of Government Employees (AFGE), to develop strategies to improve client service and eliminate the backlog. We will continue to examine every new idea from our employees and stakeholders that may assist us in our mission.

CONCLUSION

Secretary Shinseki's goal is to transform VA into an organization that is Veteran-centric, results-driven, and forward-looking. At the same time, VA must deliver first-rate and timely health care, benefits, and other services to our Nation's Veterans, families and survivors. Nothing less will do. All of VA is moving forward aggressively and comprehensively to transform our claims process through a focused and multi-pronged approach. At its core, our team approach relies on three pillars: culture, reengineering business processes, and technology and infrastructure. We look forward to working with Congress, VSOs, and other partners to meet our critical goals and the needs of 21st Century Veterans and their families.

Mr. Chairman, this concludes my testimony. I will be happy to respond to any questions from you or other Members of the Committee.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO MICHAEL WALCOFF, ACTING UNDER SECRETARY FOR BENEFITS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. The Veterans' Disability Benefits Commission recommended that VA adopt the use of universally accepted medical codes—ICD codes. However, because ICD codes are updated regularly, placing them in the Rating Schedule could result in continued use of outdated information. Please explain how VBA could utilize ICD codes to identify disabilities.

Response. Veterans Benefits Administration (VBA) could feasibly utilize International Classification of Diseases (ICD) codes as a supplement to its existing dis-

ability classification system. As mentioned in VA's 2009 report to Congress, required by section 213 of Public Law 110–389, the objective of the recommendation to map the VA Schedule of Rating Disabilities (VASRD) to the ICD system could be achieved by adding an informational field to VA's disability rating program and corporate database where ICD codes associated with specific VA diagnostic codes assigned in each Veteran's claim could be stored.

Replacing the existing system of diagnostic codes in its entirety is not a viable option at this time. The principal function of VA's current system of diagnostic codes is to describe levels of functional loss, and the ICD system is not designed for this purpose. The ICD system is designed for detailed diagnostic identification purposes, such as insurance billing, research, and studies. VA also notes that ICD–9 codes do not include mental health codes. The existing system has extensive codes for this body system. Replacing the existing system of diagnostic codes would require significant reprogramming of VA systems.

Question 2. Please describe the use of ICD codes in the Veterans Health Administration.

Question 2a. Is the use of ICD codes mandatory in VA's electronic record system?

Response. International Classification of Diseases, 9th edition (ICD–9) codes are mandatory to reflect diagnosis and certain procedures for every clinical encounter or episode of care and are captured as administrative data.

Question 2b. Are VA electronic medical records searchable by ICD codes?

Response. VHA cannot use the International Classification of Diseases, 9th edition, Clinical Modification (ICD–9-CM) code to search within a patient's Electronic Health Record (EHR). ICD–9 codes are administrative data elements that are not stored as part of the electronic health record. ICD–9 codes can be searched in the administrative databases.

Question 2c. Describe the policies and practices VA uses in associating a particular medical condition with ICD codes.

Response. VHA follows national standard coding guidelines as approved by the four organizations that make up the Cooperating Parties for the ICD–9-CM: the American Hospital Association (AHA), the American Health Information Management Association (AHIMA), the Center for Medicare and Medicaid Services (CMS), and the National Center for Health Statistics (NCHS). VHA does provide guidance when national standard coding guidelines are not developed, such as utilizing a V code for TBI cases.

Question 2d. Are there instances where a VA physician would not use ICD criteria in evaluating a veteran's disability? Please explain when this might happen.

Response. Standard operating procedures requires clinicians to identify and associate a diagnosis with the each clinic "visit or appointment", with appropriate internal controls to ensure the completion of this requirement. Compliance with the identification of a diagnosis is required to close out a "visit/appointment."

Question 2e. Does VA report cancer incidence to the National Cancer Registry using ICD codes?

Response. International Classification of Diseases for Oncology, Third Edition (ICD-O–3) codes are transmitted as part of the incidence report on cancers.

Question 2f. Under what circumstance does VA accept or not accept and use the International Classification of Diseases for Oncology, Third Edition to identify and code malignancies?

Response. ICD-O–3 is used for coding malignancies in compliance with national standards-setters; however, the identification of malignancies is done primarily using Systematized Nomenclature of Medicine (SNOMED) coding from the pathology departments.

Question 3. Please detail VA's plans for processing Agent Orange claims that will come as a result of the Secretary's decision to add three new presumptive conditions? Please also provide an update on the Agent Orange Fast Track project.

Response. VA's Compensation and Pension (C&P) Service ran a broad-spectrum match across VA's systems for potential entitlement. VA must re-adjudicate previously denied claims for newly added herbicide-related presumptive diseases and provide retroactive benefits from the date of the prior claim under the 1989 Nehmer settlement. C&P Service's match yielded approximately 93,500 potential Nehmer cases. This number includes living Veterans and potential survivor beneficiaries.

VA developed a Nehmer Project team to coordinate efforts and ensure work processes operate within the parameters of the court-ordered Nehmer stipulation.

VA's operational plan for reviewing and re-adjudicating the identified potential Nehmer cases includes dedicating approximately 1,000 personnel stationed in 13 regional offices to complete this work. The actual number assigned to the task will

decline as this workload is diminished. Three of the offices will process all survivor claims with the other 10 handling Veteran claims. Extensive training on eligibility and processing requirements under the Nehmer stipulation has been provided to personnel reviewing and re-adjudicating the identified potential Nehmer cases.

All new claims received prior to the publishing of the final rule also fall within the scope of the Nehmer stipulation. To date, VBA has received approximately 53,000 new claims and we expect to receive more claims before the final rule is published. Notably, 10,200 of the new claims received were previously identified as potential Nehmer cases. Local regional offices will complete all new claims received for the three presumptive disabilities that are received after the date of the final rule.

The Agent Orange Fast Track contract was awarded on July 1, 2010 to IBM and is proceeding with the development of a working prototype. The IBM team, working in collaboration with VA, began testing an end-to-end demonstration model in late August 2010.

The Nashville Regional Office will conduct a pilot of the Agent Orange Fast Track prototype for 60 days following release by the contractor. Subject matter experts from across VBA will assist personnel from Nashville in testing the system. Utilizing feedback from the pilot, the contractor will adjust the Agent Orange Fast Track System to ensure the highest level of accuracy in the development of Agent Orange claims for the three new presumptive conditions. The Agent Orange Fast Track System is planned to be deployed nationwide in October 2010.

Question 4. Committee oversight has found inconsistent rating decisions for disabilities not specifically listed in the rating schedule. For example, some of the most common knee conditions, such as chondromalacia of patella, lead to a wide variation in ratings ranging from an erroneous denial of the claim for lack of presumptive eligibility to a rating of 40 percent for bilateral knees with consideration of Deluca factors. Does VA believe that the use of ICD codes to identify a disability would improve consistency of the review and evaluation of medical evidence and promote the ability of VBA to move toward an electronic claims file using common medical terms, such as those used by hospitals, clinics, and insurance companies? If not, please explain why?

Response. VA does not believe that using ICD codes instead of VA's current diagnostic codes will improve consistency of rating decisions. Supplementing VA's current system (as described in #1 above) will enhance inter-operability between VA and the rest of the medical community. However, the major factor in improving consistency of rating decisions rests with the current VASRD Modernization project. This project is a comprehensive program to update medical terminology and ensure proper classification of diagnostic codes and conditions, as well as ensure the VASRD accurately compensates Veterans for average earnings lost due to service-connected disabilities. The EconSystems study, about which VA has previously provided a report to the Committee, identified the need to add a limited number of diagnostic codes to the schedule. One of the conditions identified in that report is chondromalacia. We anticipate that that condition will be addressed in the revision of that section of the rating schedule currently under way.

Question 5. VA's written testimony noted that the effort required to implement the pilot program proposed in S. 3517 would divert critical resources from working on existing claims. What additional resources would be needed for the pilot program?

Response. The resources required to develop and implement the pilot program directed by S. 3517 would be extensive. Within a limited timeframe, VA would be developing an adjudicative construct for what is the largest section of the rating schedule (both in terms of number of current diagnostic codes and number of veterans affected) that is foreign to its traditional way of doing disability evaluations (i.e., a single evaluation for all conditions of this body system as opposed to individually evaluating each condition). The pilot would require extensive study, testing, and evaluation of any proposed change to ensure equity. VBA would have to suspend virtually all modifications, updates and enhancements to existing regulations to accomplish the task. Further, we would have to divert critical IT and business resources from the Secretary's key transformational projects including the Veterans Benefits Management System (VBMS), Veterans Relationship Management (VRM), Virtual Lifetime Electronic Records (VLER) and others to accomplish the task.

Question 6. VA expressed concern that the rating system proposed by the pilot program could lead to inconsistent results. Please provide data from at least five VBA Inter-rater Reliability (IRR) Studies showing the consistency of rating musculoskeletal disabilities under the current rating schedule. If data is not available for

at least five musculoskeletal conditions, please provide data from all available studies and for any other conditions in order to provide a sample of at least five studies.

Response. We would like to clarify that the testimony of the Acting Under Secretary for Benefits expressed concern about the pilot because the pilot would create a situation where similarly situated Veterans would likely receive different benefits based solely on geography as opposed to disability.

We have conducted four IRR studies on musculoskeletal disabilities since the inception of IRR studies in 2008. We conducted a study on diagnostic code (DC) 5237—low back strain, in July 2008 with a follow up for the same condition on April 2009. We also conducted an IRR study on a bi-lateral knee condition, DC 5260 in February 2009. Results from the four IRR studies on musculoskeletal disabilities are provided. In addition, we included results from an IRR study on sleep apnea conducted in May 2010 to meet your requests for results of five studies.

Inter-Rater Reliability Studies

Date of Study	# of Participants	% Consistent	Condition Evaluated	Incorrect Decision (grant/denial)	Incorrect DC	Incorrect Evaluation	Incorrect Effective Date	# Total Errors
July 2008	246	69%	Low Back - Grant	4	4	66	6	80
Feb 2009	246	88%	Bi-Lateral Knee Condition Left Knee - Grant	8	0	22	6	36
Feb 2009	246	99%	Right Knee - Denial	2	0	0	0	2
April 2009	245	82%	Low Back Strain - Grant	17	9	16	4	46
May 2010	249	99.6%	Sleep Apnea	0	0	0	1	1

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Question 7. I continue to be concerned about the length of time that VBA has gone without permanent leadership. What steps are being taken to prepare for the eventual transition of leadership within VBA when a confirmed Under Secretary finally comes on board?

Response. A list of nominees for a new Under Secretary for Benefits has moved forward for review at the White House. When a final selection is made and the confirmation process is complete, VA will be prepared for a smooth transition. VA has developed a plan to "break the back of the backlog" which includes short, medium, and long term initiatives running in parallel and feeding into continuous improvement efforts. When a nominee is selected, the organization will continue to focus on the Secretary's goal to eliminate the claims backlog by 2015 so as to ensure timely and accurate delivery of benefits and services to our Veterans and their families.

Question 8. VA's written testimony notes that "transformational approaches [will] begin yielding performance improvements in 2011."

- How will this be measured?

Response. VA transformation initiatives attack the claims process and backlog through a focused and multi-pronged approach, which relies on three pillars: Culture, Reengineering business processes, and Technology and infrastructure. VA is currently researching and testing performance measurements for each initiative as they are developed, tested, and piloted within their specific target group. Performance criteria will center on customer and employee satisfaction for Culture initiatives, and reduction of processing time within specific claims processing cycles and

quality improvement for Reengineering and Technology initiatives. As each initiative is stood up, parameters for performance and expected outcomes will be identified, documented, evaluated, and supported.

• What is the expected change?

Response. VA anticipates that integrated transformation initiatives will yield improvements through a series of short-term, mid-term, and strategic initiatives that are integrated or aligned within or across each pillar. The life cycle for deployment of each initiative includes: concept development, execution planning, localized execution, and full-scale execution. It is expected that the majority of VA transformation initiatives will move into the localized execution or full-scale execution phase during 2011, thereby yielding performance improvements in claims processing timeliness, quality, and Veteran advocacy.

• What will happen to stations and/or personnel who do not meet expected improvements?

Response. VA will establish specific performance expectations using clearly defined measures to evaluate and support transformation of claims processing within the organization. VA leadership and regional office management will ensure all personnel have sufficient knowledge of performance expectations stemming from each initiative; associated training, tools, and resources; and proper oversight to ensure successful transformation. Performance will be tracked at the national, area, and local levels to determine improvements needed, and a system of accountability will be adhered to, ensuring sustainability of performance gains. Pilots that do not meet goals will not go forward.

Question 9. VA's testimony notes that $145.3 million was included in the President's budget request to support the ongoing development of a 21st Century smart, paperless claims processing system. How specifically will this funding be used? How will such a system replace or be coordinated with VETSNET, the Benefits Delivery Network (for payment) and the proposed VBMS? What office will be responsible for coordination of the various systems?

Response. The Veterans Benefits Management System (VBMS) is a business transformation initiative supported by technology and designed to improve delivery of benefits to Veterans. It is a solution that integrates a Business Transformation Strategy (BTS) to address process and people, along with a paperless claims processing system.

In FY 2010, the VBMS initiative began with development of the Virtual Regional Office (VRO). The VRO concept involved subject matter experts (SMEs) working with a vendor to develop business requirements and detailed specifications. The vendor used the input from the SMEs to create a graphical user interface (GUI), which became a means of validating the requirements as well as building the front-end interface for the business user.

The President's budget includes nearly $190 million dollars to support the VBMS initiative, including $145.3 million in IT funding. These dollars are focused on continuing development of VBMS. Specifically, in FY 2011 VA will deploy the first iteration of software for testing at a pilot site in November 2010, followed by a second software deployment at an additional pilot site in May 2011.

Claims processors at the first pilot site will use the new software to validate and harden the business requirements, as well as to generate new business requirements for future software releases. This pilot will utilize a new electronic claims repository and scanning solution, as well as new claims processing software, which will integrate with existing core business applications (VETSNET) that support claims processing. The first pilot is scheduled to last six months.

Concurrent with the development of VBMS, the VETSNET user interface is being completely replaced with a services-based platform. The VBMS and VETSNET organizations have been working closely together to develop requirements and schedules. In order to coordinate this complex development, a Joint Executive Board (JEB) has been established to provide governance over the development of these services.

Question 10. VA's testimony notes that you are aware that Congress and veterans service organizations are not seeing sufficient results despite VA's efforts to transform the disability claims processing system. By the end of 2011, VA is confident that there will be change that produces results that can be viewed externally.

• What is the basis for that confidence?

Response. Our confidence is based on early results in several of the pilot initiatives currently in progress. An example includes the Interim Ratings/Quick Pay initiative (QPD), which has already provided full or partial payments within 30-days for disabilities meeting QPD criteria by utilizing specialized interim rating procedures. As of July 2010, VA has served over 1,000 Veterans and paid out more than $1.2 million in benefits for Quick Pay claims.

• What are the expected changes that can be viewed externally?

Response. VA is piloting several initiatives which, when deployed more extensively, will have immediate visibility to our external stakeholders. The following four initiatives are examples:

1. The Rapid Evaluation of Veterans Claims (REV) Initiative was established to improve processing time and increase quality outcomes. The REV initiative gives Veterans who are receiving disability compensation more control in preparing their own claims for increased disability evaluations by guiding them in organizing and submitting required medical evidence. The initiative reduced the average days to complete these claims to 25 days. This initiative provides direct service and one-on-one support to beneficiaries, increasing our advocacy role on behalf of those we serve.

2. The Walk-in Claims initiative is being piloted at the Wichita and Milwaukee regional offices. This initiative maximizes on-site interaction with claimants to expedite claims development, with the potential for immediate decisions on Veterans' claims. Walk-in claims processing improves timeliness and transparency of claims processing and public perception of VA service delivery, and supports Veteran advocacy. As of June 2010, the average number of days to complete a walk-in claim was 3.1 days.

3. To minimize the need for VA medical examinations and avoid processing delays in scheduling and completing those examinations, VA is also developing over 60 new medical questionnaires that are specifically aligned with the VA Schedule for Rating Disabilities for use by Veterans' personal physicians. Use of these medical questionnaires will minimize the need for Veterans to also be examined by VA in connection with their disability claims.

4. Under the Fully Developed Claims initiative Veterans are provided a checklist that clearly outlines the evidence necessary to substantiate their claims, resulting in more frequent and timely receipt of evidence and faster decisions.

• How will results be measured?

• Response: As referenced in question 8, VA is identifying and testing performance measurements for each pilot initiative. Performance criteria will include customer and employee satisfaction, reduction in processing time, productivity, and quality improvements.

Question 11. VBA experienced a 14.1 percent increase in annual claims in 2009 and projected an increase of 13.1 percent in 2010 and 11.3 percent in 2011. What are the current projections for 2010 and 2011?

Response. Through July, receipts have increased by 17.9% in FY 2010. VBA projects receipts will increase by 16.2% in FY 2011.

Question 12. Please provide a timetable for when the Committee will receive VA's evaluations of the four claims-processing pilot projects you referred to in your testimony. During testimony, a representative of VA stated that VA has received the contractor's report on the Little Rock pilot project. Please provide a copy of that report and any other written evaluations or reviews of these projects that are available.

Response. The Claims Processing Pilot at the Little Rock RO concluded in May 2010. An Executive Summary and the final report from Booz Allen Hamilton was received August 11, 2010, and is currently under VA review.

The Business Transformation Lab (BTL) in Providence, RI, serves as an ongoing "test ground" for defining processes and testing functionality that will be incorporated into the development and deployment of VBMS. The business process improvements identified by the BTL will be supported by technology enhancements and be integrated into VBMS. VBA will continue to analyze and assess the impact and utility of the testing at the BTL. However, no formal report is planned as this is an ongoing pilot in support of VBMS.

VA continues to evaluate and monitor the progress of the Case-Managed Development Pilot at the Pittsburgh Regional Office. No formal report has been generated, as testing continues through the end of FY 2010. VBA leadership will assess lessons learned and best practices at the end of December 2010 to determine whether additional rollout would have positive impact.

The Virtual Regional Office (VRO), co-located at the Baltimore Regional Office, served as a business and functional requirements development and validation pilot. The outcome of the VRO was validated business requirements needed for the Veterans Benefits Management System (VBMS). The specifications produced by the VRO have been used to inform the development of VBMS. The final deliverables (requirements, use cases, user guide, etc) of the VRO were received and accepted by VBA. The VRO was a successful effort due to on-time delivery and quality of deliverables, and subsequent incorporation of the specifications into VBMS.

Question 13. What is the average caseload of rating specialists within and among regional offices? Is there a correlation between the length or level of experience of the rater and the rater's caseload? Please explain the criteria VA uses to prioritize claims for review and disposition. Please describe each of the incentive programs and specific criteria VA uses to improve the quality or quantity of claim decisions, including the criteria for awarding each incentive.

Response. Work is allocated on a local level by regional office management based on several different factors and can vary within each station and across stations. Such factors include experience level, case complexity, and other duties and responsibilities such as training, mentoring, and special projects. Therefore, it is difficult to determine a specific correlation between caseload and any of these factors alone. As of July 30, 2010, 529,372 rating-related claims were in the inventory. Of that number 68,841 were considered ready to rate. VA had 2,647 Rating Veteran Service Representatives (RVSRs) of all experience levels as of July 31, 2010.

VBA utilizes national and local workload management practices to prioritize claims for review and disposition. National priority claims, such as seriously injured and homeless claims, are case-managed by local coordinators at each regional office. Currently a number of "quick pay" pilots are in process as well. Remaining claims are reviewed in each phase of the claims life cycle based on age of claim and timeliness in that phase. All regional offices are required to create and utilize local plans outlining the priority of claims processing and utilization of available resources for workload management.

VBA utilizes a three-tier incentive program to recognize individuals and regional offices for excellent performance during the fiscal year.

Individual recognition (level I), awards are given to those employees whose performance significantly exceeds their performance requirements. All performance requirements for claims examiners contain critical elements for both quality and timeliness/production. At the heart of the performance award program is a foundational focus on quality. Funding for level one of the program is distributed to regional offices based on a percentage of total salary for each office. Level one funds are paid out to individual employees locally as incentive awards, and the criteria for performance are determined locally and vary across regional offices.

Group awards (level two) are made to offices or elements of offices that achieve and exceed performance targets. Funding for level two of the program is distributed to regional offices for meeting key performance targets during the fiscal year, including all claims accuracy goals. Funding for level two awards is pro-rated based on total salary for employees in each business line for which the regional office met the level two criteria.

Special contribution awards (level three) of the program are reserved for recognition by the Under Secretary for Benefits. Recommendations at this level are made by the Associate Deputy Under Secretary for Field Operations.

Question 14. VA testified that the actual time it takes to review a fully developed claim typically is just 20 to 30 days and that most of the rest of the time is spent gathering or developing the information VA needs to decide the claim. How much time, as a percentage of the total claim processing time, is spent transporting the claim file between locations within the regional office or between different regional offices—for example, during brokering?

Response. VA transfers claims between offices via United Parcel Service (UPS) ground shipping, which is typically one to five business days. Folder movement within an office occurs within the same day. The percentages of time spent transporting claims vary, and an average percentage may be viewed as misleading.

Question 15. At a number of places in VA's testimony, there is reference to VA employees being advocates for Veterans. How do you envision a VA employee, who is required to judge the merits of a Veteran's claim for benefits, simultaneously serving as an advocate for the Veteran? Are those two roles inconsistent?

Response. VA decisionmakers also have a key role as Veterans' advocates. The advocacy portion of their responsibilities relate to ensuring that Veterans, Servicemembers, and their family members are empowered with the information they need to submit the best claim possible. As decisionmakers our employees are guided by the eligibility and entitlement requirements to apply facts to the law, resolving reasonable doubt in favor of the claimant to arrive at decisions. We do not see these as inconsistent.

Question 16. During the hearing VA testified that the use of VA employees and contractors to evaluate PTSD claims results in consistency across the system and that consistency is monitored by CPEP. During Committee oversight consistency in evaluations has not been identified. For example, at one regional office, marked differences have been noted in the evaluation of PTSD claims by VHA and contract

providers at the same location, resulting in marked differences in the evaluation of the veterans. Two of the examiners appeared to follow VHA Best Practices and provided testing to support the findings, while another examiner at the same location provided no testing and submitted examination results using templates which result in virtually identical reports, distinguishable only by the name of the veteran, the veteran's file number and the GAF score assigned with no discussion of veterans treatment history, symptoms and findings of treating physicians.

• Is the number of examinations reviewed by CPEP adequate to measure the quality of individual PTSD examiners?

• Will VA be taking any additional action to monitor the quality of PTSD examinations, for example by using a sample size for CPEP evaluations, which would be adequate for statistical analysis?

• Please provide a list of VA funded research currently underway concerning the evaluation of PTSD for purposes of evaluating medical examinations and opinions using different techniques and the expected completion dates for such studies.

Response. VA's current system for reviewing the quality of disability examination reports is administered by the Disability Examination Management Office (DEMO—formerly the Compensation and Pension Examination Program, or CPEP).

Under the current centralized program design, exam quality review findings are valid at the VISN level based on three months of accumulated data. They are not valid at the individual examiner level. The sample size that would be needed to achieve validity of quality findings at the examiner level is far larger than can be accommodated in this design using currently available resources.

VA has, however, recognized limitations in its exam quality review program and is working creatively to address issues such as the one raised in your question (that is, inter-examiner reliability). DEMO is currently designing a disability examination peer-review program that will involve review and feedback by and for clinicians who conduct these exams. The reviews will be targeted at the clinician level, and the process will be centrally tracked to identify those who require additional training and support to bring their exam reports up to the expected level of quality.

The peer-review program will include an intervention training mechanism to address individual examiner weaknesses. DEMO will create the Disability Evaluation Resource Academy (DERA, working title), which will be responsible for providing mandatory enrichment training to examiners identified by peer review as needing additional support. The DERA will be a joint venture involving DEMO staff and the Employee Education System.

Components of the peer-review standards include attention to matters addressed in your question. For example, quality elements will include adequacy of support for diagnoses, to include indicated test results and clear interpretation of their findings.

VA is currently funding a major study titled "Enhancing Equitable and Effective PTSD Disability Assessment." This study is testing consistency, quality, and uniformity of practice in conducting and reporting PTSD examinations. Included in the study are assessments of the effects of administering structured clinical screening instruments and structured functional assessment tools on the quality and usability of the resulting exam reports.

The ultimate aim of the study is to "improve the reproducibility, consistency, and validity of the PTSD examination process while maintaining a level of efficiency and cost restraint that provides Veterans with an exam process that is fair, accurate, and equitable across VHA."

Data collection will end September 30, with an interim analysis expected to be released in October. Additional analyses are anticipated through the rest of the year. In addition, there will be an effort to associate rating decisions in these cases with the study groups to assess the effects of separate disability data collection methods with claims outcomes.

Question 17. I am encouraged by the focus on developing "templates" for medical examinations necessary to evaluate disability compensation claims.

Please provide an estimate of when each new or improved medical examination template will be approved and made available to the medical personnel who conduct the examinations.

• Which templates, if any, will VA make available to private physicians and other medical professionals whose evaluations could be accepted in place of an examination conducted by VA or VA-contractor personnel?

• For each examination template expected to be approved by the end of this year, please provide an estimate of the average length of time it will take a qualified medical professional to conduct the examination and fill out the template and compare this to the time it takes under current procedures (either without any template, or with an existing template that will be revised).

• Once VA has developed a template, are VA and contract personnel who conduct medical examinations required to use the template, or is the template optional? If use is optional, what alternative reporting methods are allowed?

Response. VBA's goal is to have C&P Examination worksheets, called Disability Benefits Questionnaires (DBQs), prepared to replace the current 67 worksheets by October 1, 2010. A VBA/VHA/OGC/BVA working group is composing each DBQ; groups of 3–5 completed DBQs are then sent to OMB to obtain approval for public display on the VA internet site, for use by private physicians.

VA's DBQ Project Management Plan requires that all DBQs be made available to private clinicians of the Veteran's choosing. The PTSD DBQ, however, because of the new PTSD regulation, is only available to private physicians for claims for increased disability evaluations. All DBQs, with the exception of an original PTSD claim, when completed by a clinician, whether VA or otherwise, will be accepted in place of an examination conducted by VA or VA-contractor personnel.

The strength of the DBQs lies in collecting only essential rating criteria-related medical information that a Rating Veterans Service Representative (RVSR) needs to make a decision. Additionally, use of the DBQs by private physicians, which is optional, is expected to reduce the number of VA exams needed, which will improve processing timeliness. VHA and contract personnel are required to use DBQs.

Our initial testing of the DBQs was limited to the substantive adequacy and accuracy of both the questions asked and the answers garnered from each form. The test involved the completion of a DBQ based on a review of the medical records of sample Veterans and a subsequent rating decision utilizing the DBQ and all available medical information. The DBQ-assisted rating decision was then compared to the current rating decision on record. This test did not capture average completion time. However, the DBQs are currently being field tested at several medical centers throughout the country, which will allow us to estimate the average completion time when accompanying a full examination.

Currently, VHA schedules a minimum of one hour for every examination. However, that time increases with the addition of factors such as number of body systems involved, number of symptoms, severity of symptoms, existence of comorbidities, etc. Therefore, it is difficult to estimate the time required to examine a Veteran, either utilizing the DBQ or the current worksheets. However, physicians experienced in conducting VA disability examinations indicate that current documentation requirements account for about one-half of the required examination time. The DBQs reduce the documentation requirement by more than half. Therefore, we estimate that the DBQs will reduce the required examination time by at least one-half.

Question 18. Good IT solutions are central to fixing the claims problem—to help with processing and to ensure a seamless transition with DOD, among other things. Is there more Congress can do to help VBA in this regard?

Response. VA is fully committed to achieving the goals the President mandated of us—to create a Virtual Lifetime Electronic Record (VLER). Utilizing information technology to ensure healthcare and benefits providers have secure access to authoritative source information supplemented by health data created by the private sector will facilitate the seamless transition of Servicemembers to Veteran status. We appreciate your continued support and oversight to ensure appropriate resources are committed to accomplishing these efforts.

Question 19. During the hearing, it was stated that VA's current electronic claims processing systems are built on proprietary software that has been customized repeatedly over a long period of time to serve the unique purposes and needs of processing claims for veterans' benefits. It was stated that VA is rapidly moving toward replacing these proprietary systems with software built on open standards. Please explain why VA is making this change and how a system based on open standards can serve veterans better than a proprietary system that has been customized over many years to serve the unique needs of disabled veterans.

Response. The Veterans Benefits Management System (VBMS) initiative is designed to address inefficiencies in the claims process as well as modernize the existing legacy applications in order to break the back of the backlog. VBMS is based on open architecture and commercial-off-the-shelf (COTS) products that will allow VA to react more methodically to emergent claims processing needs.

VBMS will dramatically reduce the amount of paper in the current claims process and will employ rules-based claim development and decision support where possible. Additionally, by using open architecture and COTS products, VA will be positioned to take advantage of future advances in technology developed in the marketplace and to respond to the changing needs of Veterans over time.

Question 20. VA's testimony refers to a contract with IBM to create an online claims application system by November of this year.

• Is this project on track for completion by the November deadline?

Response. The Agent Orange Fast Track contract was awarded on July 1, 2010 to IBM and is proceeding with the development of a working prototype. The IBM team, working in collaboration with VA, began testing an end-to-end demonstration model in late August, 2010. The Agent Orange Fast Track System is planned for nationwide deployment in October 2010.

• Will the new system actually "go live" in November? If not, when will veterans be able to use the new system to file a claim?

Response. The Agent Orange Fast Track System is planned for nationwide deployment in October 2010.

• How will the system differ from the current Veterans Online Application (VONAPP) system?

Response. The Agent Orange Fast Track System will utilize the 21–526EZ (Fully Developed Claim) application form, and will initially only be applicable to claims involving the three new herbicide presumptive conditions. The legacy VONAPP system supports filing the 21–526 (Veterans Application for Compensation and/or Pension), 21–4138 (Statement in Support of Claim), 21–686c (Declaration of Status of Dependents), and the 21–530 (Application for Burial Benefits). Additionally, VONAPP supports claim submissions for Education and Vocational Rehabilitation benefits. The Agent Orange Fast Track System will deploy with additional functionality that goes beyond just collecting information online. This includes a business rules component to provide a recommended disability evaluation, as well as scanning capability to store all of the information in an eFolder.

• When a veteran files a claim through VONAPP, does VA maintain the claim in electronic form or print out the information to insert in a hard-copy claims file? How would the improved online claim filing system affect the way that VA maintains and uses the information provided by the veteran?

Response. At the current time, VA does not maintain the claim in its electronic form, but rather prints this information for insertion in the hard-copy claims file. An advanced online claim filing system offers several advantages to VA in terms of electronically reusing information provided by the Veteran. In VA's future on-line application system, Veterans will gain access via the eBenefits portal. This provides for authentication of the Veteran, allowing VA to associate known information about the Veteran. Using information from VA systems, applications for benefits can be prefilled with such information as service data and demographics. Information provided by Veterans can be used to automatically establish claims and automatically compile the required Veterans Claims Assistance Act (VCAA) notice to the Veteran based on what is being claimed. The Agent Orange Fast Track System is taking advantage of these capabilities to enable more efficient processing and quicker initial turn-around time.

• Under both the current and new online claims-filing systems, which entities within VA (or any other agency or organization) have remote electronic access to the information provided in the online claim?

Response. With the legacy VONAPP application, that information is not available electronically until the claim control is established in VETSNET. At that point, any employee or Veterans Service Officer (VSO) with access to VETSNET MAP-D (Modern Award Processing—Development) can see the details of the claim. Additionally, as VETSNET is the feeder system for the eBenefits Claim Status Service, any properly authenticated Veteran can see information about his/her claim(s) through the eBenefits portal. Because of the automated claim establishment, Veteran will be able to see the initial information faster through the eBenefits portal, and will have online access to their information in the Agent Orange Fast Track System.

• On average, how long does it take a veteran to fill out the current online claim form?

Response. The OMB Respondent Burden for the 21–526 is one hour and thirty minutes. By contrast, the Respondent Burden for the 21–4138 is fifteen minutes. The 21–4138 is commonly used to file claims subsequent to an original claim. The Respondent Burden for the 21–526EZ, the baseline for collection of information in the Agent Orange Fast Track System, is twenty-five minutes.

• Does VA need statutory authority to authorize electronic signatures on applications submitted electronically?

Response. In May 2008, the Secretary of Veterans Affairs approved elimination of the "wet signature" (i.e., an original signature on a piece of paper) requirement for VBA online claims submissions. Instead, the claimant is provided with a "claimant certification." That certification is in lieu of the prior wet signature requirement, and meets the existing statutory requirements for a "signature." Other Federal

agencies, including the Social Security Administration, deploy the same methodology to online claims submissions. VHA recently eliminated the wet signature requirement when applying online for VA healthcare benefits.

Question 21. How will VETSNET be impacted by the Veterans Benefit Management System (VBMS)?

Response. VETSNET has two major components- the Visual Basic user interface (VBUI) and the Corporate database behind it.

VETSNET development continues to be focused on completing the conversion of records out of the BDN system. As of June 2010, no new C&P records were being created in the BDN system, and approximately 90 percent of all records have been converted. The remaining records will be converted over the next year, and the VETSNET development teams are making only minimal VBUI and database changes needed to support the conversion.

Separate from conversion, VETSNET will continue to provide production support for both the user interface and database.

Development of any new functionality for VETSNET is being carefully examined by VBA and OI&T leadership to ensure it is mission critical. Any non-mission critical development is being deferred for inclusion in VBMS. Any approved development will be designed to ensure ease of integration with VBMS by focusing on minimizing code changes to the VBUI and maximizing development in a service-oriented framework.

Currently the only major new development in VETSNET supports Combat Related Special Compensation, which is scheduled for delivery in November 2010.

VETSNET resources not engaged on conversion, production support, or leadership-sanctioned new development are engaged with the development of services needed to support VBMS.

Question 22. As VBMS comes online, is there a need to upgrade the IT infrastructure at Regional Offices?

Response. VA's Office of Information and Technology (OI&T) has a plan in place to upgrade the IT inter-office network infrastructure separate from the VBMS initiative. At this time, there are no additional upgrades needed to specifically support VBMS. However, part of the pilot testing of VBMS will be a review of the IT infrastructure to ensure no additional upgrades are required. If any additional needs are identified through the VBMS pilots, the VBMS project team will work with OI&T to address them in advance of national deployment.

Question 23. Does the VBMS initiative fall under Project Management Accountability System and if so, can you please share the PMAS scheduled milestones?

Response. VBMS has a major IT component and as such does fall under PMAS. Major PMAS milestones in FY 2011 include Pilot I and Pilot II software deployments.

The VBMS initiative is currently in Pilot 1 development. The Pilot 1 customer-facing software deployment (PMAS milestone) is scheduled for November 2010. Pilot I will run for a period of six months during which time the software will be tested. The second PMAS deliverable in FY 2011 will be deployment of VBMS software for Pilot II. This second deployment will refine and improve capabilities provided in the initial deployment in November 2010.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. RICHARD BURR TO MICHAEL WALCOFF, ACTING UNDER SECRETARY FOR BENEFITS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. Witnesses on our second panel expressed concerns about whether VA is placing a high enough priority on developing smart, rules-based automated systems to help claims processing. Would you please clarify for us whether rules-based processing will be a part of the paperless claims processing system that VA plans to roll out in 2012?

Response. The VBMS system will include a rules-based processing engine when national deployment commences in 2012. VA will build automated workflow processes as well as automated decision support where appropriate. VBMS will have the functionality to readily accept additional rules in the future as the needs of our Veterans change, and/or as more efficient business processes are developed.

Question 2. Former Under Secretary for Benefits Joe Thompson testified that it is his understanding that the Government Performance Results Act required VA to conduct a program evaluation of VA's disability compensation program but that an evaluation has never been done.

A. Is that accurate? Has VA conducted such a program evaluation?

B. If not, when does VA plan to conduct that evaluation?

Response. VA did not conduct a program outcomes study for the compensation program because Congress created the Veterans Disability Benefits Commission as a three-year commission to examine the compensation program to see if it was meeting the needs of Veterans. We believe the report of that commission meets the intent of the law.

Question 3. The Acting Under Secretary for Benefits testified that VA has an incentive program for claims processing employees through which funds are distributed to offices that meet certain goals and those offices then distribute the funds as they deem appropriate.

A. Please provide a copy of any guidance provided to offices on how those incentive funds should be distributed.

B. Under this incentive program, is it possible for claims processing employees to receive incentive funds if their individual productivity has declined from prior years?

Response. VBA utilizes a three-tier incentive program to recognize individuals and regional offices for excellent performance during the fiscal year. Guidance provided to our regional offices is attached. [Attachment follows response.]

Individual recognition (level one), awards are given to those employees whose performance significantly exceeds their performance requirements. All performance requirements for claims examiners contain critical elements for both quality and timeliness/production. At the heart of the performance award program is a foundational focus on quality. Funding for level one of the program is distributed to regional offices based on a percentage of total salary for each office. Level one funds are paid out to individual employees locally as incentive awards, and the criteria for performance are determined locally and vary across regional offices.

Group awards (level two) are made to offices or elements of offices that achieve and exceed performance targets. Funding for level two of the program is distributed to regional offices for meeting key performance targets during the fiscal year, including all claims accuracy goals. Funding for level two awards is pro-rated based on total salary for employees in each business line for which the regional office met the level two criteria.

Special contribution awards (level three) of the program are reserved for recognition by the Under Secretary for Benefits. Recommendations at this level are made by the Associate Deputy Under Secretary for Field Operations.

ATTACHMENT TO QUESTION 3

PERFORMANCE AWARDS PROGRAM FOR VBA FIELD OPERATIONS, JUNE 2002

OBJECTIVE

The Performance Awards Program is designed to provide meaningful incentives to individuals and stations in the field for high performance. Awards will be based on the achievement of performance targets that are set by the Under Secretary for Benefits (USB) in response to priorities and goals established by the Secretary. Performance indicators will be tied directly to the needs of veterans and their families, and will reflect not only production targets but also rigorous quality standards. The criteria for earning an award will also include indicators that reflect the Secretary's commitment to improve timeliness and reduce the pending workload. The performance awards program is also designed so that it is easy for employees to understand what they must accomplish as individuals and as part of the Regional Office (RO) or VA Medical and Regional Office Center (VAMROC) to be eligible for a performance award.

VBA PERFORMANCE MANAGEMENT POLICY

All performance award distribution plans at the national and local levels within VBA must be linked directly to the achievement of individual and/or organizational performance targets and goals. Directors will be expected to ensure that the allocation methodology is tied directly to performance, and that there are meaningful distinctions in the amount of award dollars granted.

DESCRIPTION OF THE THREE PERFORMANCE AWARD POOLS

Level I—Basic Incentive Awards:

Every station will receive the equivalent of 0.65 percent of their salary funds (including locality pay) as of pay period 1 for FY 2002 and pay period 21 for subsequent years. In subsequent years, the funds will be paid out in the beginning of the

first quarter of the fiscal year. This pool of dollars is intended to fund the various incentive awards programs (e.g. "special act," "extra step," and "on the spot") and performance awards programs (e.g. special contributions) established by an office. While a station may not reach its performance goals as outlined in Level II, the Level I station distribution recognizes the fact that there will be some individual employees within an office that are high performers who deserve recognition during the operating year. Additional/supplemental incentive award funds for these high performing employees may be earned if the station meets its performance targets as part of the Level II Pay for Performance award distribution.

Since the following unique functions do not have sufficient performance targets set for this year (FY 02), they will receive a Level I payout that is equivalent to 0.80 percent of their salary funds. Although they will not be eligible for a Level II payout, they may compete for Level III recognition. If appropriate performance targets can be set for these functions, they will be included in the Level II pool in subsequent fiscal years.

- Pension Centers
- Resource Centers
- Human Resources Centers
- Network Support Centers
- The Records Management Center
- The Portfolio Loan Oversight Unit
- Tiger Team
- Huntington SRA
- Muskogee Direct Deposit Unit

Level II—Pay for Performance:

The total amount of this pool will be equivalent to 0.90 percent of the salary funds (including locality pay) in the field as of pay period 21. The funds will be sub-divided (based on salary) into the following award pools:

- Veterans Service Centers*
- Regional Loan Centers* (Including funds for the LG activities that still remain at the Regional Offices)
- Regional Processing Offices*
- Vocational Rehabilitation and Employment Divisions*
- Loan Guaranty Eligibility Centers

To be eligible for a Level II business line pay out, a station must meet key performance targets established by C&P, LGY, VR&E, and Education Services; the Associate Deputy Under Secretary for Field Operations; and the Associate Deputy Under Secretary for Policy and Programs. These targets must have the concurrence of the Under Secretary for Benefits. The ADUS for Field Operations, the ADUS for Policy and Programs and the ADUS for Management will appoint a committee at the end of each Fiscal Year to review the performance award program and recommend any necessary revisions to the performance indicators or distribution process to ensure that the program continues to support the priorities of the organizations.

The total amount in each business line pool will generally be distributed to qualifying stations on a pro-rata basis (i.e. based on their proportionate share of the total business line salary dollars for the stations that qualified for a Level II payout). However, each service is capped at the following: VSC 15, RLC 3, RPO 1, and VR&E 15. If the number of stations is less than the cap, the award funds will be limited to the salaries for one pay period for that service divided by the number of FTE on board (per capita). For example, if 14 stations achieve the VSC target, the per capita would be $1,816 if the salaries were $12,387,689 divided by 6,821. A station of the size of 10 FTE would receive $18,160 for Level II payout. If the entire pool for a business line is not paid out because only a limited number of stations make their performance targets, the excess funds will roll over into Level III. The payouts under Level II will occur once a year in the beginning of November and will be distributed based on the performance achieved in the prior FY. This timeframe should allow stations to authorize performance awards prior to the end of the calendar year and traditional holiday seasons.

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*The overhead payroll dollars for Executive Direction, Information Resources Management, Human Resources Management, and Support Services at each of the Regional Offices will be added to the program/business line pools on a proportionate basis (e.g. if Compensation and Pension represents 72 percent of the business line salary dollars in the field, then 72 percent of the overhead salaries would be added to the Compensation and Pension award pools). If the business line divisions make their performance targets, the elements that support them would be expected to receive an appropriate share of the Level II award payout.

The Regional Loan Centers (RLC) and the Regional Processing Offices (RPO) that achieve their performance targets will be responsible for allocating an appropriate amount of funds from their award pool for the outbased employees assigned to their area of jurisdiction. The salary dollars for all Loan Guaranty employees, even those still assigned to an RO, are rolled into RLC salary dollars. Therefore, the RLC will be responsible for distributing Level II awards to all Loan Guaranty employees, including those assigned to an RO. The San Juan and Honolulu Loan Guaranty functions are treated like an RLC, but are not included in determining whether the payout is capped.

The Insurance program, which is funded primarily by Trust Funds, will be expected to develop a similar awards program that is consistent with the objectives and dollar amounts in this plan.

The performance targets that must be met in FY 2002 to qualify for a Level II payout in November of this year are as follows:

Veterans Service Centers

A VSC must meet three of the following four performance targets to be placed in the pool:

- Meet or exceed the station's Rating Related Production target for the year
- Achieve an accuracy rate of 85% for Ratings and 70% for Authorization on the national STAR reviews
- Rank among the top one-third (19) stations for average processing time for the rating- related end products, and reduce their total pending workload from the beginning of the FY to the end of the FY by 15%
- Reduce pending appeals by 10% for the year

Regional Loan Centers

A Regional Loan Center must meet both of the following performance targets to be placed in the pool:

- 96% accuracy under the SQC program index
- 39% or better FATS ratio

Loan Guaranty Eligibility Centers

A Loan Guaranty Eligibility Center must meet both of the following performance targets to be place in the pool:

- 96% eligibility accuracy for the SQC review of this program
- 6 day timeliness standard for processing eligibility applications

Regional Processing Offices

A Regional Processing Office must meet three of the following four performance targets to be placed in the pool:

- 38 day timeliness standard for original claims
- 21 day timeliness standard for supplemental claims
- 94% payment accuracy
- A blocked call rate of 20% or less

Vocational Rehabilitation and Employment Divisions

A Vocational Rehabilitation & Employment Division must meet three of the following four performance targets to be placed in the Level II pool:

- Entitlement determination accuracy will be at least 91%
- Outcome accuracy will be at least 84%
- The rehabilitation rate will be at least 65%
- The serious employment handicap rehabilitation rate will be at least 65%

Level III—Under Secretary for Benefits' High Performance and Special Contribution Awards:

This discretionary award pool is for the use of the Under Secretary for Benefits to recognize contributions by stations that exceed normal expectations. The amount of the fund will be equivalent to .20 percent of field station salaries (including locality pay) as of pay period 21.

Stations will be given the opportunity to nominate their office for a share of this pool based on exceptional contributions they made during the FY to help VBA and the Under Secretary meet their performance goals. Nominations must be submitted by September 15th to an Awards Panel that will make recommendations to the Under Secretary on which organizational elements should be rewarded and on the amount of the award. The Awards Panel will consist of the Associate Deputy Under Secretary for Field Operations, Associate Deputy Under Secretary for Policy and Programs, Associate Deputy Under Secretary for Management, and Area Field Di-

rectors. The ADUS for Field Operations will serve as the Chairperson of the Panel, and the Director of the Office of Human Resources will provide administrative and advisory support to the Panel.

Since this is a discretionary fund, the Awards Panel may recommend paying out none, some or all of the funds depending on the extent of special contributions. The USB may also decide to use a portion of the fund for special recognition during the year prior to the convening of the Awards Panel. Criteria and a nomination format will be provided to all field sites by July 2002.

Payouts will be combined with the Level II payouts in early November.

The following is a list of examples of the types of contributions that might be recognized by a Level III award. The list is intended to be illustrative and not all-inclusive:

- Outstanding levels of performance in key indicators that far exceeded the stations targets (e.g. exceeding the production target for ratings by 150 percent);
- Volunteering and contributing to the successful testing of a new application or process;
- Performing significant amounts of additional work (brokering and/or help teams) for other stations;
- Developing a new initiative or process that improves performance or service to veterans;
- Exceptional performance in support of the veterans in communities served by an RO or VAMROC that experienced a natural disaster or other devastating event;
- Exceptional outreach programs;
- Initiatives that support and enhance the "One VA Vision" or other priority programs identified by the President and Secretary;
- Creative initiatives that improve relationships with key stakeholders (e.g. VSO's, congressional staffs, mortgage brokers, schools, and the military services at the local RO and VAMROC level).

Question 4. At the hearing, we discussed factors that contributed to the failure of prior VA claims processing initiatives, including unclear goals, lack of integration of various efforts, and failure to coordinate with stakeholders. We also discussed the on-going claims processing initiatives.

A. Please provide a list of the goals for each on-going initiative.

Response. VA has set goals for eliminating the disability claims backlog by 2015, processing disability claims in no more than 125 days, and achieving a 98 percent or greater accuracy rate on every completed claim for disability. All on-going claims processing initiatives were established based on this mandate and are continually evaluated to ensure they support VA's strategic transformation goals.

B. Please provide a list of the metrics that will be used to gauge whether each initiative should be continued, expanded, or discarded.

Response. VBA's Claims Transformation Plan will "break the back of the backlog" through a series of short-term, mid-term, and strategic initiatives that are integrated or aligned within or across each pillar. The life cycle for deployment of each initiative includes: concept development, execution planning, localized execution, and full-scale execution. During each phase, VA will assess the efficacy, sustainability, and return on investment to determine which initiative(s) will be continued, expanded, or discarded. All initiatives will be evaluated based on VA's strategic goal of no claims pending more than 125 days, 98% accuracy rate of claims outcomes, and Veteran advocacy.

C. Are the various initiatives being integrated and, if so, how?

Response. VBA has established a dedicated program office to monitor, evaluate and promote the successes of the initiatives; the Office of Strategic Planning (OSP). OSP fosters collaboration and an environment for integration of results. For example, a weekly conference call with the 10 Innovation Initiative Project Managers provides a forum to learn from the experience of others in addressing challenges and provide opportunities to build upon successes. Integration also will be realized through the anticipated synergistic accomplishments of similar initiatives. For example, in the case of new Agent Orange presumptive disabilities, one initiative is developing a Web-based portal for claims filing and development to address an expected surge of workload with these new claims, while another initiative is building better medical evidence-gathering routines for the same disabilities for integration into the automated system that guides disability examinations. Private doctors are offered paper versions of the examination questionnaires that can be uploaded through the new Web portal when complete.

D. What input did veterans' organizations and other stakeholders have in crafting each of the on-going initiatives?

Response. Veterans service organizations have been involved in the Transformation Plan from the nationwide Innovation Initiative competition through advising VA during ongoing execution. Activity ranges from VBA pilot initiative teams communicating with local Veterans organizations about their activities, to a pilot for improving claims contention quality in which representatives of Veterans service organizations are active pilot management committee members. Veterans groups have been provided information on all initiatives and VA will continue to brief them, as well as employees, labor groups, and Congressional Members and staffs.

E. What input will veterans' organizations and other stakeholders have as VA determines whether to continue, expand, or disband each of these initiatives?

Response. Veterans organizations' and other stakeholders' input and understanding are vital to the success of the Claims Transformation Plan. VA managers are committed to ongoing dialog with organizations representing Veterans, labor groups, state and county Veterans affairs offices, and Congress. VBA plans to continue monthly meetings with representatives of major Veterans organizations, and will encourage a robust exchange of ideas as initiatives mature.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. BERNARD SANDERS TO MICHAEL WALCOFF, ACTING UNDER SECRETARY FOR BENEFITS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. Do you think hiring more Veterans in VBA would be a good place to start that culture change?

Response. Veterans currently represent a large percentage of VBA's workforce. VBA actively recruits Veterans through job fairs, and emphasizes VA as an employer of choice during Transition Assistance Program briefings. In addition, Veterans are made aware of the special hiring authorities available to assist with obtaining Federal employment. VBA will continue to aggressively recruit and hire Veterans.

Question 2. Of your new hires, what percentage of the VBA employees are service-connected disabled Veterans?

Response. Currently, 27 percent of VBA's workforce is service-connected disabled Veterans.

Question 3. Of your new hires, what percentage was hired through work with VA's own Vocational Rehabilitation Program?

Response. VBA does not capture this information.

Question 4. Of your new hires, what percentage of the employees are Veterans?

Response. Currently, 48 percent of VBA's newly hired workforce is Veterans.

Question 5. Of your new hires, what percentage was hired through working with the Department of Labor's Veterans' Employment and Training Services?

Response. VBA does not capture this information.

Question 6. Are these positions listed with the Local Veterans' Employment Representatives or Disabled Veterans' Employment Program Specialists?

Response. These positions are not listed with the Local Veterans' Employment Representatives or the Disabled Veterans' Employment Program Specialists. However, through our partnerships with the Department of Labor Veterans Employment and Training Service and VA's Veteran Employment Coordination Service, Veterans with disabilities are presented employment opportunities with VA.

VR&E Employment Coordinators (ECs) work closely with VA's Regional Veterans Employment Coordinators, who have direct knowledge of employment opportunities within VA. ECs help Veterans with disabilities apply for VA jobs by:

- Assisting with use of the USAjobs.gov Web site to develop a Federal resume;
- Helping Veterans understand special hiring authorities for Veterans, such as Veterans Preference, and Schedule A; and
- Providing assistance with interviewing skills and techniques.

Question 7. Of your new hires, what percentage are recently separated servicemembers? (By "recently separated," I am referring to Veterans of Iraq or Afghanistan.)

Response. Specific service information is not captured in VBA's hiring database.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. ROLAND W. BURRIS TO MICHAEL WALCOFF, ACTING UNDER SECRETARY FOR BENEFITS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. Can you give us a better estimate on the number of projected backlog in the year 2015?

Response. The goal of the Transformation Plan is to eliminate the backlog of cases pending greater that 125 days by 2015.

Question 2. Given the increased effort that the VA has put into outreach in getting Veteran's to take advantage of their benefits, what is the plan to address an overwhelming success in enrolling more veterans, or an unanticipated increase in disability claims to process?

Response. The President's 2011 budget request for VBA is $2.1 billion in discretionary funding, an increase of $460 million, or 27 percent, over the 2010 enacted level of $1.7 billion. The 2011 budget supports an increase of up to 4,048 FTEs, including maintaining some of the temporary employees funded through the American Recovery and Reinvestment Act of 2009.

Hiring more employees is not a sufficient solution. The need to better serve our Veterans requires bold and comprehensive business process changes to transform VBA into a high-performing 21st century organization. The budget includes $145.3 million in information technology (IT) funds in 2011 to support the ongoing development of a smart, paperless claims processing system.

VA's transformation strategy for the claims process leverages the power of 21st century technologies applied to redesigned business processes. We are examining our current processes to be more streamlined and Veteran-focused. We are also applying technology improvements to the new streamlined processes so that the overall service we provide is more efficient, timely and accurate. We are harvesting the knowledge, energy, and expertise of our employees, VSOs, and the private and public sectors to bring to bear ideas to accomplish this claims process transformation. Our end goal is a smart, paperless, IT-driven system that empowers our VA employees and engages our Veterans.

While we work to develop this system, we are making immediate changes to improve our business processes and simultaneously incorporating the best of those changes into the larger effort, our signature program, the Veterans Benefits Management System (VBMS).

Question 3. When do you think the training process is going to have to adapt to the wide spread availability of new technologies?

Response. Delivery of the initial VBMS user guide and the change and communication training modules is expected in September 2010, two-months prior to deployment of Pilot 1. As additional business and technical requirements are identified through the VBMS pilots, adjustments to any hands-on training and refinement of the training materials will be made accordingly. Training will occur prior to each pilot and in advance of national deployment. For national VBMS deployment, user training will begin in the 3rd quarter of FY 2012.

Question 4. Are the people that have been trained in the last few years going to have to go through additional training?

Response. Yes, the training curriculum is continuously updated to incorporate legislative and regulatory changes as well as new initiatives and technological advances. We currently require at least 85 hours of refresher training annually for experienced employees. Ongoing training is essential to maintain a high performing workforce.

Question 5. Are we going to have to increase the budget for training down the road, to train the next generation of claims processors that utilizes VBMS?

Response. Training costs associated with the national deployment of VBMS will be included in the FY 2012 budget, and will be based on our experience conducting training for other large national software deployments.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. ROLAND W. BURRIS TO PETER L. LEVIN, PH.D., CHIEF TECHNOLOGY OFFICER, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. You have previously voiced that we need to build a totally new claims processing system. I think you understand, as I do, that our aim shouldn't be to just fix the backlog, but to drastically improve the claims process itself. How do you propose that we do this?

Response. The VMBS initiative is designed to address inefficiencies in the claims process, as well as modernize the existing legacy applications in order to break the

back of the backlog. VBMS is based on open architecture and commercial-off-the-shelf (COTS) products that will allow VA to react more methodically to emergent claims processing needs. Additionally, VBMS will dramatically reduce the amount of paper in the current claims process, and will employ rules-based claim development and decision support where possible. The paperless environment will ensure shorter wait times for the adjudication of new claims. The new process will help VA meet the Secretary's target of slashing wait times from an average 165 days to a maximum of 125 days or less.

Question 2. What level of Information Technology spending do you think is necessary to achieve and sustain a functional adoption of a paperless system?

Response. VBMS is a large and complex program involving development, deployment, and sustainment costs. The FY 2011 Budget Submission includes the appropriate funding to meet our needs.

Question 3. How do we capitalize on the effectiveness of single pilot programs aimed at technological fixes that seem intended to only solve, in isolation, only a few problems at a time and successfully scale the initiatives nationwide?

Response. The VBMS technology platform will be built using a Services Oriented Architecture (SOA) framework. SOA-based architecture allows for the flexibility to make changes quickly and incrementally to the business processes system functionality. The use of Agile development will enable VBA to respond rapidly to new requirements, such as those captured from nationwide initiatives. These do not simply address "problems in isolation." The purpose is to fix systematic issues in a methodical and scalable way.

Chairman AKAKA. Thank you very much, Mr. Walcoff.

VA's testimony notes that Secretary Shinseki, and you mentioned this, his goal is to have no veteran wait for more than 125 days for a quality decision with a 98 percent accuracy rate. Will you please explain what that accuracy rate entails. How is it measured, by appeal rate, remands, or reversals?

Mr. WALCOFF. OK. The quality rate right now is 83.4 percent, and that number is arrived at through a quality assurance program that we run out of the Nashville area. The program is called STAR, and what that program consists of is randomly selected cases called in from every regional office, a statistically valid sample from each office are reviewed by employees who have no association with the regional office structure. These employees work for the C&P Service, so they are not in any reporting line that would involve the regional offices.

They do a review. They look to see whether the obvious things, whether the right amount of disability is being paid, whether it is being paid from the correct effective date. They look to see whether any inferred issues were missed. There is a whole checklist of things that they go through in order to determine if the case is correct or not.

Once they have done that, they track the types of errors that are being made and then report back to the regional offices where there are trends to say, "These are the types of errors that are being made in your office. We need to incorporate training for that particular type of thing in your curriculum for your employees as we go through training for the next year."

You had mentioned possibly appeal rates, that type of a thing, and that is not the way we do it. I will tell you, anecdotally, but I will tell you, 3 years ago, I actually looked to see whether there was a connection between the STAR results and appeal rates and I found that in some cases there was, in some cases there weren't. There are a lot of different reasons why cases are appealed and it doesn't necessarily mean that it is directly related to whether the case was correct or not.

In terms of reversals by the Board and remands, that is often suggested as a possible reason. The one thing I want to point out on those is that the case which the Board reviews at the time that the judge actually looks at it is not necessarily the same case that was done at the regional office, and by that I mean the system allows veterans to submit additional evidence throughout the life of the appeal, so that very often, the judge in reviewing the case will be looking at evidence that was not available and not submitted to the regional office at the time they made the decision. That is why we really can't say that a remand or a reversal is necessarily an error made by the regional office. Now, it could be, and certainly some of them are, but you can't say that because a case was remanded, the RO made a mistake.

Chairman AKAKA. Mr. Walcoff, recent oversight conducted by the Committee showed that the denial rate for claims processed through the Pittsburgh pilot was high. Committee staff has shared its findings with VBA. Would you please comment on this issue.

Mr. WALCOFF. Yes. We are currently reviewing all the cases that came out of the Pittsburgh pilot. We don't have the results yet. We have called the files in from the regional office so we can review them. The one concern I have about the methodology that was used by the member of your staff was that it is important to remember that the pilot is really geared at development. Once the case is developed through the pilot, it goes into our regular rating boards. They have one rating specialist that does work for the pilot, but basically, he only does a small percentage of them. The rest of them get mixed in with all the other cases that are rated from the Pittsburgh Regional Office.

What I would think might be a better way to look at it is let us look at the cases, the error rate of the cases that are started in the pilot versus the error rate of other Pittsburgh cases, because the rating board from Pittsburgh is doing both of those sets, and that would really enable us to distinguish whether the cases coming out of the Development Unit are treated any differently than the cases that are done in the rest of the office.

Chairman AKAKA. Thank you very much.

Let me call on Senator Burr for his questions. Senator Burr?

Senator BURR. Thank you, Mr. Chairman. Welcome, Mike.

More than 12 years ago, former Under Secretary for Benefits Joe Thompson—he will be on later—said this about the VA's efforts to improve the claims processing. "The Veterans Benefits Administration has undertaken a number of initiatives to bring about needed change. The reasons for the lack of success include inadequate planning, unclear goals and objectives, poor integration and interrelated efforts, a lack of coordination with other stakeholders, and insufficient implementation, planning, and follow-up." Since VA again has a number of initiatives to try to improve the claims processing, I think it is important to look at whether past mistakes will be avoided, so let me ask a few questions.

What do you see as the lessons learned from past initiatives?

Mr. WALCOFF. Well, first of all, Senator, I am familiar with that statement that Mr. Thompson made. I might have written that statement, for all I know, if we think back.

I think the question is very valid. Obviously, as has been said by many on this Committee, this is a problem that has existed for many, many years. I first came into central office in 1990 and we had a backlog. We are now in 2010 and we have a backlog. So this has been a long existing problem. I think there have been sincere efforts made during this period to try to fix the problem, but obviously they have not succeeded. So the question is, why haven't they succeeded?

I think part of the problem is lack of follow-through in some cases. I think that sometimes a lot of these initiatives take time and I think that as personnel change and transition, sometimes a program is started, and just before you have the time for it to show results, different people come in, might have different ideas, and sometimes those programs aren't given the opportunity to go to their full fruition where we can see the benefits of it.

I think one of the positive things about what is going on now is we got it started very early in the administration. I think that there will be a period of continuity where we can get the stuff implemented. Certainly, the keystone to our program is the VBMS system and that had, to a certain extent, started before the new administration came in. They have made, I think, significant improvements to the planning.

Having a Chief Technology Officer on board, I think is a major difference in terms of all the IT plans that we have had over the years. This is the first time that we have had somebody who really has that level of expertise in technology and whose whole job is focusing on what technologies can be used to address our problems.

And I think that the timeframe that has been set up for the VBMS project of 2012 is very realistic. I feel very confident that we are going to reach that and I believe that we will have that continuity to be able to get that in place, and that is the program that I believe is going to make the biggest difference in eliminating the backlog.

Senator BURR. I am certain that you have got metrics that you are using for all of the pilot programs, but do you also have a target date for final evaluation of the pilot programs, at which time a decision would be made as to whether you roll them out more broadly?

Mr. WALCOFF. Each program is different; we have different amounts of time. We have several programs that are up for review in August. They will have been piloted for 90 days. I wanted to set a time up that was relatively short, where we could at least see whether there is enough definitive information to make a decision on whether we could move forward or not. So we have several pilots that are coming up in August to make a decision on.

The Little Rock Pilot finished in late June. We got a report in from the contractor. We are still reviewing that to make a determination as to what we want to expand from that. We know there are a lot of good things that came out of it. The decision that we are making is exactly how do we take out what we think are really positive things that would translate nationally and how do we export that nationally. That decision is being made right now.

Senator BURR. Let me ask, just for the record, if you would share with the Committee in writing what the target dates are for each of the pilot programs.

Mr. WALCOFF. Absolutely.

Senator BURR. And I would also ask that once you have made the evaluations, let us not wait for a hearing to provide the Committee with your observations on the success or failure of those pilot programs.

Just real quickly, a last one. You and I talked about service officers in North Carolina that had shared with me a deep desire on their part to get claims accurate before they are ever submitted, and to do that, it would be a wise investment to beef up the funding prior to claims coming in the door to make sure that they were complete.

What do you think of that idea, and is having an application that walks in the door complete beneficial to the overall processing of these claims?

Mr. WALCOFF. Senator, I absolutely agree. When people talk about how long does it take to process a claim and we talk about 160 days, the interesting part of that 160 days is that about 65 to 70 percent of it is getting all the evidence together. The actual rating doesn't take long at all. We do our ratings in 20 days, 3 weeks. I mean, we can get a case rated and promulgated.

The long pole in the tent is getting all that evidence together so that the case is ready to rate, is available to rate; so, yes, accumulation of the evidence is absolutely the key part. If we could get claims coming in to us fully developed, in other words, with all the different things that are needed to be able to rate the case, we could turn it around very quickly. We have a pilot right now in Atlanta which says that if certain conditions are met in terms of the filing of a claim, on a claim for increase, that we will turn it around in 30 days, to give you an example.

We have several things that we are doing right now to try to get to the point where claims come in fully developed. One of the biggest things is a pilot in Pittsburgh involving templates for exams. One of the problems we have is there was a statement made concerning the fact that we don't rely enough on private medical exams. I think the Chairman made that statement. We know that we are going to have to rely more on private medical exams, because, frankly, with all this work coming in, it is going to be a lot of work if we send it all to VHA for exams there. I am not sure that they, no matter how many people they had, could handle that.

So we want to encourage veterans to be able to go to their private physicians to get their exams done. The problem is that when these private doctors do their exams, they send them in and we don't have the information we need in order to rate the case because there are certain things that the rating schedule calls for. So what this pilot does is it sets up templates for every disability—we are going to have 67 of them—that are really simple. I mean, basically, it has got a bunch of fill-in-the-blank type of things where a private physician, all he has to do is answer five questions and we will have an exam that is sufficient for us to rate on.

Number 1, that allows veterans to go to their private physicians. Number 2, it makes it so that when he comes back with that exam,

he is giving us something that we can rate on. Those are the types of things that we are doing to try to get exactly where you said, which is get the claim right before it comes in the door so that we can rate it right away.

Senator BURR. Great. Thank you. Thank you, Mr. Chairman.

Chairman AKAKA. Senator Brown?

Senator BROWN OF OHIO. Thank you, Mr. Chairman.

Mr. Walcoff, how do I explain to people in Finley, Ohio, or Youngstown, Ohio, that a bum knee in Ohio is worth a lot less than a bum knee in San Diego?

Mr. WALCOFF. Senator, that is——

Senator BROWN OF OHIO. Well, let me say one more sentence about it. Ohio ranks 49th in the 50 States, and I am not sure what the 50th State is, but in terms of compensation for any illness or injury, and nobody can understand why that is when you tell them that if they were living in another place, they would get higher compensation.

Mr. WALCOFF. Senator, that is a really key issue. I mean, it is absolutely a problem, not just that it is Ohio, but that anybody in any State could get rated differently depending on where they live. Frankly, that is one of the concerns that I have even about the pilot, sir, that is in the proposed legislation. Consistency is really absolutely a key.

The fact that we know statistically that a case submitted in Des Moines could possibly be rated differently than a case submitted in Cleveland is a problem to me. I don't know that I would say, in terms of Ohio that Ohio should be first. I don't know that——

Senator BROWN OF OHIO. I think it should be tied for first with 49 other States.

Mr. WALCOFF. I think they should be 29th. I think they should be 29th.

Senator BROWN OF OHIO. No, they should—we have to work toward——

Mr. WALCOFF. The middle.

Senator BROWN OF OHIO. Right.

Mr. WALCOFF. Exactly right, sir, when this first came up a couple of years ago, everybody wanted to be first, and my whole thing was, I am just as worried about the person who is way above the middle as I am the person who is way below the middle. Really, everybody should be the same because we are using the same rating system.

You know, in terms of the situation with Ohio, what I would say is that you have to understand that statistic you are looking at is a accumulation of ratings that have been done for everybody who is on the rolls, going back to people who came on in World War II that are still on the rolls. If you look at it year by year, the ranking of Ohio is actually a little bit higher.

But I think the real point on this is that we can't allow a system that has the amount you get paid dependent on what State you live in. We have got to make it so that we have consistency from one State to the other, and anything that we do has to work toward that goal of having everybody get the same treatment no matter where they live.

Senator BROWN OF OHIO. OK. It reminds me a bit of the story, there was a secret ballot taken in the U.S. Senate on who should be the next President and it was a 100-way tie for first. [Laughter.]

And I would think perhaps we should strive toward a 100-way or 50-way tie for first here.

A recent GAO report stated that despite previous GAO and VA Inspector General findings, the VA had only recently begun reviewing the extent to which veterans with similar disabilities, as we were talking about, receive consistent ratings across regional offices and individual raters. The GAO reported on May 24 that it was too early to determine the effectiveness of some of these new efforts.

What can we expect in terms of as you work assiduously, and I really, really, really applaud what you and the Secretary are doing because I think the focus is exactly right. I liked when he and Joan Evans came in and explained to Doug Babcock and me how you were doing the regional pilots and all of that, how much sense it makes as you are working to reduce that backlog. I just don't understand why it is taking so long to begin to figure out this disparity in ratings. I just want to be reassured that this disparity in ratings among VISNs is going to go along—the progress there is going to be consistent with the progress of reducing the backlog.

Mr. WALCOFF. OK. Let me answer that in two ways, first, from the longer term. We believe that, to a large extent, technology is going to play a key role in this. In the new VBMS system, we believe that built into that system will be certain rules-based principles that will kind of, I think, assist us in making sure that every rating specialist working a case, no matter where he is working it, is guided toward the right answers. The machine is not going to make the decisions, but I believe that there are certain types of errors procedurally that a system of technology would be able to help us with to make it so that when he starts going down the wrong road, it kind of pops up and says, why don't you reconsider that and think about going the other way.

Dr. Levin can maybe explain that idea a little bit more, and then I will come back and talk about what we are doing in the short term.

Senator BROWN OF OHIO. Thank you, Dr. Levin.

Mr. LEVIN. Very, very briefly, exactly what Mike said is correct, that we do not propose to create a rules-based system that is going to take the place or replace or substitute a human being making a final decision. But there are clearly things that you can identify—pattern matching capabilities—that we can build in. Do you want to be the first RVSR to not compensate for a debilitating illness, or do you want to be the first one who compensates at 100 percent for one that doesn't have a medical record? There are very simple checklists that we can provide guard rails for, a framework to make sure that the decisions are, in fact, being made according to, I would say, common sense or otherwise procedurally sensible guidelines, and that will be part of the design specification. It is part of the design specification.

Mr. WALCOFF. And let me answer just quickly on the short term. Obviously, that is 2012. I don't propose that we wait until 2012 to begin addressing the problem that you have raised, so we have

done some things. First of all, I think it is important that we make sure that we have training that is consistent, that the curriculum is consistent so that everybody who is learning the job, no matter where they are learning it, is learning the same things. And that is something that we have made several efforts toward over the last couple of years, to make sure that it is a national curriculum.

We have the National Challenge Training, which every rating specialist in VSR attends in their first 3 weeks in this curriculum. It is done in Baltimore. They all get the same instructor. They all hear the same thing.

And third, the C&P Service is involved in doing consistency matches to try to determine statistically what stations are out of line on particular types of decisions and then look into those cases to figure out what they are missing as to why their decisions are out of line and then correcting those decisions.

Senator BROWN OF OHIO. Thank you. Mr. Chairman, thanks.

Chairman AKAKA. Thank you, Senator Brown.

Senator Johanns?

Senator JOHANNS. Thank you, Mr. Chairman.

In your testimony, Mr. Walcoff, you talk about complex claims. There was a statistic cited that veterans claiming eight or more disabilities have increased from about 23,000 in 2001 to 67,000 in 2009. Give us a sense of what is driving that, number 1. And number 2, is that impacting the backlog at all, or are those triaged in a way that they move more quickly? Walk me through that.

Mr. WALCOFF. Well, first of all, they definitely have an effect on the backlog, and actually, they take longer to do because they are more complex. A lot of that is the influence of the work that we are getting through our Benefits Delivery at Discharge sites. A good program that we have is that we are out at these discharge sites. We are meeting with servicemen before they get out of the service and getting claims from them before they get out with the idea that we will be able to provide an answer to them more quickly once they become veterans.

One of the things that we have found is that servicemembers who file claims at those points file a lot more claims. We have two places where those cases are rated, Winston-Salem and Salt Lake City, and on average, we have between 11 and 12 issues per claim through those BDD claims, whereas a normal claim coming in would average somewhere around four issues per claim. So you can see that there is a much higher volume in terms of issues from the claims coming from those sources.

Now, some of it is we get retirees that are coming out at those places. Retirees, because they have been in so long, they have had a lot of different experiences that may cause incidents and injuries that they want to claim, which they are entitled to.

But what we do find is that the number of claims that we are getting with these multiple issues are dramatically increasing, as you said. I am not going to say this is the rule, but we get some claims with 70, 80 issues, and they are more complex. They take longer to do.

Senator JOHANNS. Let me go a little further on that, because I think this relates to that, but it relates to the whole picture. I oftentimes—and I am sure other Committee Members also hear

this—I hear about the difficulty of interfacing recordkeeping with DOD and VA. I found your comments to be very, very interesting, that if you can conceptualize this, if the veteran literally walked in with the full packet of information, that claim could be sent out in 3 weeks, 4 weeks.

So is that a point at which there needs to be better technological interface between the two areas, DOD and VA? Is it just for recordkeeping? What is going on that makes that so difficult and how much impact does that have on processing a claim?

Mr. WALCOFF. I am going to start. I am going to answer it, and then I am going to ask Peter to jump in in terms of where we are going with this, because it is a very good question.

One of the reasons that we are able to process Benefits Delivery at Discharge cases quicker than we do our regular cases is because we have the veteran there with all of the service treatment records. Everything is there so that we can get it all into the system, and then we are able to make a decision quicker. That is as compared to somebody who files after they have been out a year or 2 years and then we have got to go out and find the records. And it is particularly an issue with Guard and Reserve records. So it is a big part of why it takes so long.

But we are making progress, and Peter, I would like you to talk about some of the things going on with the VLER project and some of those things.

Mr. LEVIN. My pleasure, Senator. This is really not a technology problem. This ends up being more a process and policy problem. That said, the systems that we have in place today are largely proprietary and customized systems. So these are systems that were built by folks back in the mid- to late-1990s when some of these standards hadn't existed yet, or for reasons of expediency or convenience, they were built one time, never expected to expand.

So, one of the charges of the Secretary in this administration is to migrate from these proprietary custom systems to something we call openly architected—you can read the standards on the Internet—and componentized standards-based system, things that would allow you, for example, to use G-mail to communicate with somebody who is using Outlook.

We are about halfway done with that project right now. We have two pilot projects that are already very, very successful using these standards-based components. It is a big project, not just because we are trying to have these two different e-mail systems communicate with each other. It is a little bit more complicated than that. We are also including this as part of the Electronic Health Record Interoperability Project, this thing called the Virtual Lifetime Electronic Record, or VLER, and so the benefits component of that is coupled to the health record component of that. We are doing them both at the same time and we are making big progress. I expect we will be able to report to the Committee at the end of this year or the beginning of next year about those pilots, as well.

Senator JOHANNS. I ran out of time, but I will wrap up with this. I think if you had a breakthrough here, and I continue to hear about the appeals process which I think has a whole separate backlog, if somehow we could deal with those two issues and have a breakthrough, you would make some pretty significant strides for-

ward. Now, it doesn't solve all the problems. You still have complex claims and a whole host of other issues. But it just occurs to me as I kind of dug into this that those two areas are ripe for remedy, and if you can find the remedy, you are going to be able to report really significant success.

Mr. WALCOFF. I agree, sir.

Senator JOHANNS. OK. Thanks.

Chairman AKAKA. Thank you very much, Senator Johanns.

Senator Tester?

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Well, thank you, Mr. Chairman.

Many of the questions that I had have been asked, although what I want to do right now is give you my statement, and though it is information for you it is also about taking this information back.

I think this is a very key moment for the VA on the claims issue, and I think Secretary Shinseki has laid out, in my opinion, a pretty good mission of outlining the goals to finally get to a place where we can handle the backlog.

Initial reaction is to agree with most folks who are asking, why does it take 5 years to get here? This is an urgent problem. It has been an urgent problem for a while and I wished we could have an immediate solution, but solutions aren't that simple and I know that. It takes a great deal of time to get new claims processors trained and contributing. It takes time to modernize a record-keeping system that has been shockingly behind the times in the area of technology. It takes time to get veterans, the VSOs, and State veterans agencies familiar with a brand new form that the VA will be using.

But just like with Electronic Medical Record sharing between the VA and the DOD, we only meet that goal if there is a daily concentrated focus by the VA leadership to get that done. Secretary Shinseki knows that. I know that Secretary Gold knows that and I assume that you, too, Mr. Walcoff, know that. Hopefully, we will do better with the disability backlog than we have with the VA/DOD record sharing aspects, because with the policy changes for Agent Orange exposure, changes to PTSD claims, which I strongly support both, we are going to see more claims. And with our troops still very much engaged in two wars, we are going to see more claims.

Like all disability compensation claims, it is critical that we get them done quickly and accurately. If we fall short on either front, we are not keeping up our end of the bargain to take care of those who were injured serving our country. And shame on us if we fail. These are real folks and struggling families behind those 500,000 disability claims. In my veterans town hall meetings, I hear them tell me that they fear the VA is trying to outlive them. They tell me that the VA doesn't give a damn about them. And this is a place where the regional office is doing better at reducing the backlog than in most other States in the country.

So right now, I am not as optimistic as I wish I could be. The number of claims exceeding 125 days in review is up. The accuracy

of the claims is down. Today, one of six claims are decided incorrectly, according to the IG. That doesn't work for our veterans and it should not be acceptable to anyone in this room, and I am not saying that it is.

I again want to thank Secretary Shinseki for making this a priority. My fear is that we will be back here next year and the year after discussing the same issue and wishing the numbers were better. I hope that is not the case, but only time will tell.

Mr. Walcoff, I do hope that you will take this message away from the Committee here today. I am sure you will. We are here to help and we are partners with you in this effort, and so are the other witnesses. I hope you are getting to hear directly from the DAV and from your employees about how to improve the process. If they don't have direct input, which I think that is critically important, we need to find a way to get them to give direct input. This is an all-hands-on-deck problem and we cannot afford to miss out on a single idea.

Like I say, the challenges are many. Many of the folks here today have said that they were here before. It hasn't gone away. And to be honest with you, I think the people who serve this country deserve better.

Do you have any response to that, in general?

Mr. WALCOFF. Senator, first of all, I agree that veterans deserve better. Everything we are doing is to make it so that veterans don't have to wait as long as they do to get their decisions and that we don't have one in every six claims decided incorrectly. I agree with you that that is unacceptable and we have got to do better than that.

We are working with—you mentioned VSOs, you mentioned our employees. We had a competition for our employees where they had the opportunity to submit ideas. We received 3,200 ideas from our employees, and many of the things that we are doing that I am talking about today are ideas that came from employees.

Senator TESTER. Good.

Mr. WALCOFF. And I will take everything you have said, I will take it back to the Secretary.

Senator TESTER. I just want to touch on one issue, though there are many. Like I said, Senator Brown touched on one of them—we are 43rd, by the way. I thought maybe we were 50th, but my staff set me right.

Disability claims filed by Guardsmen have a 14 percent rejection rate, compared to a 5 percent rejection rate for active duty claims. We have got about 650 National Guardsmen from Montana who are getting ready to be deployed or are already deployed. You have indicated some opposition to the part because it takes focus off of other things that VA is trying to work on in relationship to claims. What are you doing to fix this disparity, or is it a concern right now?

Mr. WALCOFF. I think we need to know more about why there would be a difference in terms of approval rates. I can tell you that one of the things right off the top that I know is different is that it is much more difficult to get treatment records from Guard units. You know, when regular soldiers come back to a base to be discharged, they are there for a period of time. We can usually get to

them. We can brief them. We can get records from them, that type of a thing.

Whereas, often Guard units disperse quickly. They are in a hurry to get back. I don't blame them. But it is difficult sometimes to make contact with them while everything is there. And then stuff goes back to the units and it is much more difficult for us to get access to them, and that is a problem. It is certainly not the soldiers' problem. It is our problem which we have got to work out with the units to do better.

Senator TESTER. It is fixable. Thank you. Thanks, Mr. Chairman. Thank you, Mr. Walcoff.

Chairman AKAKA. Thank you very much, Senator Tester.

Senator Begich?

Senator BURRIS. Mr. Chairman?

Chairman AKAKA. Senator Burris?

Senator BURRIS. Mr. Chairman, are you taking us in the order we come, because I do have to leave in a few minutes.

Chairman AKAKA. Yes. Well, Senator Burris?

STATEMENT OF HON. ROLAND W. BURRIS, U.S. SENATOR FROM ILLINOIS

Senator BURRIS. Thank you, Mr. Chairman. I appreciate the Senator yielding. I came because I have a load of questions, Mr. Chairman, and I don't know if I can even get to all of them, because I am very concerned about what is happening with these claims.

My staff came and briefed me the other day about this and I just about fell out of my chair, because I have been telling the veterans in Illinois, oh, yes, we are improving our claims processing, things are improving, things are getting better. Now my staff is telling me that they are not, and then I hear this information is correct. Our veterans, especially in Illinois, are having all kinds of problems and I am concerned about the history that was there, because when President Obama was a Senator and Senator Durbin, Illinois veterans were number 50 in terms of benefits that they were receiving, in terms of medical benefits. We are going to check to see how that has improved, but I have been trying to defend the VA, Secretary Shinseki, saying that we got a little bit more money, we have got all these benefits coming for VBA, and then we hear that it is taking just so much time to process these backlogs.

I find the timetable just a little—well, I have a great deal of concern about the time that we are talking about. You have got a 2015 date when we hope to be—assume to be—caught up with the processing of the backlog, and that is when we have got, what, 23 million veterans and only 3.1 million are now currently receiving some type of compensation.

Another question I have is there is an economic difference between our different States and I hope that you don't think that an injury that is obtained would help a veteran in Chicago or a veteran in, let us say because of cost and living standards, a veteran in Southern Illinois. Are you making adjustments for those economic standard of living differences in the compensation for the veterans? Is that taken into consideration?

Mr. WALCOFF. The rates of compensation that we pay are national rates. They don't vary by State and certainly not by——

Senator BURRIS. And they don't vary by cost of communities?

Mr. WALCOFF. The actual compensation rate itself?

Senator BURRIS. Right.

Mr. WALCOFF. No, sir.

Senator BURRIS. So if I have got a bad knee and I am living in Chicago or even Carpenter, Illinois, and I got $20 a month in Chicago and $20 a month in Carpenter, that is what you are saying.

Mr. WALCOFF. That is correct, sir.

Senator BURRIS. That is something new.

Another question I have, what is your timetable in hiring these 4,000 full-time processors to process these? I understand it is going to take 2 years to train these people, to be fully staffed. Is your budget allocated over the next 2 years to cover 4,000 employees, or are you all going to make internal adjustments in the finances of VA to accommodate this additional hiring blow-up that you are going to have?

Mr. WALCOFF. Senator, the proposed budget for 2011 is a very generous budget for VBA and certainly we are looking at the hiring of a significant number of people as part of the solution. But we don't believe that staffing alone is going to solve this problem. We believe that there are other things that have to be done.

I think that the culture of the organization has to be changed. I think we need to change the viewpoint of all of our employees to make sure they understand that they are advocates for veterans and that everything they do should be to help veterans. I don't think necessarily that our employees don't feel that way, but I think they need to understand and basically do things that are more indicative of an advocate. An advocate is the initiative that we have to follow up with all veterans who file a claim with a phone call where it says, you received a letter from us recently. Did you understand the letter? Let me go over it with you. Do you understand that we are asking you to submit evidence to us, that you have 30 days to do that. Whereas in the past, we would just send the letter out and if they understood it, great. If they didn't, well, then we would move on when they didn't respond. That is not what an advocate does, and I think that is an example of trying to change the culture of our organization.

We are looking at our business processes. I don't think that it makes sense to change our technology, which obviously has to be done, but to change it with our old processes. We need to be looking at what new processes we need to be more consistent, to fit into the new technology. So that is something else we are doing.

And then the technology, most of all, I believe, is what is going to allow us to be able to achieve the goals that we have talked about. Just hiring people is not going to be enough. We have got to do all of these things.

Senator BURRIS. One last question. Now, have you all been impacted by the addition of the GI Bill? Is VA being impacted overall by those claims that are now being made for the veterans as to workload coming into the office, overloading the overall system?

Mr. WALCOFF. The GI Bill is under me. It is under VBA. But the education claims are only processed in four offices, Muskogee, Buffalo, Atlanta, and St. Louis. So most offices don't even have an edu-

cation processor, and the ones that do, those four, it is a separate division, separate employees.

Senator BURRIS. So, the educational GI Bill, is not impacting this problem?

Mr. WALCOFF. Not the compensation problem, no.

Senator BURRIS. Right. Mr. Chairman, I will submit questions for the record. I thank the other Senator for yielding. I appreciate that.

Chairman AKAKA. Thank you very much, Senator Burris.

Senator Begich?

STATEMENT OF HON. MARK BEGICH, U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you very much, Mr. Chairman. Thank you all for being here today. I have just a couple of general questions and then I want to follow up on some folks' conversations here.

First, to be very parochial about Alaska and the need for understanding the rural aspect of Alaska in delivering services by the VA into rural Alaska and also understanding the uniqueness of cultural differences, especially the Alaska Native community that participates significantly in the military and Armed Forces as well as the Guard; can you give me a couple of comments on how the VA views—we had a hearing here maybe a month ago on rural veterans care and veterans outreach. Could you give me kind of a feeling of how the VA views their effort or what they need to be doing in the future?

Mr. WALCOFF. Senator, there are definitely some unique challenges with the State of Alaska. Just the sheer size of it and the pattern of the population really present some challenges that we sometimes struggle with coming up with the right answer, but it is something we absolutely need to do.

I am going to ask Diana Rubens, who is the head of our Field Operations organizations, to address this.

Senator BEGICH. Very good.

Ms. RUBENS. Thank you, Mr. Walcoff. I appreciate your attention to the benefits piece. I will tell you that we have worked very hard with folks from your staff to talk about some of the issues, not only as they pertain to the outreach, but just to make sure that we have got the right staffing level up there, that we are paying the right attention to the claims process.

As we look particularly to the rural veterans in Alaska, we are working very closely, hand in glove, not only with our counterparts from VHA, but with DOD to ensure we are doing the right level of outreach, that we are working to make sure that we are accessible. To the degree that technology will help us, if it is through video teleconference, whether that is to get exams done or to be accessible to veterans, those are the kinds of things that we recognize will help us as we work to serve those veterans living in rural Alaska.

Senator BEGICH. Very good. I know you have been aggressively working with the staff. It is just a very complex issue, especially as more and more are returning, how we deliver that, also how we ensure those advocates, and I think that is the right word to use, are going to be available because that is what is critical for deliv-

ering these services. It is not about someone having to find these services. It is an advocate who reaches out and gets the services to the members who earned them and deserve them. So I appreciate that.

Let me, if I can, Mr. Walcoff, I was actually not going to bring up this area because honestly it wasn't on my list until now, but I am following the discussion. Let me ask you a kind of general philosophic question. Do you think you have the capacity within the organization to make those cultural changes with the delivery of services? I am asking that from experience being a former mayor who had to take a library system and change it because there was a little confusion in how we operate. I say that only because I had to radically change it and reorganize it, and that is how we honestly cleaned out dead wood. We focused on what we were delivering and increased the services dramatically over the next 3 years, so now the system is very healthy, very strong.

Do you have the capacity to do that? Do you have the rules to do that? In other words, it is great to have 4,000 people, but I will tell you, if the training is not started from point A reflecting a cultural change and you have people who are—I know they do a lot of good work, I agree with you, but it doesn't take many to create a system that clogs up, where they believe that they are there to question everything the veteran does rather than advocate for the veteran. So what tools do you need?

Mr. WALCOFF. That is a great question, and I am going to answer your question from the perspective of somebody who has worked for the VA for 36 years and has seen a lot of things in those 36 years. But I really believe we have a unique opportunity right now, because we are at a point where there has been a lot of turnover within the organization. The combination of the employees that were hired in the Vietnam era that are now my age and retiring and the fact that our budgets have been so good over the last couple of years, which has allowed us to hire additional FTE, means that if you look at our workforce, and I don't have the exact numbers, but I bet you close to 50 percent of our workforce has been hired in the last 5 years.

This really gives us an opportunity to shape the perspectives of these guys, to get them to understand that it is an honor to do this job, that you really have an opportunity—every day you come in, you have the opportunity to help somebody and to pay somebody back for sacrifices that they made to this country.

And that has always been the primary attraction, I believe, about working for the VA. I mean, you can work a lot of other places and make a lot more money. But you can come here and really help people and pay people back for things that they have done for you. And to me, this is an audience, this is a group of people that are really receptive to that kind of thinking.

Second, I am going to be very frank, the leadership coming from the Secretary's office, if you listen to the Secretary you can feel the sincerity that he exudes. When he talks about us being advocates, he is not just saying words; he really believes it. So I think the combination of those two things puts us in a situation where, yes, I think we can do it.

Senator BEGICH. My time is up, but let me ask this. Do you, from the smallest item to the largest item, I mean, I think of everything when I was mayor of how you reshape an organization. There is nothing wrong with saying you are molding them or reshaping, to be very frank with you, because you are trying to shape the culture using a new approach. Are these folks—if I walk in there and say, "I am looking for my advocate," is there such a job title that exists in the VA?

Mr. WALCOFF. It doesn't, but I will tell you that——

Senator BEGICH. It should.

Mr. WALCOFF [continuing]. It should——

Senator BEGICH. If they are going to be advocates, make them—it is all about attitude.

Mr. WALCOFF. But, you know, it is interesting——

Senator BEGICH. If a person walks in there and says, "I am an advocate," they are an advocate.

Mr. WALCOFF. In the position description, it used to be, back when I was working in the adjudication area for the VSR, what was then called a Claims Examiner, it was in there about being an advocate for a veteran.

Senator BEGICH. All right.

Mr. WALCOFF. I don't know that that language is in there anymore, but it was and it should be.

Senator BEGICH. I just would encourage you—you have got a great challenge ahead of you because if you can't change the culture within an organization, it doesn't matter how much money we put in, how many great efforts we have, how many great Committee meetings we will have here, we will never move the system. And you have some great people who work within the system over there and I think there are a lot of people who are anxious to kind of bust out——

Mr. WALCOFF. Yes.

Senator BEGICH [continuing]. And be ready to take on this new challenge. They are looking for that moment, and I think your description is good.

I would just end by saying I encourage you, as you work—again, back to the Alaska issues—to continue to reach out to the veteran communities and our office. We will be happy to help you in any way we can to make sure the veterans communities are well connected, because the communications is sometimes the problem or the challenge of delivery. So let me say, thank you all very much.

Mr. WALCOFF. Thank you.

Chairman AKAKA. Thank you very much, Senator Begich.

Senator Brown?

STATEMENT OF HON. SCOTT BROWN,
U.S. SENATOR FROM MASSACHUSETTS

Senator BROWN OF MASSACHUSETTS. Thank you, Mr. Chairman. It is good to be back. Sorry I was late. I had to speak to the summer interns, bright-eyed and bushy-tailed, so I apologize for being late. I want to thank you for holding this hearing, once again.

Obviously, claims are important and it is something of great concern, which I know you are making an effort to tackle with the new hires and the like. How do you actually forecast claims and relate

that to the amount of hires? Is there a mechanism we can use? It seems like we are always playing catch-up. We are always on the defense versus offense.

Mr. WALCOFF. We do have models that we use in terms of those projections, but I will tell you that those models aren't necessarily as accurate as we would like. I will give you an example.

If you look at last year, our incoming went up 14 percent. We had projected it to go up about 6.5 percent. So you say, well, how could you possibly have been so far off? Well, if you look at the 3 years before it went up by 14 percent the increases were 2 percent, 4 percent, and 5.5 percent. So we saw 2, 4, 5.5, and 14 percent. I guess all that shows is that there are some things that we are just not as good as we need to be at predicting.

I believe in that situation the economy played a big part of it in terms of why we saw such a big increase. If you look at what types of claims have shown the biggest increase, it is reopened compensation, people claiming that their conditions have gotten worse, and original pension claims. Pension is a program that is income-based. To me, when I look at those few things, one of the conclusions I draw is that the economy is playing a factor in why the large increase.

But we do have models. We do try to project as closely as we can. Then, obviously, our budget requests are tied in with those projections.

Senator BROWN OF MASSACHUSETTS. Do you prioritize which backlog claims are handled first? For example, settlement of the oldest claims? Is there a process that you can share with us on that?

Mr. WALCOFF. We are always looking at the oldest claims and certainly trying to figure out why they are old, if they ready for decision, and trying to get them out. We don't do a strict first-in/first-out, because if you do that, you are always going to have old claims because you are never getting to the ones that are ready but aren't the oldest. I mean, what I don't want is a case that comes in, within 30 days I have got everything I need to rate it, but I don't want a system that says, I am not going to rate that case until it becomes the oldest case.

So there is really an art to it in terms of making sure that we are attacking those old claims, but at the same time, when a new one comes in and it is ready, grabbing it, getting it out so that it doesn't become old. And that is what we train our managers to do in running these service centers.

Plus we look at certain indicators. The average age of the pending inventory is one that we look at to make sure that our employees are not ignoring the oldest cases. If that average days pending metric is going up, that means that they are not doing the old cases and we will intervene in that situation.

Senator BROWN OF MASSACHUSETTS. Is there a plan to retain a new generation of managers and personnel? And also, is there an incentive program of any kind to stimulate people, you know, cranking these claims out and kind of getting them off the desk?

Mr. WALCOFF. Absolutely. About 6 or 7 years ago, we dramatically increased the amount of money that we put into our incentive plan and we also rewrote the plan to make it so that instead of just

giving money to all the offices and saying, OK, this is your money, spend it as you wish, we took a large part of it and said at the beginning of every year to every station, if you achieve these goals, then you will be eligible for this bigger pot of money. If you meet those goals, we will give you your share of that money and you decide how you want to distribute it among your employees.

Senator BROWN OF MASSACHUSETTS. Let me interrupt for a second on that. So, is the incentive plan, though, to not settle cases, like if you save money for the government, or is the incentive to actually service the soldier and get it out the door? What is the nature of the incentive plan?

Mr. WALCOFF. Well, first of all, I want to jump to one thing you said right away because I hear this once in a while and it just drives me crazy. There is absolutely no incentive, no pressure from anybody ever since I have been working for the VA to not pay cases because VA wants to save money. I mean, we read that every once in a while. No administration, Republican, Democrat, no administration has ever pressured me or any of my employees that I know of to do that. So I want to be clear on that.

The things that we measure are things like production, quality, timeliness; basically the things that would tell us whether we are doing a good job or not. Very often we will say, for instance, you have to meet three of four goals in order to qualify for a program. But we will also say that the one goal you always have to meet is quality. We want to emphasize that quality has to be considered the most important indicator, because what I don't want is our employees putting out twice as many cases and having them all wrong.

Senator BROWN OF MASSACHUSETTS. Yes, right.

Mr. WALCOFF. I mean, that wouldn't do anybody any good.

Senator BROWN OF MASSACHUSETTS. Mr. Chairman, do I have time for one more question?

Chairman AKAKA. Go ahead.

Senator BROWN OF MASSACHUSETTS. Thank you. Just briefly, is there something that we can do through the Chairman's leadership? Is there something in the Senate, for example, that we are not doing that can provide the tools and resources for you to do it better? Is there something that we can convey, either through the leadership or the administration, like, what are we missing? It seems like something is missing here in terms of, is it more people? Is it more computers? Is it better technology? What is it?

Mr. WALCOFF. Senator, I believe that the Congress has been very generous to us, certainly over the last couple years. I think that our budgets have been good. I think we have resources. I think we are on the right track now in terms of technology. And I think what I am asking for is just to give us an opportunity to carry out this program. Monitor us.

I mean, I think coming up for these types of hearings is not a bad thing. I think that I should have to report back in terms of how we are doing and are we making progress; you know, are we using the resources wisely. But I believe we have the tools we need in order to accomplish what we are set out to accomplish.

Senator BROWN OF MASSACHUSETTS. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Brown.

Senator Webb?

STATEMENT OF HON. JIM WEBB,
U.S. SENATOR FROM VIRGINIA

Senator WEBB. Thank you, Mr. Chairman. And Mr. Chairman, I would like to express my appreciation and support for you holding these kinds of hearings. As the Chairman well knows, there is a great percentage of veterans law that gives an enormous amount of discretion to the executive agency itself. It has the ability with the sweep of a pen to move billions of dollars. These types of hearings, I think, are vital to ensure that the executive discretion does not operate independently from strong legislative oversight, so again, I hope we can have more of these types of hearings.

Mr. Walcoff, I would say to you, listening to what you just said a minute ago about having spent 36 years at the VA, I first came into veterans law 33 years ago. I am boot to you. I thought I was probably the senior guy in the room here. You have seen a lot of ups and downs in 36 years, for sure.

Your comment about 50 percent of the workforce having been hired over the last 5 years, I think, if accurate, is an incredible statement. It also reinforces what I am suggesting about the need for more oversight here to make sure that this agency is headed in the right direction.

This is kind of an age-old battle in terms of the claims process, and I think that the questions that are being raised about timeliness and responsiveness versus accuracy, first of all, they depend on the quality of people and how you train them, obviously.

Second, I think it is really important in this particular area for the Department to be working closely with and listening to the veterans service organizations, the DAV particularly, which has a rich history with respect to how to handle claims and how to help people.

But let me make one suggestion here. Maybe you can take it back to people who are above you. I am pretty concerned about the timeliness and the quality of the cooperation between the top of the Department of Veterans Affairs and the Congress. I will just speak from my own office on that. You are getting a reputation, quite frankly, for less than full coordination and cooperation on a lot of issues—the homelessness issue in terms of my own office, the Agent Orange issue, the way that it was handled procedurally and the lack of coordination even in my case when we asked Secretary Shinseki directly for information and some actions on the homeless issue before it came up.

This is a classic example, if you want to talk about responsiveness. I wrote a letter to Secretary Shinseki more than a year ago asking about—and it was signed, actually, by the Chairman, as well—talking about the difference in the numbers of people being categorized as prisoners of war between DOD and the VA. There have been news reports on this. We wanted to get some clarification. I wrote that letter on July 7. I got a response on May 17. That is more than 10 months.

Now, when I worked in the Pentagon as a young Marine Captain, anything that hit my desk, I had a 48-hour turnaround on. We had to do some pretty detailed information on a lot of these

point papers. Ten months to respond to a U.S. Senator on an issue that basically is data oriented is—it may be a comment about the overall mentality of the Department as much as anything else, if you look at the difficulty with claims processing.

We examined that reply of May 17, then sent something back in June. We have been waiting now another month just to get data clarification. I don't quite understand why that needs to happen and it makes me wonder also in terms of a lot of these claims, is this a bureaucratic mindset in the agency or what are we to make of this? You know, I am not going to—I am not holding you personally accountable, but take the message back, if you would.

Mr. WALCOFF. I will, sir, and I will tell you that the POW letter, I believe that I probably should take some of the responsibility for that because I believe that was a VBA assignment. Now, I think we went through some steps that we had to do in terms of checking data and getting back to DOD. Sir, I am not trying to excuse it, but I don't want to just say I will take it back without saying that VBA played a large part in that delay and I apologize for that.

Senator WEBB. Well, the Department of Defense—I spent 5 years in the Pentagon, as you know—the Department of Defense was the greatest data resource center in the government. I can remember when I was a Counsel on the Veterans Committee and we were doing these hearings on a Carter Discharge Review Program. One day I turned around to the DOD representative, an Army Lieutenant Colonel, and I asked him for a breakdown of casualties in Vietnam by year, by service, by rank, and by ethnicity, and I had an answer in 24 hours. So, I am a little perplexed here.

We need to be working together in order to resolve these issues, and I just hope—take the message back, if you would, and again, my thanks to you for having dedicated your life to those who have served.

Mr. WALCOFF. Thank you, sir.

Senator WEBB. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Webb.

Mr. Walcoff, this question concerns a recently published PTSD regulation. I appreciate VA's continuing efforts to take into consideration the circumstances of individuals' service when determining service connection. A *Marine Corps Times* article yesterday indicated that you do not anticipate more veterans will receive benefits for PTSD under this regulation, which is contrary to what many believe, as evidenced by Senator Tester's comments a few minutes ago. Can you please elaborate on this?

Mr. WALCOFF. Mr. Chairman, at the press conference where some of this came out, there were questions about the increasing claims. At the same time, there were questions about increasing costs, and I think some of those answers got kind of laid on top of each other and not necessarily worded correctly.

I said a couple things at that press conference. One was that there is one set of veterans who had applied for PTSD benefits where we required proof of the stressor who had to go through a lot of difficult and frustrating processes and waited a long time in order to get benefits; and that one of the advantages of this new regulation is that people in that situation would not have to go through the frustration of that process, that they would get it much

quicker, OK, not necessarily that the original people were turned down, but just that they had to go through a large process.

So, in that sense, there is not an increase because of that, but I do believe that certainly publicity surrounding this—there probably are some veterans who heard if you apply for these type of benefits, they are going to jerk you around and really give you a hard time. A lot of them might have said, well, I don't want to have to go through that. And when the word gets out that we had liberalized this process and made it easier for them to apply for these benefits, I do think that there will be some more people applying. So I do think there will be somewhat of an increase.

What I said was, in terms of the costs, the biggest thing about having people apply for this benefit is that, hopefully, we will get them into our treatment programs. That is really the key here. I mean, the payment of the benefits, certainly they deserve that, but what we are really looking for is to get them into a treatment program, because untreated, this type of a condition has all kinds of hidden costs. You know, people with serious PTSD who don't get treated wind up very often with substance abuse problems, alcoholism. They wind up homeless in many cases. They wind up incarcerated. These are all things that cost society money, a lot of money.

All I was saying was that any additional costs that these additional people who are going to be applying will cause would be offset by what we won't have to pay in terms of homelessness and incarceration and that type of a thing. And that was the statement that I made.

Chairman AKAKA. Thank you, Mr. Walcoff.

VA's testimony states that under the pilot proposed in my legislation, veterans would not be treated equally. Since by definition a pilot program is only carried out in selected locations, isn't that a risk with any pilot program, including those that VA is currently undertaking?

Mr. WALCOFF. Sir, this issue of consistency is one that obviously is, I think, something that weighs on all of us. We have had several Members of this Committee refer to it in today's hearing, and it is certainly something that I have been aware of for quite a while, and it is difficult to justify why a veteran who lives in a particular State, when presenting a set of facts, should be treated differently than a veteran who lives in a different State.

What concerns me about the proposed legislation is that it would actually establish that exact situation. Now, you say, well, what about other pilots; other of our pilots. We are piloting different processes. We are not actually piloting the actual criteria we use to make the decision. So a pilot that has us doing, let us say, the case management pilot in Pittsburgh where we are working one-on-one with a veteran when he comes in to file his benefit, that is a pilot of a new process.

What this is doing is piloting the actual criteria we use to make the selection—to make a decision, so that a veteran who lives in one of these six States will have a decision made based on different criteria than a veteran who lives in any of the other States. That is going to very possibly cause them to get two different decisions based on the same set of facts, and that is what I object to in terms

of the—and that is me. We haven't officially presented an opinion from the administration. That is my own, again, from me in my job as the Acting Under Secretary. As I looked at this, that was the concern that I had right away.

Chairman AKAKA. Thank you very much.

I understand Senator Burr does not have another question, but Senator Begich, do you have a question for this panel? Otherwise, we will move on.

Senator BEGICH. I do have a quick question, and I can't stay for the second panel, so I am going to have a list of questions I will just submit, if that is OK, Mr. Chairman.

This is more of a comment, and that is I know we are going to do a follow-up meeting in Alaska with the Tribal communities and with the VA, which I really appreciate. I think this might be one of the first times for you. I am hopeful that as you do that meeting, that you have the perspective that one, specifically, because I think there are some very specific action opportunities, that it be really focused as an action meeting. It is great to have meetings. We go to plenty of them around here that will last us until midnight at times. So it would be great if, as you attend—because I know it is the first time and they are very motivated to assist you in some action items, I would hope that you would take that as an action item kind of a meeting.

Mr. WALCOFF. We will, sir.

Senator BEGICH. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Mr. Begich.

If it is OK, Senator Brown, we will move to the second panel.

Thank you very much to the first panel, Mr. Walcoff and all of you.

Mr. WALCOFF. Thank you.

Chairman AKAKA. Thank you.

Before the second panel sits, I am going to call for a very brief recess.

[Recess.]

Chairman AKAKA. This hearing will be in order.

I want to welcome our second panel. Our first witness is the former Under Secretary for Benefits, Joe Thompson, who served as the head of VBA from 1997 to 2001.

Next is Linda Jan Avant, Rating Specialist at the Little Rock, Arkansas, Regional Office and First Vice President for Local 2054, American Federation of Government Employees. Ms. Avant is on the front lines of bringing down the claims inventory. Ms. Avant, I understand that today is your birthday and that your mother is here in the audience, so happy birthday and welcome to mom here.

Our next witness is Richard Cohen, who is the Executive Director of the National Organization of Veterans Advocates.

The final witness today will be Joe Violante, National Legislative Director for Disabled American Veterans, testifying on behalf of The Independent Budget.

I thank you all for being here. Your full testimony will appear in the record.

Mr. Thompson, please begin with your testimony.

STATEMENT OF JOSEPH THOMPSON, FORMER UNDER SECRETARY FOR BENEFITS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. THOMPSON. Good morning, Mr. Chairman and Ranking Member Burr. Thank you for inviting me here today to present my views on veteran claims processing and current VA initiatives.

The Veterans Benefits Administration, in my view, is at a critical juncture in its institutional history. It is undergoing things today that are with the great changes that followed the Vietnam War and World War II. That order of magnitude.

VA's Disability Claims Evaluation process is likely the most complex one in the world. Over the last 10 years, it has only gotten increasingly complex. Not only have the laws changed and additional requirements been added to VBA's processes, the claims volumes have risen significantly, as was mentioned earlier, and the sheer number of claims and the number of issues embedded in each claim just makes the work much more difficult for the people trying to administer these programs.

Compounding this is the fact that VBA has fallen behind in terms of using information technology to help make things better. It just hasn't kept up with the times and it faces the prospect, and I heard what was described earlier, of really trying to play catch-up before it can even move ahead.

And just as the baby boomers, my generation, replaced the class of 1946, the men and women who came to work for the VA after World War II, today, the millennial generation is coming into VA in great numbers and replacing the baby boomers. So given all of this, given this complexity and the size and scope of change, it is important that VA gets it right.

Now, VA has used a number of different approaches to process claims over the last several decades. I won't go into detail as to what those approaches were, but I would suggest that the model they are looking at today is very similar to ones we were using in the 1990s. I will just very briefly to describe the current initiatives, as I see them.

The Little Rock pilot is creating cross-functional teams that have end-to-end ownership of claims, using modern management techniques to improve the process steps within that team concept. That is important, because instead of the claims being spread out throughout the regional office, you have all the skills in one area to decide that claim from start to finish, and you also have the ability of the team to look at the processing steps to make sure that they don't waste time with a claim sitting idly there that could be processed more readily.

The Pittsburgh Regional Office is case managing claims. I heard one of the Committee Members ask about having veterans' advocates in regional offices. This is exactly what case management is—having a person in the regional office with the responsibility for making sure that claim gets done right. I can't tell you how much I think that is absolutely the right thing to do. Instead of having a phone number that you call and never speaking to the same person twice, you now have a person who will pick up the phone and talk to you and try to work you through the complex issues. To me, there is no substitute for that level of service.

The Providence pilot's Business Transformation Lab is moving to a paperless system. If the requirement is that you need to have a claims folder open in front of you for you to do your job, then that requirement dictates how, when, and where that claim gets done. If you can get claims into an electronic format, you have broken all those bonds. You have given the agency tremendous flexibility to process claims when, where, and how they see most fit. So I think that is a key element of this improvement process.

And I think the Baltimore pilot, the last piece, is really about building a virtual regional office that pulls all of these elements together.

I think all of those things are really positive steps and I encourage the agency in pursuing them. There are however, some things I think they need to be cautious of and there are some challenges to these efforts.

First of all, deciding on the correct solution. You can make things work in a pilot setting that don't translate well when you try to implement them across America. There are reasons it can work in the pilot. You might have put your best people in there. You might have provided more resources. Or just the fact that everybody is watching makes people do a better job. So, I caution VA to be sure that when they get the results from the pilots, they understand what they are seeing and how well that will translate into the broader VA.

Scaling the initiatives is also going to be a challenge. VA is stretched to its limit right now. It is, I think, using all of its available resources just to get current work done. Trying to bring in new processes is also going to be a challenge and one that has to be managed carefully.

I also believe that they need to put a higher priority on using rules-based systems. I recognize that they are looking at these systems right now, but I believe that the reason that claims decisions can be made differently in one regional office versus another is because the rules are very broad. You can legitimately decide claims differently based on the same evidence because the rules provide that much flexibility. Putting in rules-based systems that start to not only remember the nuts and bolts rules, but also start to narrow the decision-making "sidelines" down is important both in terms of making the process more efficient and also making it more accurate.

I also think VA needs to keep their eye on quality, because when push comes to shove, the default position for VBA, and I say this as somebody who loves the organization, is that in a tradeoff between quality and production, they will choose production every time.

Now, I think the current leadership and certainly the Secretary has the appropriate emphasis on quality, but you need to understand that when people are pushed and they have performance metrics to meet, they are going to try to get the work out even if sometimes is not entirely correct.

Improving electronic data exchanges is also needed. It is disheartening for me to hear that we still don't have that capability with DOD, that they still mail paper to VA. Those discussions began a dozen years ago with DOD and still it doesn't look to me

like a lot of progress has been made. I also think there are opportunities between VBA and the Veterans Health Care Administration to improve their electronic exchanges and using templates, which I heard mentioned earlier, for exam ratings. Those templates were developed 8 or 9 years ago. I haven't seen them in use as yet, so I wonder if VA is utilizing all the tools that I think are available.

And finally, I would mention blending new hires into the organization is going to be a challenge. Adding 4,000 people to this organization is an enormous lift. When people come into the organization, they are actually a net negative because you have to train, equip, provide space for them to work, and most importantly, you have to pull experienced people offline to help train the new people. So I mention this just to recognize it as an issue. I mean, it is a problem I would love to have had: getting 4,000 new people. However, in the beginning at least, there is a lag time before the training kicks in and really makes a significant difference in performance.

In conclusion, I would just like to say I think VA faces major challenges in its attempts to improve and modernize the claims process. I believe the current efforts appear to be on the right track in terms of developing solutions. But I think the far greater challenge will be in the implementation end of it. The good ideas are there and I think they can see what they are, but scaling that up and making that work in 56 or 57 regional offices throughout the country is really going to be a tremendous challenge.

As noted earlier, VA, I believe, is at a critical juncture in veterans claims processing. Although they face daunting challenges, they do have the advantage of strong senior leadership support. They have excellent budget and staffing, thanks to the Administration and the Congress; and the technology available today has capabilities that, when I was in that job 10 years ago, I could only dream about. I think that by continuing with their current initiatives and by taking some of the steps mentioned above, VA can be successful in transforming this most critical process for helping our Nation's veterans.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF JOSEPH THOMPSON, FORMER UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Good morning Mr. Chairman and Members of the Committee. Thank you for inviting me here today to present my views on veterans' claims processing. Your invitation letter asked that I comment on the claims pilot programs in the Baltimore, MD; Little Rock, AK; Pittsburgh, PA; and, Providence, RI regional offices as well at the claims processing legislation you recently introduced. I was also asked by committee staff to provide my perspective on how the claims process has changed over the years. Given the highly technical nature of the proposed legislation, I do not believe I have the necessary expertise and would like to pass on providing comments about its various provisions. Before I respond to the other topics, I would like to state that I believe the Veterans Benefits Administration is at a critical juncture in its institutional history, one that holds both great promise and great challenges.

The veterans' claims process is as old as our Nation, tracing its origins to the early years following the ratification of the Constitution when the responsibility for providing compensation to veterans moved from the individual states to the Federal Government. Although much has changed from the quill pen and inkwell days of claims adjudication, the essence of the process has remained the same: having trained experts gathering and reviewing the best available evidence and deciding if the veterans' disabilities are related to service and if so, the extent to which they are disabling. In essence, VA is charged by the American people with fulfilling the

social contract that arises when a young enlistee raises his or her hand and swears an oath to "support and defend the Constitution of the United States against all enemies * * *."

CURRENT SITUATION

Deciding veterans' disability claims is a complex and often time-consuming task. Research conducted by VA staff in the 1990's concluded that the veterans' claims process is likely to be the most complicated disability determination process in the world. This intricacy is driven by a number of factors including the number of claimed disabilities filed by each veteran, the complexity of claims received (e.g., environmental and infectious diseases, Traumatic Brain Injuries, etc.) and the often significant lapsed time between the disabling event and the filing of a claim. It is not unusual for VA to have to decide issues that are a half a century or more old. The claims process has gotten increasingly complicated since that study was conducted, driven by significant new legislation over the last ten years coupled with disability claims arising from the wars in Iraq and Afghanistan.

Things have changed considerably for the Veterans Benefits Administration (VBA) over the last ten years. From Fiscal Year 2001 to Fiscal Year 2011 (estimated) the number of claims received per year will have grown by 70% while the overall staff employed by VBA, as proposed in the President's 2011 Budget, will have grown by 80%. The number of veterans receiving Disability Compensation or survivors receiving Dependency and Indemnity Compensation (DIC) will have grown by 47% and total payments for these programs will have increased by 156%.

The scope of the transition of the VBA workforce from baby boomers to the millennial generation will rival those of the other great transitions in VA that followed World War II and the Vietnam War and the increases in disability claims and outlays are unmatched in recent history. Given these facts, it is imperative that VA "get it right" with its improvement initiatives.

EARLIER CLAIMS PROCESSING MODELS

VA and its predecessor agencies have utilized numerous organizational strategies for handling claims; a number of the more recent efforts are very similar to the aforementioned pilot programs. From my perspective, there are three basic approaches to claims processing that have been followed by VBA over the last several decades.

The first approach, referred to in VA as the "unit concept," was prevalent from the Vietnam era through the Gulf War era. Each claims unit had responsibility for a certain percentage of the overall claims work and unit staff members typically had many of the skill sets needed to handle claims, including putting claims under electronic control, developing evidence, and making certain determinations. However, some key tasks were outside the purview of the claims unit such as making the actual disability rating decision (this was the responsibility of rating boards) and speaking with veterans on the phone or in person (this fell to Veterans Services Division staff). "Ownership" of the overall process was a senior management responsibility. Complaints about slow service and poor quality fueled a number of management improvement initiatives in the 1990's which ultimately led to a move away from this model by VBA.

The next approach, referred to as Business Process Reengineering (BPR), utilized cross-functional work teams with individuals responsible for the full range of actions for processing a claim from receipt through to the final decision. Each team was assigned a percentage of the overall claims workload and was responsible for managing the entire process from end to end. Each claim was also "case managed" that is, an individual on the team would be responsible for helping the veteran through the process and keeping him or her apprised of the status of their claim.

As the Director of the Regional Office in New York City, I helped develop this model and utilized it for handling claims in New York. Later, as the Under Secretary for Benefits, I began the process of expanding Business Process Reengineering nationwide. This short-lived model (1999–2001) was being implemented across VBA when efforts were halted because of concerns about growing claims backlogs stemming from legislation passed in 2000.[1]

The third approach, VBA's current Claims Processing Improvement (CPI) process, has been in place since 2002. It relies on a strict division of labor with a focus on specialization of claims processing functions and roles, with each employee working in a highly circumscribed fashion. Work moves through specialized elements, each

[1] The Veterans Claims Assistance Act of 2000 required the re-adjudication of approximately 100,000 previously-decided claims which added to the claims backlogs commensurately.

of which is responsible for a part of the process, but with no individual element responsible for overall outcomes. As with the Unit Concept, responsibility for the overall process rests with senior managers. This is an assembly-line approach used successfully in manufacturing.

Each of these models offers advantages and disadvantages. The current CPI model offers the benefits of process standardization and makes training somewhat easier because individual roles and responsibilities are narrowed. However, it is inflexible, requires extensive process controls, reduces accountability, and keeps employees limited in terms of their knowledge and capabilities. Most importantly, it makes it difficult for employees to see how their actions ultimately affect veterans and their family members. The connection between the internal claims work and outcomes can and should be a potent performance motivator given the profound importance of VBA's mission to help veterans and their families.

The Unit model was more flexible than CPI but it too erected barriers between employees engaged in different parts of the same overall claims process and disconnected claims staff from the impacts of their activities on their veteran clients.

The BPR model was the one which, in my view, tied VA claims processing staff most closely to outcomes, expanded employee capabilities, and provided the best service to veterans. It was also, at least in the short run, the most labor and resource-intensive process to implement and administer. Nonetheless, I believe it is well worth the effort. As VBA's senior statistician remarked as the first data was being analyzed from BPR pilot sites in 2001, it was the only initiative in her experience to "move the needle" on customer satisfaction. Not only were claims processed more quickly, veterans' satisfaction with the process also increased significantly and their substantive appeals of the decisions, which constitute a major percentage of VBA's work, were cut in half.

A key element of the BPR model was a simultaneous effort to improve and expand Information Technology (IT) to support claims processing. Many, if not most of these initiatives have been implemented over the last decade and constitute the core of VBA's current disability claims IT infrastructure.[2]

CURRENT VA EFFORTS

Since retiring from VA in 2002, I have had the opportunity to work with leaders in a number of Federal agencies on business process improvements, primarily as a senior advisor at the National Academy of Public Administration[3] (NAPA). NAPA conducted a study of VA in 2008[4] which considered the Department's organizational capacity, management strategy, and implementation challenges related to improving service to veterans, including those returning from Iraq and Afghanistan. Noting that VA often tends to over focus on internal requirements, the study Panel strongly urged VA to take a more "veteran-centered" approach toward dealing with veterans' issues. I am encouraged to see that VA seems to be following that recommendation as evidenced by its new veteran-centered approach to claims processing in its four pilot sites.

The Little Rock pilot has created cross-functional teams that have the end-to-end ownership of the claims assigned to them. Using management improvement tools (Lean Six Sigma), each team focuses on minimizing the time required for each step in the claims process and eliminating processing errors. This approach should provide the necessary mechanisms for VBA staff to significantly reduce barriers to processing efficiency and take complete ownership of all the claims assigned to them.

Dovetailing nicely with the Little Rock effort are the efforts of the Pittsburgh pilot to case manage claims. This case management approach, directly championed by VA Secretary Eric Shinseki, appears to be making improvements both in terms of the timeliness of claims and veterans' satisfaction with the process. Using "old school" approaches such as telephoning the veteran to ensure that he or she understands the process and is given the opportunity to help with the evidence-gathering, Pitts-

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[2] These efforts included: modernizing the corporate database structure (VETSNET); building a Data Warehouse; improving claims processing capabilities (RBA 2000, MAP-D); imaging veterans records (Virtual VA); on-line claims applications (VONAPP); electronic requests for claims information (CAPRI/VHA, PIES, DMDC Link, SSA Link, CURR Link) and development of rules-based claims systems (CAPER). CAPER was dropped as an initiative in 2002.

[3] The National Academy of Public Administration is a congressionally chartered, non-profit, independent coalition of top public management and organizational leaders who tackle the nation's most critical and complex challenges.

[4] *After Yellow Ribbons: Providing Veteran-Centered Services*. A Report by A Panel Of The National Academy Of Public Administration for the U.S. Congress and the U.S. Department Of Veterans Affairs. October 2008.

burgh is working to fundamentally change the relationship between veterans and the VA.

The Providence pilot's Business Transformation Lab (BTL) is working to develop a paperless claims processing system. Using VBA's current imaging system (Virtual VA) as a starting point, the goal is to provide VBA with the capability to decide claims, end-to-end, in a paperless environment. This is a key initiative for VBA's transformation. Having to review paper files, as is currently required in the claims process, determines how, when, where and by whom claims are processed. This paper "tether" severely restricts VBA's flexibility in handling claims. Allowing access to claims information to VA staff working in a secure IT environment, regardless of location, will provide significant flexibility in how veterans' claims work is accomplished. As an example, VBA currently "brokers" many thousands of claims annually. That is, they physically move veterans' claims files from offices with too much work to offices that have the resources to help with the work. This adds time and costs and reduces accountability in the claims process and creates the potential for losing one-of-a-kind records. A paperless process can eliminate this need to broker work.

The Baltimore pilot is designed to pull together the best practices of all three efforts to create the "virtual regional office" of the future. The location was chosen to leverage the proximity to VA Headquarters as well as the Social Security Administration which has gone through a paperless transformation. The objective is to completely replace the existing claims system and eliminate the claims backlog.

CHALLENGES TO CURRENT EFFORTS

I believe VA is off to a good start in terms of transforming the disability claims process. In my opinion, however, success is contingent on getting a number of important elements right:

• *Deciding on the correct solutions.* The initial results from the pilots are encouraging but they have also been engineered to succeed through the use of additional staff, additional expertise, or the possibility that the Hawthorne Effect[5] is contributing to results. Determining how these initiatives will work in a non-pilot site will be critical to a successful expansion. As noted above, many aspects of these pilot initiatives were attempted earlier but later abandoned.

• *Scaling the initiatives nationwide.* The pace and scope of expanding these initiatives to all regional offices are severely constrained by how busy these offices are with existing workloads. There is very little, if any, slack in the system and introducing a major change to business processes will be problematic, at best.

• *Making rules-based systems a higher priority.* VA should focus on developing rules-based/expert systems to help with the claims process. Currently, new employees go through an extensive training process, much of which is focused on memorizing rules that could readily be programmed into the claims processing system. This not only contributes to process delays but also drives up errors. The current plans I have seen do not seem to include the development of rules-based/expert systems in the near future. The use of such tools, particularly in the evidence development process, could have significant impacts on claims timeliness and quality.

• *Keeping the focus on quality.* Secretary Shinseki has publicly committed to improving the quality of VA claims decisions. If workloads remain high and major new processing changes are implemented as scheduled, there will be increasing pressure to get the claims work done quickly. That is when VBA tends to move to its organization default position of processing claims instead of deciding claims. Simply put, the emphasis will be on meeting production goals, sometimes at the sacrifice of quality. Leaders overseeing this change process need to remain vigilant to this tendency.

• *Improving electronic data exchanges.* More than a decade after initial discussions were held between VA and DOD on the electronic exchange of service treatment records, the process remains paperbound. With the tremendous growth in claims activity, this is a problem that should not be allowed to continue. The electronic exchange of examination requests and results between VBA and VHA is also in need of improvements and updates. Electronic rating exam templates were developed eight years ago but never implemented. These templates would significantly improve the quality of exams if implemented.

• *Protecting the existing IT infrastructure.* Despite their limitations, current VBA IT systems mail out millions of checks or send direct deposit transactions to the ac-

[5] The Hawthorne effect describes a situation whereby subjects improve or modify an aspect of their behavior being experimentally measured simply in response to the fact that they are being studied, not in response to any particular experimental manipulation.

counts of millions of veterans and family members, unfailingly, on the first of every month. This has been the case for decades. In the move toward improved technology, there needs to be a continuing focus on ensuring that these existing payment systems remain robust.

• *Blending new hires into existing organizations.* Training and integrating VA's large influx of new staff will be a major challenge for VA leaders. In the short run, substantial new hiring will draw resources away from claims processing and strain existing human capital systems.

• *Focusing on the mission.* VA's programs trace directly to the American Revolution. Its major benefits programs were signed into law by presidents Washington, Madison, Lincoln, Wilson and Franklin Roosevelt. For over two centuries, these programs have succeeded in transitioning generations of warriors successfully back into civilian society and VA leaders should take every opportunity to remind employees of the Agency's rich history. They also need to remind staff that people who come to VBA for help are dealing with some of the most significant events in life: disability, illness, death, buying a home and going to school. The actions of VBA employees make a critical difference in the lives of these veterans and their families. An ongoing and consistent message to reinforce that fact can be an important driver for bringing about needed change.

CONCLUSION

VA faces major challenges in its attempts to improve and modernize the claims process. Many initiatives have been undertaken over the years to improve veterans' claims processing and the supporting IT infrastructure. Most have struggled, many have failed. Nonetheless, the current efforts appear to be on the right track in terms of developing solutions to existing problems. The critical, and far more difficult, aspect of this change process will be in implementing the solutions on a nationwide basis. My experience with VA and other Federal agencies has shown that having a well-formulated and executed change management strategy is essential to taking solutions from development to successful implementation. During my research for this hearing, I was unable to find clear documentation of how the strategy, technology, structure and organizational culture will fit together in the new claims processing environment. This type of comprehensive plan, coupled with continuous management attention and support, is vital to success.

As noted earlier, VA is at a critical juncture in veterans' claims processing. Although the change efforts face daunting challenges, they also have the advantage of strong senior leadership support, excellent budget and staffing, and widely available and ever improving technologies. I believe that by continuing with their current emphasis on improvements and by taking some of the steps mentioned above, VA can be successful in transforming this most critical process for helping our Nation's veterans and their families.

Chairman AKAKA. Thank you. Thank you very much, Mr. Thompson.

Ms. Avant, your testimony.

STATEMENT OF LINDA JAN AVANT, RATING SPECIALIST AND 1ST VICE PRESIDENT, AFGE LOCAL 2054, VBA REGIONAL OFFICE, LITTLE ROCK, AR, ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL

Ms. AVANT. Chairman Akaka, Ranking Member Burr, and Members of the Committee, thank you for the opportunity to testify about the experiences of the front line employees working on VBA pilot programs. My name is Jan Avant, and as you mentioned, I am the First Vice President of AFGE Local 2054 at the Little Rock Regional Office.

I have worked with the VA for 26 years, and for the last 13 years, I have worked as a Rating Specialist, serving as a mentor and trainer for VSRs and Rating Specialists. My goal when I come to work every day is to do what is right for the veterans of our Nation, and often in order to do this, we, as employees, have to sac-

rifice higher production to process veterans' claims correctly the first time.

Part of why my experiences with the Little Rock RO PODs/Lean Sigma Process Pilot Program, or POD, have been so positive is that management and labor worked very closely together from the start, always jointly focused on the ultimate goal of ensuring that our veterans are well served. However, I feel it is too early to roll out most components of the POD nationally. We need more time to train new employees as well as employees that have been promoted.

My initial role in the pilot was as a union representative. I regularly met with management and the Booz Allen Hamilton consultants to address workplace safety and other questions like: how do we staff each POD so they reflect a true picture of the mixed experience levels of our workforce, and do we have sufficient space? How do we keep the work flowing in the rest of the office when 20 percent of the employees are in POD training? I began participating in the third phase of the PODs after some of the initial kinks and processes had been ironed out.

The POD structure is an asset to the VBA organization and to veterans we serve. Blending multiple positions into one team enables employees to communicate with each other both efficiently and quickly. With the varying levels of experience, the POD facilitates training and mentoring of employees because they receive the immediate feedback and support of other POD team members. This also allows for better quality assurance.

What makes all the PODs especially effective is that we work the case from what we call "cradle to grave" and we keep the veteran's file within the team area until it is completed. For employees who only worked under specialized CPI teams, this POD gave them their first experience to the entire claims process.

The PODs reduced development time and mail control time, along with the number of days to complete a claim. For example, a post-development VSR is now aware of the timeframes that apply to pre-development. The POD creates a valuable incentive to coordinate different timeframes because our blended team is rewarded for completion of the entire claim. The reorganization of our mailroom into an intake processing center or IPC has also been extremely beneficial. It greatly improved our ability to associate incoming mail with the veteran's file, thus dramatically reducing the amount of search mail from about 1,600 pieces to an average of 50.

Like other ROs, we suffer from a growing gap in experienced, trained staff to do the work of training and mentoring. Lots of experience has also been depleted from our regional offices due to promotions and retirement. After internal promotions, our office filled many vacancies with temporary employees from the ARRA stimulus dollars. In the end, only about 30 percent of our employees have 2 or more years of experience, leaving about 70 percent unable to completely function independently, and sometimes this takes about 2 years.

The stimulus employees, who are now permanent, are like brand new VSRs just hired off the street because they were never sent to initial Challenge Training and were only given limited or basic tasks, such as copying documents and checking for duplicate

records. This lack of fully-trained personnel directly affected the production of most regional offices and only time will provide us with the experience and confidence we need to move closer to the Secretary's 98 percent accuracy goal.

Last, I would like to address VBA flexiplace policies. We all hear officials in Washington talk about how the work-at-home policies attract and retain good Federal employees, cut down on traffic, and alleviate space issues. Yet flexiplace is not offered to enough employees. Even more harmful, VBA insists on higher production standards for employees who work at home. I feel strongly that the same production standards should apply regardless of where you sit and do the work. For consistency, all employees should have equal time to look for errors and missed benefits. It requires employees working at home to produce as much as 30 percent more work, adds too much pressure, and it sacrifices quality, especially when office-based employees are already struggling to meet their lower quotas.

Work-at-home employees have to spend time performing additional tasks, such as preparing their cases for transportation, in order to meet the new security measures. And because of technology problems, they must also spend time at the office printing medical evidence and rating decisions and associating them with the C-file.

In short, VBA's flexiplace policies have resulted in the loss of many experienced and valued employees. Therefore, we urge VBA to offer flexiplace to all experienced VSRs, RVSRs, and DROs, and also to apply equal production standards to all employees. This would lessen the need for second shifts, which are proving very difficult to staff, especially with the loss of seasoned employees. Thank you.

[The prepared statement of Ms. Avant follows:]

PREPARED STATEMENT OF LINDA JAN AVANT, RATING SPECIALIST AND 1ST VICE PRESIDENT, AFGE LOCAL 2054, VBA REGIONAL OFFICE, LITTLE ROCK, AR, ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL

Chairman Akaka, Ranking Member Burr and Members of the Committee: Thank you for the opportunity to share the perspective of the American Federation of Government Employees (AFGE) and the National Veterans Affairs Council (NVAC), the exclusive representatives of Veterans Benefits Administration (VBA) front line employees who process disability claims.

OVERVIEW

Our testimony focuses on three areas: (1) The Little Rock, Providence and Pittsburgh VBA Pilot Programs[1] (2) S. 3517, Claims Processing Improvement Act of 2010; and (3) Telework production standards at the ROs and other personnel issues related to claims improvement.

Pilot Programs: Our members have largely positive comments about all three pilots, both in terms of effectiveness and inclusion of front line employees. However, there is a general consensus that it is too early to replicate these experiments on a national scale. Additional adjustments to the claims process and more advanced scanning technology are needed to adequately handle large numbers of claims; the gains in production have been modest to date. The features that drew the greatest praise were the revamped mail system, POD case management structure, medical templates for private physicians and phone assistance.

S. 3517: While AFGE and NVAC are generally supportive of an effort to address the ambiguities and weaknesses in the current rating schedule, we have a number

[1] Information about the Baltimore RO Pilot Program is not yet available.

of concerns about the proposed pilot program in Title I, particularly the use of one combined rating code for all musculoskeletal disabilities. Our members were generally supportive of the use of ICD codes. Both RO adjudicators and Board of Veterans' Appeals (BVA)

Telework Production Quotas: We strongly urge VBA to eliminate higher production standards for employees who work from home. Telework is valuable tool for retaining senior claims processors with valuable experience, especially as VBA faces a wave of retirements. VBA has not offered any persuasive justification for this unfair practice, especially in light of severe space shortages at many ROs and a nationwide effort by OPM to increase the use of telework in the Federal sector. VBA's telework policies have no more merit than the telework policies that BVA abandoned in 2008 at the urging of Congressman Frank Wolf (R-VA).

VBA PILOT PROGRAMS

Little Rock RO

The experiences of employees participating in the Little Rock RO PODs/Lean Sigma Process Pilot Program have been very positive. Employees had a great deal of pre-decisional input. Everyone on the team, including front line employees, management and consultants, shared a commitment to helping veterans. Our ability to work together toward this goal was a key ingredient in its overall success and enabled us to identify unnecessary steps in the claims process that could be eliminated

Space was a challenge throughout the pilot, and required us to have seven, instead of eight pods.

We also faced another significant challenge: lack of experienced personnel. A number of employees were promoted from within from Claims Assistant (CA) to Veterans Service Representative (VSR), and from VSR to Rating VSR (RVSR), and both VSRs and RVSRs were promoted coach and assistant coach positions. leaving vacancies below. Currently, we have several unfilled RVSR positions.

Temporary employees with no more than one year of VBA experience and minimal training were hired on a permanent basis for portions of the VSRs duties. At the same time, some RVSRs were hired from outside the VBA, which also lowered our numbers. As a result, only about 25% of the pilot workforce had at least two years of experience.

It was helpful that when POD employees went to training, other PODs covered the work. The only weak link in the training was the "behavioral" portion on interoffice behavior taught by the contractor. This provided very few useful skills for carrying out the pilot.

The "cradle to grave" structure of the PODs worked extremely well. Each POD consisted of at least one claims assistant that brought in the mail, pre- and post-VSRs, at least Super Senior (authorizer) and several RVSR. The ability to work closely together as a team gave us all a strong sense of responsibility and ownership over our work.

The conversion of the old mailroom to an Intake Processing Center (IPC) was very helpful. A GS 12 Super Senior and two mail clerks worked effectively together to distribute the mail to the PODs, reducing the number of pieces of "search mail" (mail that has to be associated with a claims file) from approximately 600 down to 50. I understand that other ROs are replicating the IPC model.

Communication with the contractor was excellent. However, at a later stage of the pilot, the use of in-house employees instead of contractors as manager apprentices proved to be very cost effective. These employees were also more familiar than the contractor with the inner workings of the claims process.

The quality of on-the-job training also increased as a result of POD structure. RVSRs were able to coach VSRs on a regular basis. More generally, our productivity shot up because we worked in close proximity to the other team members.

Providence RO

Overall, AFGE/NVAC members who participated in the Providence, Rhode Island Business Transformation Lab are satisfied with how the pilot is progressing and their role in the project, especially in light of increased efforts by management in recent months to maintain a regular dialog with front line employees and their AFGE representatives. These employees have high praise for VBA's unwavering commitment to ensure that every change in the claims process is directed at helping veterans. Our members point to the recent revisions to Aspen and CPI as excellent examples of VBA leadership putting veterans first.

A large part of the success of the project has been the ongoing use of VSRs to conduct quality assurance (QA) over the scanning, indexing and other steps required to convert a paper file to an electronic file ("E-file"), using Capture Point. VSRs

work closely with File Clerks and CAs, and regularly share files to properly index and conduct QA. Only original claims are used for the pilot.

One of the frustrating aspects of the Capture Point program that is still unresolved is the inability to categorize every document according to preexisting software codes. As one employee noted, in Challenge training, new employees are working on hypothetical cases that are fully compatible with the software. In contract, Capture Point does not have a "drop down" box for many of the documents in the file, requiring employees to mark these documents as "unknown", "miscellaneous" or another category that is a close fit, so as not to hold up the claims. (For example, Capture Point does not recognize the WD–53–55 which preceded the DD–214). Fortunately, managers at the Providence RO were flexible enough to allow this, but other ROs may be less receptive to these strategies.

Our members benefit from the daily morning meetings held at the Intake Processing Center (IPC) that include rank and file and management staff from the ROs, staff from VA Central Office, VBMS Program Analysts, the Service Center manager and at some meetings, the RO director. However, even with these meetings, front line employees were not kept fully informed about new pilot project developments until this month. This communication breakdown was exacerbated by frequent rotations of personnel from Central Office. As a result of promotions and reassignments, only three of the employees working in the Lab have been there since the pilot was launched in October 2009, as compared to 8–10 employees assigned to the pilot at any one time.

The situation greatly improved as a result of the promotion of one of the front line employees to Program Analyst for VBMS. His direct experiences preparing and processing cases under the new procedures have been very valuable at improving communication and collaboration between rank and file and management, which in turn, has improved the functioning of the pilot.

Our members identified two other weak areas of the pilot that should be addressed. First, there is a need for greater consistency in indexing. Currently, it is much more difficult to "flip through a file" electronically, especially if the file is not in the correct order. Second, the goal of 99% accuracy for a three month period after the end of "100% QA" by VSRs is unrealistic, especially after the CAs take over the QA responsibility.

The Providence employees also stated, at this stage in the scanning technology, they are "very scared" about loss of quality once VBA discards the actual paper c-file, especially for damaged files, such as those from the St. Louis fire. When damaged files are scanned and then entered into Capture Point, and then Virtual VA, some are barely readable.

In short, while our Providence RO members feel positive about the Pilot's ability to reduce the backlog, they also feel strongly it is unwise to roll out Capture Point nationally at this time. There are too many problems that still need to be resolved, including the potential lack of consistency between ROs. The Providence RO is only a test lab and it started out as one of the top three high performing offices in the country.

Pittsburgh RO

The Delta Team at the Pittsburgh RO also used the POD "case management" structure. The team consisted of a Claims Assistant, several VSRs and RVSRs, and an Authorizer. The close teamwork was very effective. However, the Pilot suffered from a great loss of knowledge due to a wave of recent retirements, a trend that is likely to worsen over the next three to five years.

The Pilot expedited the mail and also had regular phone contact with veterans. There will be a full rollout of four to five more pods in the coming months.

The ability to complete multiple stages of the claims process within a single team, rather than shifting between times, was an enormous time saver. Here too, having VSRs, RVSRs and Authorizers on the same team allowed for a regular exchange of knowledge and best practices as well as valuable coaching. The ultimate beneficiary of this valuable synergy is the veteran.

S. 3517

Title I

AFGE and NVAC commend Chairman Akaka's effort to update and improve the musculoskeletal rating schedule. However, we question the need to make this change through legislation when VBA is already revising the rating schedule.

Our members support that the use of ICD–9/10 codes as a means of aligning VHA with other Federal agencies and we urge the use of these codes for all body systems. More generally, standardization of the rating schedule will reduce errors and in-

crease claims processing speed. Our members would also like to see fewer ambiguous terms such as "marked", "slight" and "normally" that cause frequent disagreements between RVSRs, DROs and veterans, which in turn leads to more appeals.

However, we question whether this is the appropriate time to roll out a pilot program that applies a significantly different schedule for rating musculoskeletal conditions. The musculoskeletal system is the most complex segment of the rating code, and any changes should be implemented very slowly and on a modest scale. In addition, we fear that the use of a single combined rating will further increase the backlog and trigger numerous legal challenges.

A single evaluation for musculoskeletal disabilities could also have an adverse impact on claimants by allowing one disability to be discounted in favor of another and lead to more under- and over-evaluations of claims.

If the alternative schedule is abandoned after the end of the pilot, many claims will have to be readjudicated, leading to further confusion and delay.

We are also concerned about exempting this significant change in the rating schedule from the Administrative Procedures Act and the requirement for public comment.

Title II

AFGE and NVAC support several individual provisions in Title II, but our members had concerns and mixed reactions to many of provisions relating to filing deadlines and appeals. Therefore, we recommend deferring statutory revisions to the claims process until additional insights can be gathered from recent VBA pilot programs and innovations.

More specifically:

Section 201: This proposal may not be necessary as current VBA policy already allows partial adjudication of claims with multiple issues.

Section 202: This proposal may not be necessary as current law already allows VBA to notify the claimant of the need for additional information as part of the duty to provide notice, except in Aid and Attendance cases. Extending this option to A&A cases would be helpful.

Section 203: This proposal may not be necessary as current law already allows VBA to give equal or greater weight to a private health care specialist provider over a VA non-specialist. In addition, VBA is already developing templates.

Section 204: The Fast Track Claims Review Process is similar to current practice, but could be the most helpful for homeless, terminally ill and severe financial hardship cases.

Section 205: We support this proposed requirement that VBA send a notice of disagreement with a rating decision.

Section 206: Shorter filing periods could disadvantage unrepresented veterans. The majority of cases are already filed within 180 days so this change may not do much to speed up the process.

Section 207: Shortening the deadline for filing a substantive appeal to 60 days could cause further delays. BVA already applies the "mailbox" rule to late appeals; this proposal could increase the number of timeliness determinations that have to be made. Furthermore, it is not possible to expedite cases because BVA is already at maximum capacity.

Section 208: The statement of the case already fulfills this function.

Section 209: The provision could adversely impact veterans by depriving them of another opportunity for initial review of the evidence by the agency.

Section 210: This proposed change could lead to numerous legal challenges by claimants seeking a face-to-face hearing. Many veterans would be especially opposed to a videoconference or other substitute for a "day in court".

Section 211: Authorizing CAVC to determine all issues raised by the appellant could hurt veterans by preventing the agency and claimant from entering into a settlement about the number of claims to be remanded.

Section 212: No comment

Section 213: No comment

TELEWORK PRODUCTION STANDARDS AND OTHER PERSONNEL ISSUES

Telework Production Standards

RECOMMENDATION: To alleviate overcrowding at ROs and retain experienced adjudicators, VA should apply equal production quotas to work-at-home employees, consistent with changes in production standards made at BVA in 2008.

The White House and Office of Personnel Management have stepped up their commitment to flexible workplace arrangements for Federal employees. Yet, the Department maintains counterproductive telework policies across all its ROs. Last

year, at our request, Congressman Frank Wolf asked the Department to offer telework to more claims processors, and to end the arbitrary, unfair practice of requiring higher production from work-at-home employees. To date, the Department has been unwilling to change these standards.

VA's telework policies at the ROs make even less sense when so many ROs are facing severe space shortages. Many ROs are starting to have two work shifts which are difficult to staff and hard on workplace morale. More attractive telework policies could alleviate the need for many of these second shifts.

Other Personnel Issues

RECOMMENDATION: AFGE and NVAC urge the Subcommittee to increase the frequency of its site visits to the ROs, to include opportunities for candid discussions with employees and their representatives outside of the presence of management.

Terminations of both experienced employees and newly trained employees for failure to meet production standards are on the rise. As discussed below, new employees are often pushed into production before receiving adequate training and experienced employees are working under a broken work credit system that overlooks quality.

AFGE and NVAC are also concerned about reports of local management retaliating against union officials. For example, management recently refused to allow a VSR with valuable skills and experience to work overtime because of her status as a local president with official time.

RECOMMENDATION: AFGE and NVAC urge VBA to participate in labor-management forums at the Area level (as well as the VA Central Office level) pursuant to E.O. 13522.

It is equally discouraging that VBA is unwilling to proceed with regional ("area") labor management forums mandated by the December 2009 White House Executive Order on labor-management forums. VBA continues to lag behind VHA and NCA in participation in labor-management forums. These forums offer a valuable opportunity for labor and management to work together on effective solutions to the claims backlog.

RECOMMENDATION: All VBA managers, including coaches, higher levels management and those involved in quality assurance, should be required to pass supervisor skills certification tests.

Many managers at the ROs lack sufficient experience and subject matter expertise to carry out quality assurance duties, leading to greater errors, which in turn lead to more appeals, remands and other delays. In many offices, employees are being supervised by managers with only a few years of experience.

Lack of management expertise also takes a toll on workplace morale. Front line employees facing intense production pressures have to answer to supervisors who have not experienced these demands firsthand.

To date, front line employees and their representatives have had very limited involvement in the development and administration of skills certification tests, despite substantial evidence that the test does not properly measure needed skills and repeated incidence of testing problems.

RECOMMENDATION: Management's performance measures should include quality of training and compliance with training requirements. Management performance measures should reflect the quality and thoroughness of training program. Also, VBA should be required to use a cadre of formally trained instructors from VA Central Office to conduct RO trainings.

Our members report a wide range of deficiencies in the training provided at ROs. Most problematic: widespread training shortcuts for new and experienced employees. After new employees complete their initial classroom training, their on-the-job training at the RO is routinely cut short to rush them into production. It is also common for new employees to be kept at one station to maximize their short term productivity, thus depriving them of exposure to other skill areas that are need for their long term productivity.

Most of the temporary one-year hires who have been converted to permanent C&P employees have only received in-house training and are not being rotated; the lack of initial training and exposure to other teams will deprive them of critical skills in the long term.

Similarly, experienced employees are routinely deprived of their full 80 hours of annual mandatory training by pressured managers who have significant discretion as to how much training time is allowed. We receive regular reports of "training by email", where employees are permitted a fraction of the time that was officially allotted to learn a new concept, and deprived of the opportunity to learn face-to-face from experienced instructors.

RVSRs on the Appeals Team receive valuable training from the Board of Veterans Appeals by videoconference; this training opportunity should be extended to RVSRs on the Rating Board.

RECOMMENDATION: Revise Work Credit Systems for the ROs and BVA. These systems should be designed based on scientific time motion studies and regular input from front line employees, their representatives and VSOs.

Despite its assertions over the years, VBA has never produced evidence of a comprehensive reliable time and motion study that would enable it properly assign work credits for different tasks in the claims process. Nor has VBA adjusted individual employee production standards to reflect the increasing complexity and difficulty of the claims process. As a result, employees are pressured to short cut those tasks that are undervalued, such as additional case development.

The ultimate harm falls upon the veterans, who are deprived of full, fair, and timely consideration of their claims, and a growing backlog.

The recently issued VSR standards have exacerbated this problem by eliminating credit for other routine, critical steps in the claims process. Under the old standards, VSRs received work credit based on their performance in 60 criteria; under the new VSR rules, there are only 5 criteria. Most problematic is the complete loss of credit for follow-up development.

Similarly, the current method in which VBA provides credit for RVSR work adversely affects timeliness and quality. More specifically, these standards fail to provide any credit for additional development or completion of VA examination requests, both of which may take an RVSR multiple hours of production time to complete. The lack of credit for additional development of completion of VA examination request often forces the RVSR to choose between serving the claimant's needs and meeting production standards.

VBA is also in the process of developing new production standards for DROs. Our members fear, based on the ongoing pilot project, that DRO standards will also deny work credit for much of the work they currently perform. As one member noted, under new the data capture tool, it will often appear as if the DROs produced zero work, for example, on days they hold hearings or work SSOCs, partial grants and prepare medical opinions or other directed development. They are also concerned that there is no consideration given to the number of issues on the appeal, and they would like to see weighted action credit assigned for development and medical opinion requests

Attorneys at the Board of Veterans Appeals are also calling for an independent study of their work credit system. The BVA work credit system—known as "Fair Share" Production—overemphasizes quantity over quality. For example, managers at the Board focus on weekly decision production numbers that quantitatively measure individual and BVA- wide work product without regard to the complexity of the individual claims or the quality of decisions produced. As a result, the number of remand cases is steadily rising.

Production standards should also be adjusted for new VBA employees. Currently, they are given only 90 days to reach a production standard following a period without any production requirements. Also, they are not given any deductible time to correct prior work. In contrast, the mentors who review their work for errors receive deductible time for their work.

Thank you for the opportunity to testify on behalf of AFGE and the National VA Council.

RESPONSE TO POST-HEARING QUESTION SUBMITTED BY HON. BERNARD SANDERS TO LINDA JAN AVANT, RATING SPECIALIST AND 1ST VICE PRESIDENT, AFGE LOCAL 2054, VBA REGIONAL OFFICE, LITTLE ROCK, ARKANSAS, ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL

Question 1. From your perspective, what additional training would you recommend new VBA employees receive prior to assuming duties and responsibilities?

Response. Currently new VBA employees are given an introductory crash course to all systems and programs that employees need to be familiar with prior to attending a 3-week training academy. They then return to the Regional Office to complete about 12 weeks of follow-up training. Six months after returning to the Regional Office, the employees are expected to produce a set production level of cases in order to be considered "successful". This level continues for 6 months when the level is again raised, then raised again in 12 months, then at 24 months they are considered "journeyman" level and the level is raised again.

It is not necessarily "what additional training" new VBA employees need before assuming duties and responsibilities, but "what changes should we make in our current training". The best answer is "hands-on training at a learning pace, not a racing pace" is the only thing that will render good sound employees with quality decisions! And we still need a 2-year training period with good trainers. Employees need time to have a complicated case and search for the answers to reach a quality decision. I think our 2-year training program will show better quality processors, if it is accompanied by slow hands-on application and quality trainers. Due to this "fast pace", for employees hired over the last several years, I am seeing the "analysis" of decisions become a "lost art" which is spiraling into the downfall of the VA!

I feel this "required production level" during a period of training negatively affects the employees as they are so worried about meeting their production and learning enough to keep their jobs, that they do not learn how to locate and apply the complicated regulations and laws that will be needed in the future to work pending cases. To move faster, the direct route to obtain an answer for a trainee is to ask a journeyman who has more experience; thus, working the claim faster to reach the production needed-which is the main focus for VBA and management. In essence, this weakens the quality that this person will be able to present to the organization during the training period and in the future to process claims accurately and independently. Another asset that is sacrificed is the future "training staff" needed to rebuild the organization in the future.

I worked for VBA as a claims examiner when there was no individual production level. We were able to focus on training and research needed to complete each case, work the oldest cases first, and provide the veteran much better quality decisions. The supporting argument made by management is that without production, we cannot properly reward the workers who do more since there is no way to know statistics without reporting numbers-believe it or not, the "real VA employees" are not in our Regional Offices for the little rewards outside our salaries, but we "feel" the reward when we are able to have the time to resolve a veteran's pending case that affects his livelihood. When numbers desired by Congress are raised, the solution to VBA is to "raise the employee's production" so that offices will produce more cases so we can show Congress we are successful. Higher production levels just mean less quality cases, and this is sad! The majority of VBA employees have never seen the side of the government that "really cares" for the soldier that bore the burden of our wars, so your help is greatly needed!

RESPONSE TO POST-HEARING QUESTION SUBMITTED BY HON. MARK BEGICH TO LINDA JAN AVANT, RATING SPECIALIST AND 1ST VICE PRESIDENT, AFGE LOCAL 2054, VBA REGIONAL OFFICE, LITTLE ROCK, ARKANSAS, ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL

Question 1. Do you believe VA claims processing personnel receive adequate training? If not, can you explain what training is required and how long do you think training should be required?

Response. Currently new VBA employees are given an introductory crash course to all systems and programs that employees need to be familiar with prior to attending a 3-week training academy. They then return to the Regional Office to complete about 12 weeks of follow-up training. Six months after returning to the Regional Office, the employees are expected to produce a set production level of cases in order to be considered "successful". This level continues for 6 months when the level is again raised, then raised again in 12 months, then at 24 months they are considered "journeyman" level and the level is raised again.

I believe that that training topics and programs provided to claims processors at Regional Offices are adequate, BUT* * * . What is inadequate is the minimum time allowed to have "hands-on application of the regulations, laws, and Court decisions" without having the overhanging requirement to meet a production number. We need "hands-on training at a learning pace, not a racing pace" * * *as this is the only thing that will render good, sound employees with quality decisions! Employees need time to have a complicated case and search for the answers to reach a quality decision. I think our 2 year training program, which is really needed, will show better quality processors, if it is accompanied by slow hands-on application and quality trainers. Due to this, for employees hired over the last several years, I am seeing the "analysis" of decisions become a "lost art" which is spiraling into the downfall of the VA.

I feel this "required production level" during a period of training negatively affects the employees as they are so worried about meeting their production and learning

enough to keep their jobs, that they do not learn how to locate and apply the complicated regulations and laws that will be needed in the future to work pending cases. To move faster, the direct route to obtain an answer for a trainee is to ask a journeyman who has more experience; thus, working the claim faster to reach the production needed—which is the main focus for VBA and management. In essence, this weakens the quality that this person will be able to present to the organization during the training period and in the future to process claims accurately and independently. Another asset that is sacrificed is the future "training staff" needed to rebuild the organization in the future.

I worked for VBA as a claims examiner when there was no individual production level. We were able to focus on training and research needed to complete each case, work the oldest cases first, and provide the veteran much better quality decisions. The supporting argument made by management is that without production, we cannot properly reward the workers that do more since there is no way to know statistics without reporting numbers—believe it or not, the "real VA employees" are not in our Regional Offices for the little rewards outside our salaries, but we "feel" the reward when we are able to have the time to resolve a veteran's pending case that affects his livelihood, be it 2 issues or 64 issues. When numbers desired by Congress are raised, the solution to VBA is to "raise the employee's production" so that offices will produce more cases so we can show Congress we are successful. The majority of VBA employees have never seen the side of the government that "really cares" for the soldier that bore the burden of our wars, so your help is greatly needed!

RESPONSE TO POST-HEARING QUESTION SUBMITTED BY HON. ROLAND W. BURRIS TO LINDA JAN AVANT, RATING SPECIALIST AND 1ST VICE PRESIDENT, AFGE LOCAL 2054, VBA REGIONAL OFFICE, LITTLE ROCK, ARKANSAS, ON BEHALF OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO AND AFGE NATIONAL VETERANS AFFAIRS COUNCIL

Question 1. I was happy to see that the budget supports an increase of 4,000 claims processors. At first I thought that this would be a quick hit in our fight against the backlog. I then heard that it takes almost two years for a processor to reach the pace and accuracy at which is expected of a full-time processor.

• How do you think we can reduce the time it takes to train claims processors to increase their efficiency without decreasing the rating quality?

Response. Currently new VBA employees are given an introductory crash course to all systems and programs that employees need to be familiar with prior to attending a 3-week training academy. They then return to the Regional Office to complete about 12 weeks of follow-up training. Six months after returning to the Regional Office, the employees are expected to produce a set production level of cases in order to be considered "successful". This level continues for 6 months when the level is again raised, then raised again in 12 months, then at 24 months they are considered "journeyman" level and the level is raised again.

Yes, for years, the time determined to train a producer and accurate claims processor has been stated to be 2 years. In years past, I feel that this worked to produce a quality decisionmaker within the 2 years, because the employee was allowed this entire time to research answers, laws and regulations, and then to apply them to all types of cases without being on production.

I believe that that training topics and programs provided to claims processors at Regional Offices are adequate, BUT* * * . What is inadequate is the minimum time allowed to have "hands-on application of the regulations, laws, and Court decisions" without having the overhanging requirement to meet a production number. We need "hands-on training at a learning pace, not a racing pace"* * * as this is the only thing that will render good, sound employees with quality decisions! Employees need time to have a complicated case and search for the answers to reach a quality decision. I think our 2-year training program, which is really needed, will show better quality processors, if it is accompanied by slow hands-on application and quality trainers. Due to the current "fast pace", for employees hired over the last several years, I am seeing the "analysis" of decisions become a "lost art" which is spiraling into the downfall of the VA.

I feel this "required production level" during a period of training negatively affects the employee's quality as they are so worried about meeting their production and learning enough to keep their jobs, that they do not learn how to locate and apply the complicated regulations and laws that will be needed in the future to work pending cases. To move faster, the direct route to obtain an answer for a trainee is to ask a journeyman who has more experience (hopefully they learned their manual references); thus, working the claim faster to reach the production needed—

which is the main focus for VBA and management. In essence, this push of production weakens the quality that this person will be able to present to the organization during the training period and in the future to process claims accurately and independently. Another asset that is sacrificed is the future "training staff" needed to rebuild the organization in the future, as these new processors will not be able to successfully train upcoming processors, which will not benefit our veterans in the future. As mentioned, high expectations of finalized cases were the goal when 4,000 claims processors were hired. Not considered was the complexity of these cases, with not one being like another, and due to promotions within, EVERYONE was at a training status as they had not been in their job for even a year.

I worked for VBA as a claims examiner when there was no individual production level. We were able to focus on training and research needed to complete each case, work the oldest cases first, and provide the veteran much better quality decisions. The supporting argument made by management is that without production, we cannot properly reward the workers that do more since there is no way to know statistics without reporting numbers—believe it or not, the "real VA employees" are not in our Regional Offices for the little rewards outside our salaries, but we "feel" the reward when we are able to have the time to resolve a veteran's pending case that affects his livelihood, be it 2 issues or 64 issues. When numbers desired by Congress are raised, the solution to VBA is to "raise the employee's production" so that offices will produce more cases so we can show Congress we are successful, which in turn shows a decreased quality of work since proper training application was not properly used initially. The majority of VBA employees have never seen the side of the government that "really cares" for the soldier that bore the burden of our wars, so your help is greatly needed!

Question 2. You mention how important communication, coordination and feedback are between rank and file and higher management is to the success of a pilot program.

• How do you think we can ensure this communication happens not only within the pilot program, but in all of VBA?

Response. Real communication (listening) and trust between employees, Union, and Management are the keys to success in VBA. Trust is the first step and since the employees are the "tools" which allow management to reach the goals VBA sets, the employees have to see that if they trust management, their livelihood is not in jeopardy and they are "safe" to step out and try changes in work processes, which must be implemented to improve the working of veteran's cases. If both sides do not listen to each other or are not open and honest with each other, VA is defeated before we start. I believe blended training nationwide at each local station, with both sides that have the authority to negotiate, would be a huge start in building this bridge.

Chairman AKAKA. Thank you very much, Ms. Avant.

Mr. Cohen, your testimony.

STATEMENT OF RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Mr. COHEN. Aloha, Chairman Akaka——

Chairman AKAKA. Aloha.

Mr. COHEN [continuing]. And hello, Ranking Member Burr, and thank you to the Members of the Committee to allow NOVA to testify here today.

I am going to start off by talking about the claims processing initiatives. NOVA is not very optimistic, and in fact, we are very much concerned because of two things, the bureaucracy and the culture. And two recent events have caused us more concern than we had in the past.

The first one was the May 26 request by the Secretary for a piece of legislation which the Secretary called the Veterans Benefit Programs Improvement Act of 2010. That piece of legislation to anyone who is a veteran or anyone who represents veterans represents an indication that rather than putting the veteran first and rather

than advocating for the veteran, the VA intends to abdicate adjudicating appeals. In that piece of legislation, the Secretary asked to slash the time for a veteran to file an appeal from 1 year to 6 months, even though the Secretary is well aware of the fact that we are dealing with an aging veterans population and we are dealing with slews of veterans who are coming out of the Global War on Terror who have Traumatic Brain Injury and Post Traumatic Stress Disorder. These veterans need the 1-year time.

In addition, the Secretary proposed to make it more difficult to file an appeal to the Board of Veterans Appeals. Mr. Walcoff told you and Mr. Thompson told you that the claims are more complex now. We know we have an aging population of veterans. We know they have serious medical conditions. To make those complex claims more difficult to appeal makes no sense if you want to be helpful to veterans.

So the inconsistency of the messages that are coming out of the VA, on the one hand, the Secretary is going around the country saying we are going to put veterans first, and on the other hand, coming up with a request for legislation which would hurt veterans. It doesn't make any sense, and the only explanation for this is that this bureaucracy is a giant behemoth which cannot maintain a consistent message from the top through the bottom. The people who generated this were not communicating with the Secretary and didn't get the message.

The same thing is with the recent regulation which was just enacted, 38 CFR § 3.304(f), trying to make it easier for combat veterans to get PTSD benefits. Instead, what this does is put an additional hoop that the veterans have to jump over if they want the special benefit. What they have to do is convince a doctor hired by the VA that they have PTSD or that their stressor is sufficient. The information that service organizations have been telling the VA is that we are having trouble getting VA doctors to diagnose PTSD, to accept stressors. We are getting combat medics who are told their stressor isn't sufficient, or people with Purple Hearts told that their stressor isn't sufficient.

The VA, in their regulation says we are not aware of any problems, yet everyone is aware of the problem in Texas with the Perez scandal which was in the newspapers. And then there was another situation where a veteran came into an exam with a tape recorder in his pocket and showed that the examiner said, "I am sorry. I can't diagnose you for PTSD even though I believe you have it."

So these things cause us to say that the organization is faulty and the organization must be fixed. All the initiatives in the world won't help unless the culture changes. It hasn't changed. This demonstrates it.

Now, to the contrary, Congress has been working very hard, and S. 3517, the Claims Processing Improvement Act, takes a lot of the bad provisions that the Secretary asked for and makes them veteran helpful. On behalf of the National Organization of Veterans' Advocates, the tens of thousands of veterans who we represent and the veterans out there, I tell you, Mr. Chairman, I have a thumbs up, a giant thumbs up for you and the Committee because it is very clear that you get it. You understand what is necessary.

In changing the 1-year period and adding on the possibility of equitable tolling, you are going to help the people who are severely injured or have bad PTSD symptoms and cannot file their appeals on time. The triage system that you recommend, the post-NOD decision, all these things will help veterans.

Now, Section 207, however, of this bill is a problem. You may have been told, Mr. Chairman, that Section 207, which requires a highly specific substantive appeal to file to the BVA within 60 days will not hurt veterans because many of them are represented. Sadly, the truth is to the contrary. In 2009, the statistics coming out of the BVA Chairman's Report shows that 5,000 veterans whose appeals were decided by the BVA were unrepresented. Forty-thousand were underrepresented in that they did not have someone who is trained in VA law who is an attorney to file these things. We are dealing with very complex claims and we cannot have a more specific requirement to appeal.

In the Social Security Administration, if a veteran files for benefits there, he doesn't have to file an overly complex appeal. In the Workers' Compensation System, the veteran doesn't have to file it. But here, in the VA system, he would be required to file it. That just is a problem.

The other problem is giving the discretion to the BVA in Section 210 to decide whether they are going to do a video conference or an in-person conference. For elderly and impaired veterans, that likewise presents a problem.

That concludes my remarks and I am prepared to answer your questions.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Mr. Chairman and Members of the Committee: Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates, Inc ("NOVA") concerning the claim processing initiatives of the Veterans Benefits Administration ("VBA") and S. 3517, the Claims Processing Improvement Act of 2010.

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

NOVA has written amicus briefs on behalf of claimants before the CAVC, the Federal Circuit and the Supreme Court of the United States of America. The CAVC recognized NOVA's work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated in this testimony have been approved by NOVA's Board of Directors and represent the shared experiences of NOVA's members as well as my own 18 year experience representing claimants before the VBA.

THE VBA HAS OBVIOUS PROBLEMS

NOVA's previous testimony and reports from the Department of Veterans Affairs Office of Inspector General have detailed the VBA's problems including:

- an antiquated and insecure paper claims file;
- inadequately trained employees;
- ineffective supervision;
- inadequate metrics resulting in inability to determine whether work is performed correctly;
- a work credit system which induces employees to rate claims which have not been completely developed;

• an institution which is more concerned with finding fraudulent claims than timely granting meritorious claims; and

• an institution which is so out of control that it takes years to promulgate needed regulations and which is incapable of effectively communicating policy to its employees.

VBA, under pressure from Congress and from various stakeholders, has recently initiated pilot projects incorporating techniques intended to solve, in isolation, only one problem at a time.

The four main pilots include testing of:

1. Processing claims using fully integrated claims processing teams or pods, from July 2009 to May 2010 (at the Little Rock Regional Office);
2. Paperless claims processing as part of the VA's "Business Transformation Lab" (at the Providence Regional Office);
3. Providing direct assistance and personal communications to help veterans compile documentation to complete their claims (at the Pittsburgh Regional Office); and
4. Software designed to allow users of the (soon to be created) new Veterans Benefits Management System ("VBMS") to obtain relevant information about a claim from a "dashboard" which can be used for faster and more accurate claims processing. The pilot will begin in November 2010 and deployment of the system is planned for fiscal year 2012.

Additional short term projects include:

1. An "Express Lane" (in four Regional Offices) to expedite single-issue claims;
2. To identify and pay claims at the earliest time, when the evidence substantiates the claim should be paid (at the St. Petersburg Regional Office);
3. On-line live chat between veterans and VA employees through the "e-Benefits" portal;
4. Phone calls from VBA staff directly to veterans; and
5. Shortening the application form to 12 pages from the previous 23 pages.

Still the veterans' claims adjudication system limps along month after month incorrectly deciding claims and thereby adding thousands of appeals to the system and adding to the frustrations of veterans and other claimants. During the past year, from May 15, 2009 to May 15, 2010, the VBA's Monday Morning Workload Reports show an 11% increase in pending appeals from 171,716 to 190,778. http://www.vba.va.gov/REPORTS/mmwr/historical/2009/index.asp; http://www.vba.va.gov/REPORTS/mmwr/index.asp.

The VBA knows that improperly developed claims lead to erroneous decisions and that, in the rating process, the most time is consumed by claim development. To solve those problems in claim development, the VBA continues to try different plans to generate fully developed claims prior to rating. One part of the VBA's efforts has been placing the burden on veterans to submit what the VA refers to as "fully developed claims". Remarkably, the VBA has never advocated that veterans be permitted to hire a lawyer, for pay, from the time that the claim is initially filed to assist in claim development.

Yet, having lawyers involved to help veterans yields positive results, as is shown by the most recent annual report of the Chairman Board of Veterans' Appeals. Following enactment of the Veterans Benefits, Health Care, and Information Technology Act of 2006, Public Law 109–461, and in FY 2009, those claimants who had attorney representation at the BVA received a larger percentage of favorable results than did those without attorney representation. They also received a larger percentage of favorable results than did those who were represented by VSOs. The chart below was created by NOVA from data in the BVA's Report of the Chairman, Fiscal Year 2009.

FY 2009

Representation	Allowed		Remanded		Positive Outcome	
	No.	%	No.	%	No.	%
VSO's Overall	7,688	24.8	11,714	37.8	19,402	62.6
American Legion	2,100	23.5	3,469	38.8	5,569	62.3
AMVETs	65	25.6	91	35.8	156	61.4
DAV	3,853	25.5	5,607	37.1	9,460	62.6
MOPH	179	31.7	191	33.8	370	65.4
PVA	118	28.7	156	38.0	274	66.6
VFW	1,138	24.2	1,746	37.2	2,884	61.3
VVA	235	23.8	454	46.0	689	69.8
State Svs. Org	1,975	24.1	2,802	34.2	4,777	58.3

FY 2009—Continued

Representation	Allowed		Remanded		Positive Outcome	
	No.	%	No.	%	No.	%
Attorney	853	22.7	1,743	46.4	2,596	69.0
Agents	21	23.1	32	35.2	53	58.2
Other Rep	304	28.1	357	33.1	661	61.2
No Rep	886	18.7	1,554	32.9	2,440	51.6
Total	11,727	24.0	18,202	37.3	29,929	61.3

A recent law review article published in *The Federal Circuit Bar Journal* quantifies the value to veterans of attorney representation and concludes that the denying veterans the right to hire a lawyer at the outset of a claim "may cost a single veteran millions of dollars" Benjamin W. Wright, *The Potential Repercussions of Denying Disabled Veterans the Freedom to Hire an Attorney*, 19 FCBJ 433,435 (No. 3, 2009).

Not only has the VA failed to recognize the value of allowing veterans the right to hire lawyers at the evidence development stage, but the VA's pilot projects and other initiatives ignore the value of direct communication and partnering with a veteran's representative during the rating and appeals stages of claims adjudication. Instead, the Pittsburgh pilot is directed at improving communications directly with veterans.

SOLUTIONS REQUIRE AN ORGANIZATIONAL OVERHAUL

NOVA focuses on three primary deficiencies which the VA must correct, simultaneously, if the system is to be fixed. They are lack of a well defined business model and plan, lack of adequately trained staff and administrators to carry out the plan, and lack of accurate and reliable metrics to monitor performance.

NOVA has observed that there are too many levels of management in the VA's organizational chart which has led to institutional "stove piping", institutional paralysis, and the inability to act expeditiously and properly. It has also resulted in the VA issuing mixed messages to veterans.

Additionally, the VBA must become user friendly and must consider the needs and limitations of veterans in order to efficiently and accurately assist veterans. The only way the VA can design a system which is user-friendly is by including veterans, attorneys who work in the system (and their associations, such as NOVA), together with Veterans' Service Organizations and VA employees in the redesign process.

Veterans must be given all the help they need and desire in processing their claims, including the right to hire an attorney. The VA should operate under the assumption that veterans generally file meritorious claims which should be fully and quickly granted. Such a change in outlook would logically lead to a triage system for claims management, such as has been proposed in S. 3517, which would dramatically reduce backlogs.

Veterans and their families must not be overburdened by useless paperwork and redundant, indecipherable requests for information. Ill and impaired veterans should not be required to initiate their claims with more than a simple one page form. Presently, the VA offers claimants a new eight page combined compensation and pension application form, VA Form 21–526, which is still too long and too complicated for many veterans. Although the Fully Developed Claim form, VA Form 21–526EZ, is two pages long, it requires the veteran to complete a certification that the veteran has no more information or evidence which will support the claim. Additionally, the veteran is required to submit with the form all private medical records. There is no reason why applications for VA compensation must be more than one page long if workers compensation benefits applications are one page long.

In a system which truly treats veterans as clients, they would be given face-to-face interviews and the right to participate in hearings and review claim files without the need to travel four or more hours to participate in the adjudication of their claims. Rather than the present system containing 57 Regional Offices which requires many veterans to travel large distances, a veteran friendly system would disperse most of the functions of the present Regional Offices to locations in or in close proximity to each VA Hospital, or Vet Center. Decentralizing the VA would allow veterans to be interviewed, complete forms, assist in evidence development, and attend hearings close to home. Centralized state offices could house the rating boards. Active veteran participation would result in more complete and accurate claim de-

velopment. Obviously, the previously discussed recommendation to decentralize the VA would not work without a 21st century veterans' claim system which is paperless and which allows access by veterans and their representatives. Also, the VA will never deserve the confidence of our country and our veterans until it can demonstrate that claims files are tamper proof and safely stored. A somewhat analogous system has been utilized by the Social Security Administration which has a paperless file, centralized offices for reviewing the evidence, and multiple local offices dispersed throughout each state for taking applications, dispensing information and conducting interviews.

A user-friendly system would begin the claim development phase by clearly and precisely requesting specific documentation from the veteran, such as a necessary DD–214 or current medical records. Rather than utilizing an assembly line approach with six teams performing separate tasks, an efficient system would utilize one decision unit to handle everything from reviewing the application for completeness in predetermination through gathering the evidence and producing rating decisions. It is crucial that the combined development/adjudication unit be directed to partner with the claimant and the claimant's representative (if the claimant is represented) to fully understand and develop the claim. If additional information is necessary, the team should issue an understandable and case-specific VCAA notice, assist with any additional development, and then issue the rating decision.

Because most of the delay in processing claims involves development, particularly waiting for and obtaining C&P exams[1], NOVA suggests that the VBA utilize 38 U.S.C. § 5125(a) to forego obtaining an additional exam where the record already contains an exam sufficient for rating purposes which would result in a grant of the benefit requested. In addition, veterans who apply for benefits should have the advantage of the treating physician rule so that the opinion of their treating physician is given more weight than that of an examining physician employed by the VA to provide an opinion. This would place veterans who apply for benefits in the VA system on par with those who apply for benefits in the Social Security system and have the benefit of that rule.

A user friendly system must also no longer deprive veterans of the same rights citizens have in any other circumstance: the option to hire a lawyer for assistance from the very beginning of the process. Presently, veterans who are notified of the possibility that their rating will be reduced are not permitted to hire an attorney, for a fee, to represent them even after they formally object to the notice of reduction. A veteran must wait until after his rating has actually been reduced (when he has less income) to hire a lawyer, for a fee. Similarly, veterans who believe that an earlier denial was the result of clear and unmistakable error must prepare a request for revision of the erroneous decision without being allowed to hire a lawyer, for a fee. Not only should the veteran's right to choose to hire a lawyer be expanded, but after a lawyer or other representative is hired, neither the VBA nor the BVA should view the veteran's representative as having interests opposed to the VA's central mission of providing proper benefits to veterans and their families. Rather, the VA should partner with the claimant's representative and use informal conferences to speed claim development and to narrow the issues to be decided.

Because the present rating system is difficult for veterans to understand, and for rating boards to apply, the complexity of the Rating Schedule frequently leads to erroneous decisions. It is essential that the VA rework the entire Schedule for Rating Disabilities in 38 CFR Part 4 to simplify and update the ratings. The pilot project mandated by Section 101 of S. 3517 presents the opportunity to begin the overhaul process. Being mindful of the increasing number of veterans whose lives are in shambles because of PTSD or TBI, in rewriting the Schedule for Rating Disabilities, the VA should comply with the recommendation that ratings be designed to compensate veterans for loss of quality of life in addition to loss of earning capacity.

To control the ever increasing backlog, the VBA must adequately triage claims. Increased use of presumptions would eliminate the need for development of evidence regarding the incidents of military service for all those who were deployed to a war zone regardless of their military occupational specialty or place of assignment within that zone. Thus, for example, anyone who was deployed to a war zone, whether during WWII, Korea, Vietnam, the Gulf War or the GWOT who is subsequently diagnosed with PTSD should have the sole inquiry (during the rating stage of their

[1] March 17, 2010, Report from the VA Office of Inspector General, "Audit of VA's Efforts To Provide Timely Compensation and Pension Medical Examinations" Report 09–02135–107, pages i, 11; September 23, 2009, Report from the VA Office of Inspector General, "Audit of VA Regional Office Claims Processing Exceeding 365 Days" Report 08–03156–227, pages iii, 4, 8, 9; Booz Allen Report, page 12.

claim) concentrate on the severity of their symptoms. Anyone who is diagnosed with a medical condition while on active duty and who is presently being treated for that condition should not be required to prove a medical nexus between the conditions. Additionally, veterans who are receiving Social Security Disability or Supplemental Security Income benefits based on conditions which are related to service should be presumed to be unemployable.

Following an unfavorable rating decision, the claimant should only be required to file one request for an appeal instead of both a notice of disagreement ("NOD") and a substantive appeal to the BVA. Section 208 of S. 3517 which substitutes a meaningful post-notice of disagreement decision for the often useless statement of the case is a welcome change. Eliminating the requirement of filing a substantive appeal would save additional time and paperwork. After filing the single request for appeal, the claimant and his representative should have the right to submit further evidence or argument and to have a de novo review on the record, or a hearing by a Veterans Law Judge (VLJ) sitting in a BVA office close to the decentralized Regional Offices.

Adequate training, supervision and accountability are essential to create a system which fulfills the mission to correctly decide all claims. This requires reworking the organizational chart to provide reporting and direct accountability from the Regional Offices to the Secretary. Presently, there is an excessive number of layers of executives in the system which impedes the flow of knowledge and inhibits accountability. Files do not get lost, shredded or compromised in a modern business with direct accountability. Also, in a system with direct accountability, poorly trained workers are not called upon to perform functions essential to the mission. It is essential that the pressures placed on rating specialists and VLJs to turn out decisions be replaced with a system which expects the right decision to be made at all levels of the process. Veterans deserve a system which does not issue a decision until the claim is fully developed, which involves a true partnership between the claimant and the VA, and which rewards prompt and correct decisionmaking. NOVA's experience confirms the findings in the 2005 report of the Office of Inspector General that the present work credit system is providing a disincentive to properly deciding claims. It should be replaced. To complement new expectations of increased accuracy and accountability, it is essential that VA employees be repeatedly and adequately trained and supervised. Additionally, the high rate of VLJ decisions which are returned by the CAVC to the BVA because of inadequate reasons and bases is unacceptable and contributes to the backlog and to the reputation of "hamster wheel" adjudications. Doing away with the requirement for adequate reasons and bases is not the answer. Doing away with poor decisionmaking is.

In a system with adequate training and accountability VLJs do not write decisions which are affirmed on appeal only 20% of the time. To ensure efficient, convenient, timely and proper appellate review at the administrative level, the Board of Veterans' Appeals should be decentralized and dispersed within reasonable distances from the many Regional Offices. Not only should the VLJs be moved out of their fortress in Washington, DC, but they must be reconfigured into a corps of truly independent and well trained Federal Administrative Law Judges.

Appeal from the VLJ's decision should go to the CAVC and then to the Federal Circuit. NOVA recommends two changes to the operation of the court. First, the CAVC should be granted class action jurisdiction so as to be able to remedy situations which affect a broad class of veterans. Second, the CAVC should be required to resolve all issues which are reasonably raised, (except for constitutional claims) if the appeals can be resolved without reaching the constitutional claims. Section 211 of S. 3517 which requires the CAVC to decide all issues raised is a good start. To prevent the VA from arguing that veterans have waived arguments which only became apparent after a BVA decision has been issued, it would be a valuable addition to that section to require that the CAVC decide all arguments raised in the Court regardless of whether they were raised prior to the BVA's decision.

S. 3517, THE CLAIMS PROCESSING IMPROVEMENT ACT OF 2010

S. 3517 is a compilation of some veteran-friendly provisions which would help the VA become more efficient and effective and a few ill-advised provisions which are similar to those which had been suggested by the VA during May 2010 in a proposed bill entitled the "Veterans Benefit Programs Improvement Act of 2010" ("VBPIA 2010").

(A) NOVA SUPPORTS THESE SECTIONS WHICH WOULD HELP VETERANS

Section 101

This provision requires the VA to create a pilot program to assess the feasibility and advisability of utilizing a newly created system to identify and evaluate disabilities of the musculoskeletal system. Rather that utilizing the archaic Schedule of Ratings, diseases and injuries would be identified, for rating purposes, utilizing the same nomenclature that is used by physicians in their medical reports to insurance companies, i.e. the International Classification of Diseases ("ICD"). The next step is to assess residual functional capacity ("RFC") by evaluating frequency, severity and duration of symptoms. Finally, a mechanism would be created to convert the RFC into ratings. Overall, such a change has the potential to simplify the rating of disabilities and to make it easier for physicians to convey accurate information to the VA and for the VA to more easily and accurately rate impairments.

Section 201

This provision would eliminate rating delays in multi-issue claims and reduce the time a veteran must wait before being paid on one of many theories of compensation. It directs the VA to expeditiously assign a rating for any condition which is ready to be rated without regard to other conditions which may require further development.

Section 202

This section would save time by eliminating unnecessary notifications. It clarifies that a notice of what information or evidence would substantiate the claim is required only when the necessary information or medical or lay evidence had not previously been provided to the VA.

Section 203

This section may induce the VA to eliminate requests for unnecessary medical opinions because it requires the VA to treat private medical opinions with the same deference as that given to a VA provider's opinion if the private opinion complies with the VA's established standards. Additionally, if the private exam is not entirely adequate, this section requires the VA to ensure that the VA provider has professional qualifications which are equal to or better than the qualifications of the provider of the private medical opinion. A useful addition to this section would be incorporation of the treating physician's rule and an amendment to 38 U.S.C. § 5125(a), both of which were previously discussed.

Section 204

This section requires the VA to introduce procedures to speed up the claim review process through use of a triage system and a process for identifying developed claims. The triage system requires the VA to perform a preliminary review to identify and process claims which have the potential to be adjudicated quickly, which could result in a temporary disability rating, or those which were filed by claimants who are homeless, terminally ill, or who have severe financial hardship. For those claims in which the claimant states that there is no additional information or evidence to submit (the developed claims) the VA is required to take any necessary development and decide the claim on the record.

Section 205

This section will help veterans by more precisely defining the basis for an RO decision in requiring the VA to summarize the evidence relied upon. This would replace the current requirement to summarize all the evidence considered without regard to whether the evidence was relied upon in the decision. Veterans will find it easier to comply with the technical requirements of the NOD with the addition of the provision that the VA must provide a form for it.

Section 206

This will allow for electronic filing of a Notice of Disagreement and will allow for good cause exceptions to timely filing. As was previously discussed, considerable time and paperwork would be saved if the NOD was the only document required for an appeal to the BVA. The requirement to file a substantive appeal is an unnecessary burden on veterans.

Section 208

This substitutes a post-NOD disagreement decision for the statement of the case. Veterans will be helped by the requirement that such decision must contain a description of the specific facts in the case and pertinent laws and regulations that support the agency's decision. Similarly, the requirements that each issue be ad-

dressed and that reasons be provided why the evidence relied upon supports the agency's conclusion would lead to better decisionmaking.

Section 211

This section, which requires the CAVC to decide all issues raised by the appellant, would tend to reduce the number of times an individual appellant must bring the same issue to the CAVC to finally obtain a decision on the issue. As was discussed previously, it would also be helpful to include language clarifying the fact that veterans are not required to raise arguments before the BVA in order to assert those arguments before the Court.

Section 213

This section mandates a pilot program on participation of local and tribal governments in improving the quality of submitted disability compensation claims.

(B) NOVA OPPOSES THESE SECTIONS WHICH WOULD NOT HELP VETERANS

Section 207

This section mandates that a request for extension of the 60 day period to file a substantive appeal to the BVA must be filed within 60 days from the date the post-NOD decision is mailed. In restricting extensions of time to appeal to the BVA, 17 years of Court precedent would be overturned, including *Percy* v. *Shinseki*, 23 Vet. App. 37 (2009) which just last year confirmed that 38 U.S.C. § 7105(d)(3) is not a jurisdictional bar to the Board's consideration of a substantive appeal filed more than 60 days after the statement of the case is mailed. The proposition that the timely filing of a substantive appeal is not jurisdictional and that an untimely substantial appeal does not bar the appeal follows a long line of cases going back to *Rowell* v. *Principi*, 4 Vet. App. 9 (1993). It is also ill-advised to adopt the provisions which seek to require a veteran to identify the particular determinations being appealed and to allege specific errors of fact or law. Presently, § 7105 does not require identification of the particular determination being appealed although the Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed. The large number of veterans who are still unrepresented[2] during the appellate stage would have great difficulty in complying with stricter pleading writing requirements.

Section 209

This section provides for automatic waiver of agency of original jurisdiction ("AOJ") consideration of new evidence which is submitted with or after the filing of the substantive appeal, unless a request for such review is made within 30 days of the evidence submittal. Such a change in existing law is harmful to veterans and to the VBA claims adjudication system because it denies the AOJ the opportunity to make the right decision before the appeal is heard by the BVA. Automatic waiver would create long delays for veterans due to the huge delays in certifying appeals to the BVA and the long time between certification of the appeal and the BVA decision.[3] The AOJ is in the best position to evaluate the new evidence in view of the prior decision.

Section 210

This section would allow the BVA to determine the location and manner of a veteran's appearance for hearings without the opportunity for appellate review of the BVA's choice.

Obviously, the BVA wants to control its budget by not providing travel board hearings and by providing video hearings in almost all appeals. Yet in terms of judging credibility of appellants and to provide a veteran friendly hearing an in person hearing option is essential. Imposing video hearing on veterans, many of whom are impaired because of PTSD and TBI, violates the Secretary's duty to ensure the appearance of fairness, *Hodge* v. *West*, 155 F.3d 1356,1363 (Fed. Cir. 1998); *Barrett* v. *Nicholson*, 466 F.3d 1038, 1044 (Fed. Cir. 2006).

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[2] In 2009 almost 5,000 appellants were unrepresented in BVA appeals, Board of Veterans' Appeals Report of the Chairman, Fiscal Year 2009, p.21 http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2009AR.pdf. Similarly in 2009, over 1,200 appellants were unrepresented in the CAVC, annual report FY 2009, http://www.uscourts.cavc.gov/documents/Annual_Report_FY_2009_October_1_2008_to_September_30_2009.pdf

[3] In 2009 it took on average 590 days from filing the substantive appeal until certification of the appeal to the BVA plus 227 days from receipt of certified appeal until BVA decision, Board of Veterans' Appeals Report of the Chairman, Fiscal Year 2009, p.16 http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2009AR.pdf

Section 212

This section provides for an extension, for good cause, of additional 120 days of the 120 days within which an appellant must file an appeal to the CAVC. By comparison, S. 3192, the bill introduced by Senator Specter, is far better in that it provides for tolling "for such time as justice may require" and applying to all appeals from BVA decisions which were issued on or after July 24, 2008.

(C) SUMMARY

In summary, NOVA supports those provisions of the S. 3517 which are veteran-friendly, including, sections 101, 201–206, 208, 211 and 213, but NOVA opposes sections 207, 209, 210, and 212.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. RICHARD BURR TO RICHARD COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Question 1. What more needs to be clone to advance the attempt to fix the VA's claims adjudication system, move the backlog and provide more accurate decision-making?

Question 2. What could be done to insure that claims which are submitted are fully developed?

Response.

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July 20, 2010

The Honorable Richard Burr, Ranking Minority Member
Senate Committee on Veterans' Affairs
217 Russell Senate Office Building
Washington, DC 20510-3308

Re: Follow-Up Questions to July 14, 2010 Testimony

Ranking Member Burr:

I am sending you this letter to respond to two issues which you raised at the end of the hearing conducted by the Senate Committee on Veterans' Affairs, on July 14, 2010.

You had asked what more needs to be done to advance the attempt to fix the VA's claims adjudication system, move the backlog and provide more accurate decision making. You had also asked what could be done to insure that claims which are submitted are fully developed.

To fix the claims adjudication system, a real change in the VA's culture is required. This first requires a change in the paradigm beginning with legislation to create a presumption of entitlement to VA benefits. Only when all applicants for VA benefits are assumed to be entitled to those benefits, absent clear and convincing evidence to the contrary, will the VA be on course to change the culture and truly regard the veteran as a client entitled to benefits. Such a presumption would put veterans on an equal footing with those who are arrested and who are charged with a crime. Criminal defendants do not have to prove their innocence, although veterans must prove their entitlement to benefits. Additionally, to change the VA's culture, the Secretary must eliminate the cumbersome layers of management which separate him from the VA's employees who are tasked with processing claims for benefits. Within those unnecessary layers are employees who are the most resistant to changing the institutional culture to one which is friendly to veterans. It is from those management layers that the proposal for the ill advised Veterans Benefit Programs Improvement Act of 2010 and the recent proposal to amend 38 C.F.R. § 3.304(f), neither of which is a veteran friendly proposal, were conceived.

The Honorable Richard Burr, Ranking Minority Member
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If veterans were allowed to hire lawyers to explain the process to them and to assist in development of the claim, most claims would be fully developed when submitted. Now, because veterans are prohibited from hiring a lawyer until after the first appeal, lawyers, generally, do not assist in developing the claim until after the appeal has been submitted. The appellate stage is when lawyers, after carefully reviewing the entire claims file, spend a great deal of time and money to obtain, analyze, review and submit medical records and opinions. Lawyers also do the VA's job of obtaining service medical records, personnel files and unit histories, and witness statements, and sometimes request that the VA obtain specific records within the government's control. As a result of the later development, analysis and submission of new evidence and the request for VA assistance, many appeals to the BVA are remanded by the BVA rather than decided.

If there is any additional information from me which would be helpful I am willing to respond to follow-up questions.

Sincerely,

Richard Paul Cohen
Executive Director,
NOVA

RPC/smp

cc: Chairman Akaka

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RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. BERNARD SANDERS TO RICHARD COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Thank you for your testimony concerning changes in the Veterans' Claims Process. I think you raised some excellent points.

Clearly, not all veterans can afford to retain legal counsel in dealing with their claims for earned benefits. In your testimony, you cited that veterans with attorney representation have a higher favorable rate than those who are represented by veterans' service organization.

Question. Do you believe the typical claims handled by attorney representation closely resemble the typical claims handled by veterans' service organizations?

Response.

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July 21, 2010

The Honorable Bernard "Bernie" Sanders
332 Dirksen Senate Office Building
Washington, DC 20510-4503

Re: Follow-Up to July 14, 2010 Testimony

Dear Senator Sanders:

I am sending you this letter to reply to issues raised in your follow-up questions after the July 14, 2010 hearing of the Senate Veterans' Affairs Committee.

Although at first glance some might question whether a veteran could afford to hire a lawyer to represent him, after consideration of a cost/benefit analysis, the question might better be phrased as whether a veteran could afford not to hire a representative. Attorney fees in all contexts are required by law to be reasonable. The area of Veterans Law is no exception. Moreover, the most common fee in the context of veteran's claims is a contingent fee of twenty percent of the past due benefits, which is substantially lower than the standard fee in personal injury cases, which is 1/3 of the entire recovery. Whether a veteran hires a lawyer or retains a Veterans Service Officer, there will be a fee because Veterans Service officers are paid a salary which comes from the annual dues a veteran must pay in order to receive "free representation" from a Veterans Service Organization.

Of course, the decision of whether a lawyer should be hired is a personal decision which is best left to the veteran. At present, veterans are precluded from hiring a lawyer, for pay, until after the veteran files the first appeal which follows the development of the claim and the receipt of a decision denying the benefit or granting only part of the requested benefit.

The fees of lawyers who represent veterans are not only objectively reasonable, but there is statistical and empirical evidence which supports the mounds of anecdotal evidence that hiring a lawyer results in a big net financial advantage for veterans. The financial advantage, together with the benefits gained from the assistance of a highly trained advocate, is the main reason why many veterans decide to hire lawyers. An

example of the financial advantage is revealed in a law review article which has been published in the Journal of the National Academy of Elder Law Attorneys and in the Federal Circuit Bar Journal which concludes that in comparison with Veteran Service Officers lawyers "have a higher rate of positive outcomes before the BVA", p.11. More significant is the calculation that "conservatively estimated, denying younger veterans the freedom to hire an attorney may cost the veteran tens of thousands to millions of dollars." p.13. See, the NAELA Law Review Article at http://viewer.zmags.com/publication/d54de4ab#/d54de4ab/9 .

The higher rate of positive outcomes which lawyers obtain in the BVA can be appreciated by taking the statistics from p. 16 of the Fiscal Year 2009 Annual Report of the Chairman of the BVA, http://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2009AR.pdf and by combining the remands and fully favorable decisions together as in the chart which follows:

FY 2009

	Allowed		**Remanded**		**Positive Outcome**	
Representation	**No.**	**%**	**No.**	**%**	**No.**	**%**
VSO's Overall	7,688	24.8	11,714	37.8	19,402	62.6
American Legion	2,100	23.5	3,469	38.8	5,569	62.3
Amvets	65	25.6	91	35.8	156	61.4
DAV	3,853	25.5	5,607	37.1	9,460	62.6
MOPH	179	31.7	191	33.8	370	65.4
PVA	118	28.7	156	38.0	274	66.6
VFW	1,138	24.2	1,746	37.2	2,884	61.3
VVA	235	23.8	454	46.0	689	69.8
State Svs. Org	1,975	24.1	2,802	34.2	4,777	58.3
Attorney	**853**	**22.7**	**1,743**	**46.4**	**2,596**	**69.0**
Agents	21	23.1	32	35.2	53	58.2
Other Rep	304	28.1	357	33.1	661	61.2
No Rep	886	18.7	1,554	32.9	2,440	51.6
Total	11,727	24.0	18,202	37.3	29,929	61.3

I suspect that your question, directed toward the type of cases handled by Veterans' Service Organizations as opposed to those handled by private attorneys, reflects an attempt to try to better understand the favorable results obtained by private attorneys.

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Primarily, the factors which contribute to the better results obtained by private attorneys include more personalized representation, better training in dealing with complex legal and medical issues, and the financial incentive to prevail. Although the types of claims handled by Veterans Service Officers and by paid attorneys are similar, lawyers are required by professional ethics to refuse representation for those claims which are found to be unsustainable. The few claims which are rejected by attorneys helps the system by concentrating the VA's attention on worthy claims and helps veterans direct their attention toward claims which have a likelihood of success. In short, although the appeals which are handled are, essentially, similar the way in which those appeals are handled is not the same.

Veterans' Service Organizations handle such a large volume of claims that their employees, the Veterans' Service Officers who process the claims, are overburdened by huge case loads which prevent them from getting to know each veteran who they represent. Large case loads preclude careful review of the file and the opportunity to spend the time required to repeatedly contact doctors and other health care providers to develop the medical evidence and to obtain medical opinions. VSOs also are not able to advance the money necessary to pay for the private exams which are often essential to prove entitlement to benefits.

Attorneys are better trained to identify legal issues and to prepare carefully crafted arguments directed to errors of fact and law. Additionally, VSOs generally lack the time and training required to create individualized presentations. Review of representative samples of transcripts of BVA hearing reveal the VSO's assembly line approach with the use of generalized "boiler plate" arguments. The better results obtained by lawyers reflect the considerable time spent by well trained attorneys in developing claims and in detecting errors which tend to convince the BVA that the appeal requires more consideration and reevaluation or more development prior to decision.

Finally, one should not overlook the effect of a contingent financial interest in the outcome which motivates lawyers to leave no stone unturned in developing the claim and to work exceptionally diligently on the appeal.

Sincerely,

Richard Paul Cohen
Executive Director
NOVA

RPC/smp

Cc: Chairman Akaka
Ranking Member Burr

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RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. MARK BEGICH TO RICHARD COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

Question 1. Mr. Cohen, You mention the need for a decentralization of the VA to allow for a more personal evaluation process. Even with greater decentralization, it is unlikely that many veterans living in rural Alaska would be able to be interview face to face. Is , there a way to guarantee that veterans living in rural locations receive the same level of attention as those that live in more accessible locations?

Question 2. Along with making forms and requirements less complicated, can you envision better methods to educate veterans about the benefits for which they are eligible and the process required to receive these benefits?

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Bethesda, MD

July 21, 2010

The Honorable Mark Begich,
144 Russell Senate Office Building
Washington, DC 20510-0204

Re: Follow-Up to July 14, 2010 Testimony

Senator Begich:

I am sending you this letter to reply to the issues raised in your follow-up questions after the July 14, 2010 hearing of the Senate Veterans' Affairs Committee.

The best way to guarantee that veterans living in rural locations receive the same level of attention as those who live in more accessible locations, is to extend to veterans the right granted to all other citizens of the United States of America. Veterans should be allowed to hire a lawyer, for pay, from the beginning of the proceeding. If veterans were permitted to hire a lawyer before filing a claim, the lawyer could begin by spending the time necessary to discuss with the veteran the available benefits and how to apply for them. The lawyer could then assist the veteran in preparing the application, and in gathering necessary information and evidence so that the application is complete and well supported when it is submitted or shortly thereafter.

Unfortunately, impersonal video conferences with the VA and with the Board of Veterans Appeals will not work well for all veterans. Elderly veterans, those with speech or auditory disabilities and those with mental impairments will find it difficult or even impossible to utilize video technology, particularly utilizing the present VA technology which is subject to audio delays and unclear video feeds. Because of difficulty of use of video technology, the Social Security Administration has not made video hearings mandatory, leaving the final decision to the claimant.

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The effect of expanding the veteran's right to hire a lawyer on the availability of assistance in rural areas can be seen by NOVA's growth. Although, from our incorporation in 1993, NOVA has been an association with members throughout the country, before veterans were permitted to hire lawyers during the administrative phase of their claims, NOVA had 50 to 70 members and no members had offices in Alaska, Washington State, Oregon, West Virginia nor Montana. Now NOVA has 370 members, and we include among our members lawyers with offices in all those states and more. Also, many of our members regularly consult with and represent veterans throughout the country regardless of the veteran's residence. Veterans located in rural areas can count on NOVA's members to provide the necessary assistance. We now teach about 200 new lawyers each year. If the law were to change to permit veterans to hire lawyers at the beginning of the process, NOVA would expect, in the near future, to be educating many more lawyers in veterans law and to be able to report that we have trained thousands of lawyers who are available to represent veterans living in rural areas.

Sincerely,

Richard Paul Cohen
Executive Director
NOVA

RPC/smp

Cc: Chairman Akaka
Ranking Member Burr

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Chairman AKAKA. Thank you very much, Mr. Cohen.

And now we will hear from Mr. Violante.

STATEMENT OF JOSEPH A. VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS, ON BEHALF OF THE INDEPENDENT BUDGET

Mr. VIOLANTE. Aloha, Chairman Akaka——

Chairman AKAKA. Aloha.

Mr. VIOLANTE [continuing]. Senator Burr, and Members of the Committee. Thank you for the opportunity to testify today on behalf of The Independent Budget, which is comprised of AMVETS, DAV, PVA, and VFW.

Earlier this year, Secretary Shinseki set an ambitious goal to have zero claims pending over 125 days, with all claims to be completed with 98 percent accuracy. The Secretary has forcefully and repeatedly made clear his intention to "break the back of the backlog" this year. While we welcome his intentions and applaud his ambition, we would caution that eliminating the backlog is not necessarily the same goal as reforming the claims process system.

Mr. Chairman, the backlog is not the problem. Rather, it is a symptom of a very large problem, too many veterans waiting too long to get decisions on claims for benefits that are too often wrong.

To achieve real success, VBA must focus not just on a smaller backlog, but on creating a veterans benefits claims processing system designed to get it done right the first time.

Mr. Chairman, we applaud VBA for their openness and outreach to the VSOs. However, we remain concerned about their failure to fully integrate us at the beginning of the process. VSOs not only bring vast experience and expertise about claims processing, but our service officers hold power of attorney for hundreds of thousands of veterans and their families. We would encourage VBA to involve us during the planning stages of new initiatives and pilots as well as throughout the ongoing IT development.

VBA has stated that there are over three dozen pilots underway. The IBVSOs have supported and promoted many of these approaches. However, we have concerns about whether VBA will successfully extract and then integrate the best practices from so many ongoing initiatives. Given the enormous pressure to "break the back of the backlog," we are concerned that there could be a bias toward process improvements that result in greater production over those that lead to greater quality and accuracy.

Undoubtedly, the most important new initiative underway at VBA is the Veterans Benefits Management System, or VBMS. The IBVSOs would encourage VBA to include VSOs on subject matter panel reviews. We would also urge the Committee to have an independent outside expert review the VBMS System, which is still early enough in the development phase to make course corrections should they be necessary.

Several weeks ago, S. 3517, the Claims Processing Improvement Act of 2010, was introduced. This legislation would create a pilot program to establish a new VA Rating Schedule for the musculoskeletal system using a different standard of disability, residual function capacity, based upon the severity, frequency, and duration of symptoms.

Mr. Chairman, we have grave concerns about creating a brand new rating system using a standard that was developed for Workers' Compensation and Social Security Disability Insurance programs. Veterans disability compensation is not the same as, nor substantially similar to these two civilian programs. Permanent injuries and disabilities suffered by veterans must be connected to their military service in order to qualify for VA disability compensation. To compare service-connected disabilities to civilian injuries or disabilities fails to value the history and purpose of the Veterans Disability Compensation System.

We also have grave concerns about implementing this pilot without any prior study and without the benefit of input or comment from stakeholders or the public, and with the waiver of the Administrative Procedures Act. While we appreciate the urgency of the claims processing problems and the growing impatience with VBA's progress, we believe there are better ways to address the issues for which this pilot was proposed, including VBA's ongoing work updating the Ratings Schedule and the work of both the Veterans Disability Benefits Commission and the Advisory Committee on Disability Compensation Congress created with Public Law 110–380.

The IBVSOs also have a number of comments and recommendations on the other sections of S. 3517. Some we support, others we suggest changes, and some we oppose, all of which are included in our written testimony.

Mr. Chairman, the IBVSOs thank you for the opportunity to offer testimony before the Committee today. We also want to thank Ranking Member Burr and this Committee for the great work you have done to improve the lives of America's veterans, including enactment of two historic bills during this Congress, Advance Appropriations for Veterans Health Care and the Caregiver Benefits Program. We look forward to continuing to work together with you to address problems within the Veterans Benefits Claims Processing System as well as other unmet needs of America's veterans.

I would be happy to answer any questions the Committee may have. Thank you.

[The prepared statement of Mr. Violante follows:]

PREPARED STATEMENT OF JOSEPH A. VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR OF THE DISABLED AMERICAN VETERANS

Chairman Akaka, Ranking Member Burr and Members of the Committee: Thank you for the opportunity to testify today on behalf of *The Independent Budget* (*IB*), which is comprised of four veterans service organizations: AMVETS (American Veterans), Disabled American Veterans (DAV), Paralyzed Veterans of America (PVA), and Veterans of Foreign Wars of the United States (VFW). For a quarter of a century, the *IB* co-authors have produced annual budget and policy recommendations to guide Congress and the Department of Veterans Affairs (VA) in developing, implementing and properly funding programs, services and benefits for America's veterans, dependents and their survivors.

We commend the Committee for holding this hearing on one of the most critical issues facing veterans today: receiving adequate, accurate and timely benefits, especially disability compensation. Today's hearing is focused on the Veterans Benefits Administration's (VBA's) ongoing pilot programs, especially the ones in Little Rock, Arkansas, Providence, Rhode Island, Pittsburgh, Pennsylvania, and the recently concluded Virtual Regional Office (VRO) in Baltimore, Maryland, which helped develop the business requirements for the Veterans Benefits Management System (VBMS). The hearing will also examine new legislation introduced last month, S. 3517, the "Claims Processing Improvement Act of 2010."

Mr. Chairman, as you know well, VBA has struggled for decades to provide timely and accurate adjudication of claims for veterans benefits, and the problem is only getting worse. The number of new claims for disability compensation, including both first-time claims for benefits and claims for increases or additional benefits, has risen to more than 1 million per year. In addition, both the average number of issues per claim and the complexity of claims have also increased as complicated new medical conditions, such as Traumatic Brain Injury (TBI), have become more prevalent.

To meet the rising workload over the past decade, the *IB* recommended, and Congress provided, significant new resources to VBA in order to increase their personnel levels. Yet despite the hiring of thousands of new employees in recent years, the number of pending claims for benefits, often referred to as the backlog, continues to grow. It seems that no matter how much money or personnel are thrown at this problem the backlog continues to climb ever higher.

Even as new laws are enacted, studies completed, and pilot programs implemented, one is hard-pressed to find objective evidence that the benefit claims processing system today is performing better than it was 5, 10 or 20 years ago.

To the contrary, as of July 12, 2010, there were 563,071 pending claims for disability compensation and pensions awaiting rating decisions by the VBA; 207,568 (37 percent) of the claims exceeded VBA's 125-day strategic goal. That's a 17 percent increase in pending claims (82,137) since the beginning of this year alone.

Worse, by VBA's own measurement the accuracy of disability compensation rating decisions for the 12-month period ending in March 2010 was just 83%, continuing a downward trend over the past several years. In addition, VA's Office of Inspector General (OIG) recently found that even those numbers were inaccurate, citing addi-

tional undetected or unreported errors within VBA's quality assurance program reviews, known as the Systematic Technical Accuracy Review, or STAR.

Earlier this year, Secretary Shinseki set an ambitious long term goal of zero claims pending over 125 days and all claims completed to a 98% accuracy standard. He has forcefully and repeatedly made clear his intention to "break the back of the backlog" this year. While we welcome his intention and applaud his ambition, we would caution that eliminating the backlog is not necessarily the same goal as reforming the claims processing system, nor does it guarantee that veterans are better served.

The backlog is not the problem, nor even the cause of the problem, rather it is just one symptom, albeit a very severe symptom, of a very large problem: too many veterans waiting too long to get decisions on claims for benefits that are too often wrong.

While a person with a fever can take an aspirin to reduce that symptom, the aspirin will not address the cause of the fever, nor prevent the fever from recurring in the future. So too with the backlog: if VBA focuses simply on getting the backlog number down, they can certainly achieve numeric success in the near term, but they will not have solved the underlying problems nor taken the steps necessary to prevent the backlog from eventually returning.

To achieve real success, VBA must focus on creating a veterans' benefits claims processing system designed to "get it done right the first time." Such a system would be based upon a modern, paperless IT and workflow system focused on quality, accuracy, efficiency and accountability. The foundation of this new system must be continuous improvement; VBA must evolve its corporate culture to focus on information gathering, systems analysis, identification of problems, creative solutions and rapid adjustments. This process must be a circle, not a series of lines with stop lights. While management must stress quality control and training, VBA must recognize that training is only part of the solution to improved quality. With sufficient resources, timeliness will improve and then production will increase, and only then can VBA achieve a sustained reduction and eventual elimination of the backlog.

Mr. Chairman, despite all of the problems and challenges discussed above, the *IB* veterans service organizations (IBVSOs) do see many positive and hopeful signs of change. Both VA and VBA leadership have been refreshingly open and candid in recent statements on the problems and need for reform. Over the past year, dozens of new pilots and initiatives have been launched, and a major new IT system is now under development. VBA has shared information with VSOs about their ongoing initiatives and welcomed our feedback and input on ways to improve these initiatives. These are all positive developments that we want to recognize and build on as we move forward.

Yet while we applaud VBA for their openness and outreach to the VSO community, we still remain concerned about their failure to integrate us into their reform efforts or solicit our input at the beginning of the process. Mr. Chairman, this is a mistake for a number of reasons: VSOs not only bring vast experience and expertise about claims processing, but our local and national service officers hold power of attorney (POA) for hundreds of thousands of veterans and their families. In this capacity, we are an integral component of the claims process. We make VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources to develop and adjudicate veterans' claims. We would strongly encourage VBA to involve us during the earliest planning stages of new initiatives and pilots, as well as throughout the ongoing IT development.

As VBA officials have stated, there are over three dozen initiatives underway at Regional Offices (ROs) testing ways to increase the efficiency of the claims processing system. Some, such as the Fully Developed Claim (FDC) and Individual Claimant Checklist pilots, were mandated by Congress under Public Law 110–389. Others were developed by VA with support from contractors, including the pilots in Little Rock, Arkansas and Providence, Rhode Island. Still others, such as the Quick Pay Disabilities pilot in St. Petersburg, Florida, the Rapid Evaluation of Veterans' Claims pilot in Atlanta, Georgia, and the Case Management pilot in Pittsburgh, Pennsylvania, were initiated by VBA regional offices with central office approval.

Last year, VBA solicited new ideas through an Innovation Initiative, which received dozens of nominations from ROs around the country and resulted in 10 winners being selected, eight of which are currently being implemented as pilots. VBA also developed eight new "quick hit" ideas, including phone development and walk-in claims rating, from among hundreds proposed at a workshop for VBA's Regional Office Directors held earlier this Spring.

The IBVSOs have supported and promoted many of these approaches, especially the increased use of private medical evidence and assignment of interim ratings, and applaud VBA for embracing so many bold new ideas. We believe that VBA is

right to undertake such experimentation and believe that many of these initiatives have yielded and will continue to yield important information and data to help reform the claims process.

However, we do have concerns about whether VBA will successfully extract and then integrate the best practices from so many ongoing initiatives, while simultaneously meeting the Secretary's ambitious goals with regards to "breaking the back of the backlog." With virtually every one of the 57 ROs engaged in one or more of these new initiatives, we would encourage the Committee to closely examine and monitor VBA's plans to synthesize the data and results of all this experimentation into a more efficient and accurate claims processing system. Moreover, given the enormous pressure to reduce the backlog, we are concerned that there could be a bias toward process improvements that result in greater production over those that lead to greater quality and accuracy.

Over the past year, representatives of the IBVSOs have been briefed on or visited many of the more prominent pilot programs, including the ones at Little Rock, Providence and Pittsburgh, and we offer the following comments for the Committee.

The Little Rock pilot, developed under contract with Booz-Allen-Hamilton, sought to infuse Lean Six Sigma principles of continuous improvement and reduction of waste into the current claims processing system. This pilot re-organized a portion of the ROs workforce into "pods," or integrated teams, which included both Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs), working as one integrated unit on claims. The pilot also developed new changes to their mailroom operations as well as physical layout changes to improve oversight of workload. Although the contract is complete, the Little Rock "pod" pilot continues and is also being tried out in some additional locations, such as in San Diego.

Since moving to the current Claims Process Improvement (CPI) model of processing claims, based upon specialization of function, VBA has lost some of the benefits inherent in a team-based approach. For example, by mixing together more experienced RVSRs and VSRs in Little Rock with those less experienced, there has been a natural increase in mentoring and unofficial "on-the-job" training of newer employees. Over time we would expect a measurable improvement in quality decision-making. This is a good thing. While we do not advocate that VBA simply replace the current CPI model with the "pod" model, we believe that VBA should continue to explore greater use of team approaches, whether in particular locations, or for specific types of claims.

The Providence pilot begun in October 2009 is designated as VBA's Business Transformation Laboratory to provide a testing capability for future paperless processes in a live environment. In addition, they have begun testing a new phone development program. After the RO sends a veteran claimant a notification letter explaining the veterans rights and what the veteran needs to do in order to prove their claim, a VSR calls the veteran to answer any questions they may have about that letter as well as to assist them in fulfilling their required burden of development. In essence, VA employees help distill the boilerplate in development letters into something more understandable for veterans. As a result, Providence has been able to significantly shorten development and average days to complete claims.

The phone development program has shown promising results and we support continuing to explore this concept. It is imperative, however, that VBA develop and implement proper methods to notify and involve service officers and other POA-holders for claimants who are represented. Further, we believe that VBA might even consider ways that VSO service officers could augment this program.

The Pittsburgh RO has two major initiatives underway: one establishing distinct case-management teams and the other developing templates for private medical evidence that was borne out of VBA's Innovation Initiative. The IBVSOs have long advocated for the expanded use of private medical evidence, which has too often been discounted because it was submitted in a multitude of non-standard formats, not always appropriate or sufficient for rating a disability under the Rating Schedule. These templates, constructed to solicit the information needed to address specific criteria in the Rating Schedule could, if given proper weight during the rating process, save VBA time and resources by eliminating unnecessary and redundant VA medical exams for claimants. We strongly encourage VBA to move forward expeditiously with this initiative and urge them to include electronic medical templates as a core component of the final VBMS.

Undoubtedly the most important new initiative underway at VBA is the VBMS, the first phase of which occurred in Baltimore where a prototype IT system was tested in a Virtual Regional Office (VRO) environment. While VBA has provided several briefings to the IBVSOs and other VSOs on the VRO and VBMS, we were dismayed that they did not seek our input nor consider the role of our service offi-

cers during the early phases of development of the VBMS system. When they first discussed plans for the VBMS, we were assured that service organizations and service officers would be involved in the development of this system. Regrettably, despite these assurances and public invitations to observe and participate in the VRO phase of the VBMS development, the VRO in Baltimore was completed without any VSO observation, participation or input.

VBA has since reached out to the IBVSOs and other VSOs to report on their progress and solicit comments. We do appreciate this consultation and have been impressed by many of the components expected to be included in the final VBMS at rollout. However, it remains imperative that input from VSOs be regularly and comprehensively integrated throughout the further development of the VBMS, as well as other new IT initiatives, including the Veterans Relationship Manager (VRM). As stated earlier, we not only have relevant expertise and perspectives that will benefit the development of these IT systems, we are also direct participants in the claims processing system and therefore must be integrated into their initial planning.

The IBVSOs would encourage VBA to develop regular and ongoing roles for VSO participation and input into future VBMS development. We understand that the VBMS is regularly reviewed by internal panels of subject matter experts (SMEs) and would urge VBA to include service officers on those SME panels.

The IBVSOs also have concerns about whether the VBMS is being rushed to meet self-imposed deadlines in order to show progress toward "breaking the back of the backlog." While we have long believed that VBA's IT infrastructure was insufficient, outdated and constantly falling farther behind modern software, web and cloud-based technology standards, we would be equally concerned about a rushed solution that ultimately produces an insufficiently robust IT system.

For example, in recent discussions with VBA officials, we have been told that rules-based decision support will not be a core component of the VBMS, but that it will be treated as a component to be added-on later, perhaps years later, after rollout. We question whether VBA can achieve significant improvements in quality, accuracy and efficiency without taking full advantage of the processing capabilities offered by modern IT, such as the use of rules-based, decision support. In addition, the VBMS must have comprehensive quality control built in, as well as sufficient business practices established, to ensure that there is real-time, in-process quality control, robust data collection and analysis and continuous process improvements.

We would urge the Committee to fully explore these issues with VBA and suggest that it could be helpful to have an independent, outside, expert review of the VBMS system while it is still early enough in the development phase to make course corrections, should they be necessary.

The IBVSOs are also concerned about VBA's plans for transitioning legacy paper claims into the new VBMS environment. While VBA is committed to moving forward with a paperless system for new claims, they have not yet determined how they intend to handle re-opened paper claims; specifically whether, when or how they would be converted to digital files. Since a majority of claims processed each year are for re-opened or appealed claims, and since files can remain active for decades, until legacy claims are converted to digital, data files, VBA would be forced to continue paper processing, perhaps for decades. Requiring VBA employees to learn and master two different claims processing systems—one that is paper-based and the other digital—would add complexity and could negatively affect quality, accuracy and consistency.

There are very difficult technical questions to be answered about the most efficient manner of transitioning to all-digital processing, particular involving legacy paper files. One way forward would be to leave paper files as they are in their current format unless or until there is new activity. At the time a paper file is pulled, it could be sent to a conversion center which would scan and enter data into the new VBMS system. The important element would be that it be completely converted into usable digital data, not flat images. Whether this is technically, logistically or financially feasible in the near term remains to be fully explored and reviewed by experts. However, the IBVSOs believe that VBA should do all it can to shorten the length of time this transition takes to complete, and that they should provide a clear roadmap for eliminating legacy paper files, one that includes timelines and resource requirements.

Mr. Chairman, you also asked us to review new legislation, S. 3517, the "Claims Processing Improvement Act of 2010", which you introduced last month. This legislation includes 2 titles with 14 sections that address a number of the issues and problems discussed above, and we greatly appreciate your continuing efforts to improve and reform the claims processing system. We offer the following comments and recommendations on the various sections of the legislation.

TITLE I—PILOT PROGRAM ON RATING SERVICE-CONNECTED DISABILITIES OF THE MUSCULOSKELETAL SYSTEM

Section 101 would create a pilot program to establish a new rating system for service-connected disabilities of the musculoskeletal system. The pilot would be conducted at six to ten regional offices for veterans whose claims are first filed more than one year after separation from the military. The proposed new rating system would establish a new standard for veterans disability compensation: "residual functional capacity", which would be measured using a "residual functional capacity assessment tool" based upon the severity, frequency and duration of symptoms. Rather than provide a rating for each musculoskeletal condition as is currently done, veterans would receive a single overall musculoskeletal rating, which would then be combined with other ratings for other conditions.

The pilot program would require that VBA use International Classification of Diseases (ICD) codes to identify disabilities in order to standardize medical terminology. In addition, the pilot would require VBA to develop a "separate searchable electronic file" for each veteran. VBA would have 240 days to develop this wholly new rating system and would have to publish the regulation in the *Federal Register*, but would waive Administrative Procedure Act requirements, including public comment.

Mr. Chairman, our understanding is that the purpose of this pilot program is to address several deficiencies in the current claims development and rating system, including the lack of contemporary and standard medical nomenclature; the failure to consider frequency, severity and duration of symptoms when rating musculoskeletal conditions; the failure to address flare-ups of symptoms in rating disabilities; the rate of denial for veterans who wait more than one year after separation before applying for benefits; and the disorganization of the current claims filing system.

Although we agree that VBA must make improvements in each of these areas, and in fact they have initiatives addressing many of them ongoing right now, the IBVSOs oppose this pilot program for numerous reasons.

First, we have grave concerns about creating a brand new system for determining how much compensation a disabled veteran is entitled to receive using a standard that was developed for workmen's compensation and the Social Security Disability Insurance program. Veterans disability compensation is not the same as, nor substantially similar to these two civilian programs. Permanent injuries and disabilities suffered by veterans must be connected to their military service in order to qualify for VA disability compensation. To compare service-connected disabilities to civilian injuries or disabilities fails to value the history and purpose of the veterans' disability compensation system.

Second, we have grave concerns about implementing this pilot program using real claims made by disabled veterans while providing only 240 days for VBA to develop a brand new, untested rating system, without any prior study of its effect on veterans compensation or the claims processing system—both intended and unintended—and without the benefit of any input or comment from stakeholders or the public, and with a waiver of the Administrative Procedures Acts. While we appreciate the urgency of the claims processing problems and the growing impatience with VBA's progress, we believe there are better ways to address the issues for which this pilot was proposed, many of which are already under development or should be.

For example, VBA has already announced that they will be updating the rating schedule for the musculoskeletal system beginning later this year as part of their commitment to update the entire rating schedule every five years. Another approach was put forward by the congressionally mandated Veterans Disability Benefits Commission (VDBC), established by the National Defense Authorization Act of 2004, which spent more than two years examining how the rating schedule might be modernized and updated. Reflecting the recommendations of a comprehensive study of the disability rating system by the Institute of Medicine (IOM), the VDBC in its final report issued in 2007 recommended that:

> "The veterans disability compensation program should compensate for three consequences of service-connected injuries and diseases: work disability, loss of ability to engage in usual life activities other than work, and loss of quality of life."

To help implement the recommendations of the VDBC, Congress in Public Law 110–389 established the Advisory Committee on Disability Compensation (ACDC) to advise the Secretary on "* * * the effectiveness of the schedule for rating disabilities * * * and * * * provide on-going advice on the most appropriate means

of responding to the needs of veterans relating to disability compensation in the future." The law required the Advisory Committee to report to the Secretary this October, and every two years thereafter with their recommendations. We understand that the ACDC is preparing those recommendations right now, which will include both ideas on how to update the current rating schedule as well as how to provide compensation for loss of quality of life and other non-economic loss suffered by disabled veterans. The IBVSOs urge the Committee to look to the VDBC recommendations, the upcoming ACDC report, and the pending VBA update of the rating schedule before considering a complete replacement of the disability compensation rating system and schedule.

Similarly, there are other means of addressing the pilot's goal of ensuring that VBA employees properly address the frequency, severity and duration of symptoms during evaluations and rating decisions. Under current law, these factors are already part of the rating criteria at 38 CFR § 4.10 and 4.40, and would be better addressed through greater training and oversight of existing regulations. The use of standardized medical evidence templates, such as those under development at the Pittsburgh RO, will also help to ensure that this criterion is more consistently fulfilled. Moreover, during development of the VBMS, a software rule can be established to ensure that frequency, severity and duration of symptoms must be completed in order for the VBMS to accept medical evidence and move the claim forward.

Mr. Chairman, we appreciate your willingness to seek "out-of-the-box" solutions to help improve the benefits claims processing system, and we greatly value all of your efforts to reform the claims processing system, however we cannot support the proposed pilot in Section 101.

TITLE II—ADJUDICATION AND APPEALS MATTERS

Section 201

This section would create a new requirement that the Secretary assign partial ratings to veterans who submit a claim for more than one condition whenever the Secretary determines that a rating for one or more conditions can be made without further development. The purpose of this section is to provide veterans with at least some of the disability compensation to which they are entitled more quickly, however as drafted it could have unintended detrimental consequences.

Under this section, the Secretary would be required to assign a disability rating without further development for any condition for which a rating is assigned. However, it does not require that the maximum rating be assigned, nor that if less than the maximum rating be assigned, further development should continue to determine if a higher rating can be assigned.

Under current law, there already exists authority to assign "interim" or "deferred" ratings, which are not permanent. In this situation, the Secretary assigns the minimum rating for which the evidence of record already qualifies the veteran, thereby speeding compensation and eligibility for other VA programs, while requiring that development continue to ensure that the veteran gets the full rating to which they are entitled under the law. Rather than create a new program for "partial" ratings, we would recommend that the Committee work with VBA to encourage greater use of "interim" and "deferred" ratings.

Section 202

This section proposes to allow the Secretary to waive notice to claimants for claims that are complete or substantially complete and do not require any additional information or medical or lay evidence to process. This would be a change from current law, which requires the Secretary to provide notice in all claims, regardless of whether any additional information is needed.

While the IBVSOs continue to seek ways to reduce delays when there are unnecessary steps in the claims process, it is unclear how the Secretary would determine whether additional evidence is required to properly rate a claim. For example, it is possible that a claim could contain all evidence necessary to establish service connection, but there might exist unsubmitted evidence unknown to the Secretary which if developed would entitle the veteran to a higher disability rating. If this provision were enacted, the Secretary could waive notice and proceed with development and issue a rating decision, despite the fact that the veteran could have been entitled to a higher rating. This would then leave the veteran only with recourse to appeal the initial disability rating or file a claim for an increased disability rating. We believe that the better way to address cases where notice is unnecessary would be to allow the veteran, not the Secretary, to waive such notice since he or she would

know best if any additional evidence is available. As such, we oppose this section as it is currently written.

Section 203

This section would require the Secretary to give deference to private medical opinions equal to that given to opinions provided by VA health care providers. Further, should VA determine that a private medical opinion is not adequate for rating purposes, any further opinions obtained from VA health care providers must be obtained from a provider whose qualifications are at least equal to those of the provider of the private medical opinion.

We have always encouraged VA to use private medical evidence when making its decisions, as it saves the veteran time in development and VA the cost of unnecessary examinations. We are concerned, however, that as drafted, this provision would apply only "* * * for purposes of assigning a disability rating * * *", and not with regard to whether a veteran is entitled to service connection. By modifying the language of this section to account for both the establishment of service connection and determination of the proper disability rating, private medical evidence will be given the weight it deserves, saving both veterans and VA time and cost. With this change, the IBVSOs support this section.

Section 204

This section would require VA to make specific changes in personnel organization and procedure while processing claims. First, the proposed language would require VA to assign "experienced" employees to a preliminary review of initial claims in order to create a "Fast Track Claim Review Process." Under this process, priority would be given to claims that could be adjudicated quickly, could be assigned a temporary rating, or would otherwise qualify for priority treatment under four conditions: claims by homeless veterans, claims by terminally ill veterans, claims by veterans suffering severe financial hardship, and claims that are already partially adjudicated.

Second, this section would create a fully developed claims process in order to expedite claims that do not require additional development by VA. This provision is similar to the Fully Developed Claims (FDC) pilot program mandated by Public Law 110–389, which was recently rolled out to all ROs by VBA earlier this year.

While the IBVSOs generally support the initiatives described in this section, we would not support codifying them as proposed in this section. VA currently expedites processing of priority claims as part of its internal procedures, however they also have additional priorities that are not included in this section. We also question why partially adjudicated claims would be elevated to a priority, since those claimants by definition are already receiving some compensation and would have some eligibility for other VA benefits and services by virtue of their interim rating.

VA's recently-launched FDC program is substantially similar to the program in this section, which we generally support, however the program outlined in this section may be missing key protections for veterans. First, there is no provision specifying how a veteran could file an informal claim to protect their effective date before submitting a FDC application. Under the current claims system, a veteran may submit an informal claim before beginning development to secure an earlier effective date for a disability rating. The FDC program, while quicker once adjudication begins, might not protect this earlier date, forcing a veteran to choose either an earlier effective date or quicker claims processing. Second, while a veteran who elects to participate in the FDC program currently must waive some VCAA notice requirements, there are no provisions requiring that VA comply with notice requirements should that claim be returned to the normal claims process. Also, as currently drafted, the Secretary will not undertake development of a claim until he determines that the claim is fully developed, which would itself be problematic and create additional delay in rating the claim.

For these reasons, the IBVSOs do not support this section as drafted, but would support a new provision to require the existing Fully Developed Claim program to allow for informal claims filing to establish an effective date and require that claims removed from the FDC program must then be accorded full VCAA notice.

Section 205

This section would require VA to provide, at the time an RO decision is sent to a veteran, a form that could be used to file a notice of disagreement with the decision. Currently, there is no standardized form for veterans to use when filing notices of disagreement with RO decisions, leading to both confusion for veterans and misunderstandings by VA as to what a veteran wanted to appeal.

The IBVSOs believe that the idea of a standardized form is a good one, as it would provide guidance to veterans on what information to provide, but that con-

struction of the form should be careful and deliberate to meet the needs of all participants in the appeals process. Any such form should be developed in close consultation with VSOs to ensure not only that veterans are provided with the guidance that they need in crafting their appeals but also that VA receives the information it needs to expedite the processing of appeals. With the inclusion of the additional requirements discussed above, the IBVSOs would support this section.

Section 206

This section would shorten the filing period for notices of disagreement from one year to 180 days. It would also allow the Board to grant good cause extensions of an additional 180 days in cases where a veteran's disabilities prevented filing within the original period, when natural disaster or geographic location significantly delayed delivery of decisions, or when a veteran's eligibility for benefits and services changed due to a change in financial circumstances.

The IBVSOs support the addition of a good cause exception provision, and believe that this section provides a reasonable list of such exceptions. However, we do not support reduction of the one-year filing period at this time.

Section 207

This section would limit the time allowed for a veteran to file a substantive appeal after receiving a statement of the case (SOC) to sixty days, with some good cause exceptions. Under the current system, a veteran has until the later date of either sixty days after the SOC is issued or one year after the original RO decision is issued to file a substantive appeal. Depending on how quickly VA issues a statement of the case, this section could significantly reduce the amount of time a veteran has to file a substantive appeal. For example, if an RO issues a decision on January 1, 2010, and, after the veteran submits a notice of disagreement, subsequently issues a statement of the case on May 1, 2010, the veteran would have until January 1, 2011 to file a substantive appeal under the current system but only until June 30, 2010 to do so under the new system—a six-month difference.

Additionally, this section would require veterans to allege specific errors of fact or law made by the RO. This requirement is, particularly for pro se veterans who lack legal training and experience in the VA claims process, a heavy burden and could prevent veterans from successfully appealing decisions that they otherwise might. Further, we believe this section would create a potential conflict of interest since it is VBA which is tasked with deciding what are properly stated issues and reasons for appeal. There is no mechanism save an appeal to the BVA which protects appellants from capricious decisions by VBA.

Because the provisions of this section have the potential to limit veterans' ability to appeal, the IBVSOs strongly oppose this provision.

Section 208

This section would eliminate the current requirement that ROs issue a statement of the case after a veteran files a notice of disagreement, and instead replace it with a "post-notice of disagreement decision" that would set out in "plain language" the facts used by the RO in reaching its decision, including citations to pertinent law, and the reasons for the RO's decision. These provisions are in many ways similar to current requirements for statements of the case; the main difference is the requirement that the decision be written in plain language.

While the IBVSOs understand the desire to make the appeals process easier for veterans to understand, we do have a concern about this provision. RO decisions typically involve the interpretation of often-complex statutory, regulatory, and case law, and this kind of analysis is not always easily reduced to "plain language." Attempting to compose a decision in this manner could, potentially, do a veteran a greater disservice by omitting specific—but technical—information needed to successfully continue an appeal. For this reason, we do not support this section.

Section 209

This section would modify the appeals procedure so that, if a veteran submitted new evidence after his or her appeal had been certified to the Board of Veterans' Appeals (Board), that evidence would be considered by the Board by default rather than remanded to an RO for consideration. A veteran could still request that new evidence first be considered by an RO. Under current procedure, the reverse is true—new evidence is considered by an RO, not the Board, unless the veteran waives RO consideration. If the RO decides that the new evidence is not sufficient to grant the benefit sought on appeal, it must issue a supplemental statement of the case (SSOC) before the appeal can proceed to the Board, often leading to significant delays of the veteran's appeal. The proposed procedure allows appellants who

believe new evidence is sufficient to warrant a grant to waive RO review and significantly shorten the appeals process.

The IBVSOs support this section with the addition of a requirement that VA provide sufficient notice to a veteran that new evidence may be considered at the RO level should the veteran so desire. Further, a veteran should be able to provide electronic notice of his or her decision, rather than adding the time and expense of mailing a response.

Section 210

This section would allow the Board to choose the place and manner of hearings before it, a decision currently made by the veterans requesting the hearings. While the IBVSOs support the use of technology and other efficiencies in the benefits system, and do not object to providing veterans with accurate information on how long various hearing options would take, the choice of how a veteran makes his or her case to the Board—the closest many veterans get to a "day in court" on deeply personal issues—should remain with the veteran. We therefore oppose this section.

Section 211

This section would require the U.S. Court of Appeals for Veterans Claims (CAVC) to render a decision on every issue raised by an appellant when reviewing decisions of the Board. This provision appears to address the numerous instances in which the CAVC has remanded a case on a procedural issue that is then re-adjudicated by the Board, re-appealed by the veteran, and again remanded by the Court on another issue that could have been decided during the original appeal. At the same time, there are also instances in which such procedural remands accrue to the benefit of veterans, such as when a more favorable resolution of the issue that caused the remand at the Board or RO would provide a stronger basis for the Court, the Board or RO to render more favorable decisions on the remaining issues. While language could be added to narrow the scope of this provision, the *Independent Budget* VSOs have no common position on this section.

Section 212

This section would allow the CAVC to grant an extension to the period for filing a notice of appeal for veterans who can show good cause for such an extension. As the section is currently written, it would be left to the CAVC to determine what did or did not constitute good cause, which would likely impose an additional burden on the Clerk of the Court.

The IBVSOs strongly support this section. Some Congressional guidance on the kinds of things that could constitute good cause, like that under Section 206(a)(3)(B) of this bill, would help to direct the CAVC's decisionmaking process and alleviate some of the additional burden on Court personnel. More importantly, giving veterans the tools they need to successfully navigate the appeals process is essential to making sure they receive the aid that they deserve.

Section 213

This section would establish a pilot program to assess the feasibility of programs to improve the quality of claims for disability compensation by members of tribal organizations who have service-connected disabilities. The IBVSOs do not oppose enactment of this provision.

Mr. Chairman, the IBVSOs thank you for the opportunity to offer testimony before the Committee today. We also want to thank you, Ranking Member Burr and this Committee for the good work you have done to improve the lives of America's veterans, including enactment of two historic bills during this Congress: advance appropriations for VA health care and the new caregiver benefit program.

We look forward to continuing to work together with you to address problems within the veterans benefits claims processing system as well as other unmet needs of America's veterans. I would be happy to answer any questions the Committee may have.

Chairman AKAKA. Thank you very much, Mr. Violante.

The question I have will be for all of you. While my legislation is largely a claims processing bill, I included a pilot program to test an alternative to the current Ratings Schedule. I did this because I am concerned that progress on claims processing will be limited until the Rating Schedule is reformed. Do you agree that the status quo on the Rating Schedule is unacceptable? Do you have suggestions for specific changes on this?

Mr. VIOLANTE. Mr. Chairman——

Chairman AKAKA. Mr. Violante?

Mr. VIOLANTE. Certainly, DAV believes and the IB believe that changes are necessary. However, we have some concerns about the proposal in the legislation. As has been pointed out previously, we believe that there could be a great inequity in veterans similarly situated with the same disabilities being rated differently, in addition to the fact that the VA will have to learn two different systems because not everyone will come under this new pilot program.

If these two veterans, one who is rated under the current system, one rated under the new pilot, appeal those decisions, then the Board of Veterans Appeals and ultimately the courts will also have to make a determination based on two different sets of criteria, and we believe there have been other proposals out there, again, by the Veterans Disability Benefits Commission and the ongoing Advisory Committee, that have made recommendations that should be looked at, also, not just focusing on this one change.

Chairman AKAKA. Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chairman. NOVA believes that you are on the right track on this proposal. As you suggested, the status quo is unacceptable. The present schedule is too difficult for rating teams to work with consistently. This is a well thought-out system.

The problems that were perceived by some, and Mr. Violante had mentioned it, about the disparate treatment could be resolved by taking files that had already been rated into the pilot to see what the result would be had they been rated under the pilot program, not changing the particular rating that a veteran had, but just seeing how it would be rated under the new program. That is a way that the program could be tested on a pilot basis and then compare the results, and actually, the rating team could be requested to provide input on the difficulty or ease of using both systems.

But the proposal that you have come up with is something that is time honored. It has been used consistently in the Workers' Compensation System and doctors know how to deal with frequency of symptoms and severity of symptoms, so it should work.

Chairman AKAKA. Thank you. Any other comments?

Ms. AVANT. Yes.

Chairman AKAKA. Ms. Avant?

Ms. AVANT. AFGE also agrees that the Rating Schedule does need to be updated. I understand VBA has been working on that. There are some sections that have not been updated since 1945, and as a Rating Specialist who is reviewing actual medical evidence, it is very apparent that there have been a lot of changes in the information requested on the VA templates. It is easy to see that medical facts the rater receives do not always apply easily to the Rating Schedule, and many terminology diagnoses have changed over the years. Also, many items seem to be under-evaluated. Musculoskeletal are very difficult. If you have a knee condition, it easily does not reflect what the symptoms are in the VA exams. And some of the mental disabilities are also the same way.

We think it would be beneficial if there are changes. The changes to the ICD codes—it will take some adjustment if VA does change from our diagnostic codes over to the ICD codes, but it is something

that is used nationally with all physicians and so it would be something easily adapted.

Chairman AKAKA. Thank you very much.

Mr. Thompson?

Mr. THOMPSON. Mr. Chairman, the Government Performance and Results Act required that each program administered in the Federal Government be put through a program evaluation, in other words, to look at the program and ask: is it meeting its public policy goals? Regarding disability compensation, my understanding is that a program evaluation has never been done. The question therefore remains: is what we are doing today to help veterans, with the assistance we are providing them, actually help them in a way the American people, the Congress and the President, intended?

So that kind of analysis, to me, should take place before you start changing the ratings schedule. I think we need to understand: what is the current rating schedule doing for veterans? Is it undercompensating? Overcompensating? Does it have it just right for each condition? I think the program evaluation of compensation program should be undertaken as a first step before you go in and start pulling the Ratings Schedule apart. You need to understand what the current one is doing.

Chairman AKAKA. Thank you very much.

Let me call on Senator Burr for his questions.

Senator BURR. Thank you, Mr. Chairman.

I guess I know the answer to my first question for you, Mr. Thompson, which was whether you think VA is doing enough with the Disability Compensation System and whether it is meeting its goals, and the fact is, they are not focused on it.

Let me make a general statement and then I would like to ask just a couple of questions. My statement has no impact on the legislation. It has an impact on whether or not I believe that all stakeholders are willing to do the things that it takes to solve the disability process problem that we have, and I have come to the conclusion they are not.

I think there are efforts that are underway within VBA. There are individuals involved in the processing of claims, like Ms. Avant. There are deep interests on the part of VSOs, yet we cannot find those common intersection points that will allow us to solve a very, very big problem. And I share that with you because this is very disturbing to me.

I have made the statement before coming into hearings that we talked about the disability process because I believed there was real hope that we could solve it. I see a growing number of individuals who are going to be relying on our ability to navigate this and to redesign the system in a way which can work for everybody.

Well, if we are not allowed to redesign, I can tell you, it is not going to work for everybody. There are going to be unbelievable delays. They are going to be much longer than they are today. We are going to have antiquated requirements on individuals in trying to accomplish their jobs that are going to make it impossible.

There are tremendous bright spots. The POD process that we have undertaken in Arkansas, gee, I would like to roll that out everywhere in the country tomorrow, but I am sure somewhere there

is going to be opposition to that and it is one of the reasons that I asked Mike, at what point can we make determinations as to when this works? How far can we roll it out? I am tired of talking about this. I am tired of everybody raising their hand and saying, "I want to be part of the solution," only to get to a point where we have got trial programs and demonstration projects. It looks like we are at critical mass and everybody is saying, whoa, wait a minute; I didn't mean about structural changes, I meant about speeding up the process. Well, if we are not going to make fundamental changes to this program, we are not going to reduce the amount of time.

I don't point a finger at anybody, I just make a general statement as one that has been doing this for a number of years, much like many of you at the table. I think that we probably didn't include enough people up front. Had we included more people in the input, maybe they wouldn't be as critical to the structure. I am not sure that the design would have changed, but maybe more people would have felt like they had a hand in it.

I have heard the statement made, the status quo is not acceptable. Well, let me tell you, we have been locked into the status quo for a long, long time. And when you look out and you see the population that is getting ready to come in, they deserve better and we have all got a responsibility to them.

So, I hope everybody will rethink what we have got in front of us, what we have got to accomplish, and try to figure out where we can begin to smooth the edges of where we have staked ourselves out and focus on the steps forward that we can make that have a visible and substantive impact on the processing of these claims.

Now, I raised with Mike and I won't raise it with the panel, it is beyond my comprehension as to how the number of applications that come in incomplete have actually grown versus gotten better. I am not sure where that problem is, but it seems like common sense to me that one of the areas we need to focus on is making sure an application for disability claims is complete when it walks in the door, that we not bog down the VA process with having to go get things, whether it is a VSO who is working with a veteran or it is a VA service officer. Regardless of who it is, even if it is a hired lawyer, my gosh, let us provide a hotline for the lawyers to call so that they can at least get the claims right. Even though they are making money off of it, it benefits everybody if that claim comes in the door and it is complete.

Mr. Chairman, I apologize because I know that this was a hearing designed to try to ask questions and get constructive answers, but I just couldn't let it pass without saying we have got a real opportunity right now. I think we have some real demonstration projects on the table that could—it is early—could have a dramatic impact on our ability to process these claims.

If we go until next year and Mike is forced to come in and say, well, we need 2,000 more employees, I am going to tell you now, it is not going to happen. Over my dead body will we just continue to throw people at the problem. We have got to find the fundamental change. We have got to incorporate what we know works with what we can accomplish in IT and we have got to learn from

past experiences, areas that we go to, and I hope we can all go there together.

I thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Burr.

My last question is one for all of you. One goal of my bill is to allow VA to work seamlessly with the military and the outside medical world in dealing with disability issues. The proposed pilot program would test the use of ICD codes to identify disabilities. My question is, do you believe the use of these codes would move VA closer to being able to work with other entities on disability issues? Mr. Cohen?

Mr. COHEN. Yes, Chairman Akaka. NOVA does believe the use of ICD codes would be an advantage because most of the medical community works in terms of ICD codes. So it would make it easier for private physicians and also for VA contract physicians who may be working in other hospitals and work with ICD codes every day to figure out the system.

One of the problems, though, with the seamless transition is that we are all aware of the problem with the DOD under-diagnosing PTSD. So if we have a seamless transition and a servicemember comes out and now becomes a veteran and has a record from the DOD saying that the condition that they have, their nervous condition, is a preexisting condition because they were forced to sign that before they got out, that is going to make it more difficult for them to get their VA benefits. So that is a concern that the DOD must look at before there is this seamless transition.

Chairman AKAKA. Thank you.

Mr. VIOLANTE. Mr. Chairman?

Chairman AKAKA. Mr. Violante?

Mr. VIOLANTE. I think the IB would agree that, yes, using ICD codes could help, but our recommendation would be—I mean, if you look—here is the ICD codes on the knee. There are roughly two and one-half pages of ICD codes on the knee. The VA Ratings Schedule, there are essentially four ratings for the knee. What we would like to see is the diagnostic codes lined up with the ICD so that a rater would see a condition coming in that is one of the ICD codes which would refer them to the appropriate diagnostic code and then allow them to rate it.

But if you have a rating schedule that is using knees, you are going to have a lot of duplication of effort; whereas if there is just an easy reference to say, OK, ICD Code 1025 is the same as diagnostic code 5286, I think you would make the transition a lot easier. All you would need then is for somebody with a medical background to go through and associate the two codes so that you can have a cross-reference.

Ms. AVANT. Sir?

Chairman AKAKA. Ms. Avant?

Ms. AVANT. Under the current system, personally using the system on a daily basis, I don't see that the ICD codes will make a difference in the amount of work that can be processed comparing diagnostic codes. Based on the current medical we receive, most examiners right now furnish us a diagnosis, not an ICD code.

I know we have a pilot that is undertaking the rewriting of the medical templates that VAMC uses and there is discussion of those

being rolled out to the private industry. In the event that those templates are possibly compacted—at the current time, some of them are very lengthy, they have a lot of information that I don't need to assign a percentage for example, a knee disability. If they were compacted to fewer questions just make sure that we get the answers to those questions, then these forms could then be sent out to the local and the private physicians, making it easier for them to complete.

Currently, some of the templates may take an examiner 45 minutes to an hour, and in the real world, you don't have a private physician that has 45 minutes to sit with a veteran to fill out these forms. Now that there have been Medicare cuts, the possibility of veteran patients seeing these private physicians is dimmer. It just seems like if there were a more compact questionnaires for them to fill out, that is what would help the VA process more claims versus just changing the ICD codes.

Chairman AKAKA. Thank you.

Mr. Thompson?

Mr. THOMPSON. Mr. Chairman, I would defer to the judgment of the folks at VA and the VSOs on this issue. I don't think I bring the expertise to make much of a difference in this discussion.

Chairman AKAKA. Thank you very much.

In closing, I want to again thank all of our witnesses for appearing here today. I would like to thank Under Secretary Mike Walcoff and members of his team for remaining here to listen to the second panel. Veterans are better served when we all work together, as you had said in your comments earlier.

I look forward to working with all Members of this Committee to develop innovative solutions for claims adjudication. It is clear that the issues involved are quite complex, and working toward a more streamlined, efficient, and equitable process will not be easy, but we will strive to do that. I pledge my continued support for this goal as we move forward and look forward to advancing this effort with an amended version of my legislation, S. 3517, that will appear on the next agenda for the Committee's markup next month.

Again, thank you very much. This hearing is adjourned.

[Whereupon, at 11:57 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF RICK PERCOCO, US NAVY VETERAN, SUFFOLK, VIRGINIA

My name is Rick Percoco. I am a 25 year old military veteran. I joined the military directly out of high school when I was 17 years old. I served 4 years in the US Navy where I completed a 7 month deployment in the Persian Gulf in support of Operation Iraqi Freedom. I was honorably discharged in 2007 and have been having a tough time making the transition back into the civilian lifestyle. Throughout my struggle with this I have come to realize that the VA in general is not only making it extremely challenging for myself, but all veterans to receive the help and support that is needed.

The problems dealing with VA claims can be summarized with the word "unification". There are many different systems that deal with the big picture of our military and veterans' health care. There is nothing united about how our VA/military system is set up. For starters, the military and VA have completely different records for the same serviceman/woman. How much time do you think it takes to request medical records to be pulled from military archives in support of VA claims? This is one example of wasted time and inefficiency on the VA/military's part. Another huge flaw that slows down the process of building a claim is with obtaining medical documents from private doctors. Since there isn't a unified system across the board with easy access for everyone, trying to navigate through each different system for one veteran is twice as hard as it needs to be in obtaining medical documents. Finding medical evidence to build the cases is the leading cause to why the regional offices have developed such a back log in processing claims.

I have come up with the realization that there needs to be one universal or "united" filing/record system for all branches of military, the VA and private doctors throughout the patients military career, including post career and death. This means a file/record needs to be built at the recruiter's level, and will follow each person throughout boot camp, job training, military service at each base/command, transition back into civilian life, and throughout ones post military life up to, and including death with proper burial. Then and only then the record needs to be stashed away in an archive. That way, no matter who looks at it, at whatever level, at whatever location, they will see everything that has happened to the person at every stage of service and post service. This includes ones service record to prove service dates and duty assignments, and medical records for treatment documents. Unification is the key to proper record keeping along with this simplification tactic.

Too much time is being spent trying to rebuild ones file and records. The evidence is out there lingering around in different medical facilities filing systems. The VA shouldn't have to hunt for these treatment documents; they need to be accessible at anytime by the VA. This lack of unity causes backups at the regional offices which results in longer wait times for each veteran.

Rather than having one organization, or system, trying to obtain records from each of the individual medical facilities that the patient was treated at, the ability to have one unified file/record that everyone can access is the key for more efficiently processed claims at the regional office level. A file/record system needs to be created via a very secure network called the internet to unify the military, VA and civilian doctors into one big file for each vet. This will allow any doctor/VA personnel anywhere the ability to access the vets file. I am sure we can come up with and can organize a secure Web site/network/domain name/URL system that will allow every doctor at every medical facility the ability to record/scan documents into one universal file for each vet via the internet. This will give the doctor who is treating the vet, where ever he/she may go the ability to see what has been documented in the past about the present condition. The doctor will then add notes in that same network site/system, and have it instantly be added to the vets file. The doctor will not be able to log off the network site until the patient reviews the notes him/herself, and electronically sign to verify he/she understand the diagnosis of treatment. This will allow everyone at every level the ability to see the same written fact about the severity of the condition and the nature of the appointment. This will reduce the amount of appeals being pushed back into the system. An example being the doctor verbally tells one thing to the patient and writes something else in the notes that will then be sent up to the regional office to be reviewed. Because everyone is not on the same page, the vet might be expecting one result, and actually receive another based on miscommunication. This will result in an appeal, and having the vet re-circulate back into the system among everyone else.

As stated above, the problem with obtaining medical evidence to build a vets claim and case is the sole reason why the regional offices are getting so backed up with claims. With this system in place, all the claim rep will need to do is to log on to the system and obtain whatever information is needed to properly set up the vets case to be passed along to the rating decision process,

June 22, 2010

PREPARED STATEMENT OF CAROL WILD SCOTT, CHAIRMAN, VETERANS LAW SECTION, FEDERAL BAR ASSOCIATION

Senator Akaka, Senator Burr and Members of the Committee:

Thank you for the opportunity to present this statement on behalf of the Veterans Law Section on behalf of the Federal Bar Association. The Federal Bar Association is the foremost national association of private sector and government lawyers engaged in the practice of law before the federal courts and federal agencies. Sixteen thousand members belong to the Federal Bar Association. The Veterans Law Section ("VLS") is comprised of lawyers who are associated with all aspects of veterans and military law. The comments herein are exclusively those of the Veterans Law Section and do not necessarily reflect the views or official position of the entire Association.

The growing backlog of veterans' disability claims pending before the Department of Veterans Affairs and the U.S. Court of Appeals for Veteran Claims has been the subject of numerous written submissions, testimony and commentaries. The Claims Summit twelve weeks ago and a further hearing before the House Committee on Veterans' Affairs five weeks ago all addressed the same issues – what is wrong with the claims process and how can it be fixed? Several facts are inescapable. The backlog is out of control, symptomatic of a process out of control. The operative term is "control."

The Need for Vertical Accountability within the VA

Since that time Secretary Shinseki has come on board and vowed to break the veterans' disability claims backlog and turn the VA into a veteran-friendly agency. There have been numerous studies and audits since that time. Not a single one of them has found in a single Regional Office the seeds of perfection. Nor have any of them found strong internal lines of accountability that run from the Regional Office management level to the Secretary's desk. The Veterans Benefit Administration is the size of a small army. For too many decades it has operated as if the colonels were all in charge – each with an individual regional command that operates day-to-day as the individual circumstances may dictate.

The 57 regional offices are separated from the Office of the Secretary by intermediate layers of middle management that at the end of the day seem to be accountable to no-one but themselves. Neither the Veterans Law Section nor anyone else should tell or even suggest to the Secretary how to do that; we can and must insist that he do it. Report after report documents that individual offices are extremely inventive in devising methods of making the figures look good when they are not. They also uniformly note the need for oversight. Oversight begins at the Secretary's desk with the re-arrangement of the bureaucracy of the VA into a strong, vertically accountable chain of command. We firmly believe this to be the greatest challenge. This Secretary, more than any of his immediate predecessors, has the leadership skills to meet the challenge and at the same time gain the trust he must have from at least two communities -- the veterans and that the VA bureaucracy.

Technology Challenges – When Will We See a Paperless VA??

The challenge of transforming the paper-laden process of claim adjudication into a smoothly operating system -- in which all information is readily available to the various components of the Agency, the veteran and the veteran's representative -- seem insurmountable. We all heard during the Claims Summit and subsequently that while a great many prior attempts had been discarded as unworkable, there was great hope for a new effort in Baltimore. At the same time a plethora of working programs seem to exist for the purpose of tracking cases and quality oversight. Apparently they lack the capacity to talk to each other. Other organizations and agencies have managed to accomplish the transition. The U.S. Court of Appeals for Veterans Claims ("CAVC") initiated electronic filing by just doing it, on a date certain. There were glitches at the beginning, but they were worked out. The Internal Revenue Service and Social Security Administration have accomplished this task in the last few years with systems nearly as vast, but vastly more vertically manageable.

Proposed Senate legislation (The Claims Processing Improvement Act, S. 3517) would begin to bring veterans claims adjudication into the twenty-first century by requiring the VA to carry out a pilot electronic records program to assess the feasibility and advisability of applying an alternative schedule for rating service-connected disabilities of the musculoskeletal system. We believe that this is certainly a beginning. Recognition of the urgent need for transition to a largely paperless environment suggests that a similar, parallel system should be set up in one regional office, preferably a smaller office with a comparatively good record for accuracy and begin, on a date certain, to scan into an expandable, web-based system all new claims filed in that office. We believe that the development of those claims should be conducted in the same manner. As evidence pertinent to those claims is developed, it should be scanned into the system in the same manner as in the pilot project. As the problems are recognized and solved, the system can be expanded into other offices. The best way to solve the problems posed by the current structure is through technology.

Process Management

The Veterans Law Section continues to urge VBA to change the basic way in which the individual offices process claims. The POD project, a pilot program at the Little Rock Regional Office, described in the Booz Allen Hamilton Report, has not yet been audited for effectiveness and improvement. However, in terms of potential for processing the numerous complex claims with which the system is now significantly over-loaded, it shows the most promise. It is also, because of the internal structure, the best candidate for a starting point for digital claim processing.

The POD process should integrate into discrete teams representatives from five of the six currently identified "specialty teams:" Pre-determination, Rating, Post-determination, Public Contact and Appeals. The number of team members from each "specialty" should be weighted according to workload – number of files with seven or

less issues as the demarcation point and the relative experience of the team members in those specialties. As the individual office acquires added personnel, utilizing the team structure would provide opportunity for more concentrated OJT and mentoring. The most important aspect of this modality is the inculcation of "ownership" of the individual claim. There is less opportunity for inadequate records requests, and improperly ordered or untimely C&P exams. When questions arise, communication with the individual veteran, attorney or representative is encouraged. Interaction among team members should also improve employee morale, and "humanize" the veteran by providing him/her with an identity.

This approach is particularly well-suited to the proposed provision in The Claims Processing Improvement Act (section 201), providing for partial adjudication of claims for disability compensation consisting of multiple issues, one or more of which can be quickly adjudicated. Thorough triage in the POD setting is more readily initiated. We support this approach, as it particularly lends itself to expeditious resolution of those claims that may provide the veteran with early compensation, alleviating financial difficulties to some extent. We would caution, however, that implementing regulatory language should limit early adjudication to granted claims. Claims that at first glance may seem to result in quick denials should receive further scrutiny.

Implementation of partial adjudication underscores two realities insufficiently recognized in The Claims Processing Improvement Act: first, the need for expanding the role of attorney representation at the claim initiation and development stage; and secondly, the necessity of a cooperative relationship between veterans, their representatives and the POD team. Attorney representation at the initiation and development stage is likely to result in the submission of more fully developed claims ready for adjudication. A cooperative relationship, characterized by readily available communication between veteran, representatives and rating team, is critical to the early adjudication process outlined in section 201 of the proposed legislation. Implementation under the POD process would similarly expedite resolution of the remaining claims, particularly under the expanded role of the Decision Review Officer as described below.

We applaud the implementation of VA Forms 21-526 and 21-526EZ for initiation of a claim. The Veterans Law Section of the FBA, along with NOVA, recommended a shortened form to the Transition Team in 2008. We believe that there is still room for more concise treatment, and urge further reduction of Form 21-526 to not more than two pages and Form 21-526EZ to one page. However, we question whether the proposed provision for certification of completeness of tendered evidence on such claims is appropriate with self-represented applicants. The shortened form heightens the desirability of attorney representation at the initial stage, increasing the likelihood of the submission of more complete, adjudication-ready applications for compensation.

Decentralized Claim Intake

While the POD process is entirely desirable from the standpoint of processing claims once they are filed, it is time to consider the decentralization of claim intake. Certainly this is desirable and, in our estimation, susceptible of immediate implementation. The Veterans Health Administration ("VHA") has created a network of clinics in order to expand services to patients under the auspices of larger VA Medical Centers. We urge VA to consider a pilot program in which claims intake units would be co-located in VHA clinics in at least one area, functioning in a fashion similar to the Social Security intake system. Intake units for this purpose should have one office with one or two intake stations. Personnel sufficiently experienced to counsel the unrepresented veteran in completing the short form and marshalling the appropriate evidence would ensure proper completion of the forms and inclusion in the initial file of all necessary documentation. (The claimant with attorney or other representation would retain the option of filing at the Regional Office and be excluded from the pilot program's acceptance of applications at the VBA claim office in the VHA clinic.)

All intake would be electronic, including file preparation. Evidence presented by the claimant would be scanned and included in the electronic file. The originals would be returned to the claimant, date-stamped as "Received by DVA." For purposes of consistency and practicality, such a program should be implemented in one of the regional office areas already designated for inclusion in the pilot program for rating musculoskeletal claims, as proposed by The Claims Processing Improvement Act. Later integration into a paperless POD adjudicatory process should not be difficult. Similarly this approach would lend itself to an increasing number of issues ready for rating under the musculoskeletal claims system, as conceived by the Improvement Act.

Medical Issues

We recommend the assignment of claim development by medical issues specific to some identifiable types of claims. Inspections by the Office of Inspector General of the VA of several Regional Offices, reported from November 2009 to March 2010, identified multiple challenges in providing timely, accurate rating decisions, among which were consistent difficulties with PTSD, herbicide exposure and TBI. Establishing medically specialized teams to process claims related to these issues within the POD modality rather than turning them into brokered files, makes sense. These are disabilities that usually involve several body systems. The medicine is complex and daunting, with distinct training issues. Providing concentrated instruction in areas in which there are inherently complex medical issues would decrease processing time by training triage members of each team to recognize the issue and hand-off the file immediately to the specialty team, thus putting it quickly into the proper queues.

Similarly, the knowledge level in the medical specialty triage and pre-development team members would enhance the probability of recognizing those claims in

which the reports and medical history submitted with the claim render it ready to rate or nearly so. To this end, we renew our encouragement of a "treating physician rule." Regardless of whether treatment has been by VHA or private providers, nexus opinions and questions of the level of disability/extent of impairment should be addressed to those providers. The concept that a VHA treating physician is incompetent to provide a nexus opinion because the VHA treating physician is inherently biased is inherently absurd. There is imminently more reliable information to be gained from the provider who has spent considerable time treating the veteran and to whom a digital copy of the c-file has been made available than from a contractor or VHA personnel who may or may not have actually seen the file and who spends at best 15 minutes and usually 5 – 10 minutes with the veteran.

This issue is addressed in section 203 of The Claims Processing Improvement Act, Sect. 203, which amends Subchapter I of chapter 51 of title 38, United States Code to provide for Sect. 5103B, which provides for acceptance of a medical opinion in support of a claim from a private provider that meets all of the requirements and treatment of that opinion with the same deference accorded to an opinion from a departmental examiner. In the event that such an opinion does not meet the standards, one sought from the departmental provider, i.e. a C&P exam shall be from a provider of equal or superior qualifications as the private provider.

VLS submits that this is a distinct improvement, but should be further amended to provide for communication with the private physician in order to resolve insofar as possible and with as much specificity as required, any issues of completeness or adequacy to include the offer to the private physician of an opportunity to review the c-file. Resolution of the documentation issue in this manner might preclude the necessity of the expense and delay of obtaining a C&P exam from a departmental provider. In short, VLS continues to urge the adoption of an unequivocal "treating physician rule."

VLS strongly suggests that this provision be specifically extended to the PTSD regulation introduced in the Federal Register on July 13, 2010, which unwisely extends the combat presumption for PTSD only to those claimants who have been diagnosed as having PTSD by a VA provider or contracting provider. There is no sound reason to exclude PTSD diagnoses by private treating mental health care providers. In this respect we continue to urge VA to accept service in a combat area as combat service, thus avoiding such nonsensical distinctions as cannoneers in firebases in Vietnam and radio operators walking behind platoon commanders in Vietnam and ducking the same bullets as lacking combat exposure. We strongly urge the Committee to require application of an "any treating physician rule" to determinations regarding PTSD and all mental health issues in the same manner as any other form of trauma.

Medical VAE requests would be properly generated with the appropriate questions sent to the provider, including designation of the professional level of knowledge required for an adequate exam. This would require improved communication between VBA and VHA managers to provide for the appropriate expertise as well as timeliness of the exams. (The OIG Audit of VA's Efforts to provide Timely

Compensation and Pension Medical Examinations, March 17, 2010, determined that "VA has not established procedures to identify and monitor resources needed to conduct C&P medical exams and to ensure resources are appropriately planned for, allocated and strategically placed to meet the demand.") Concurrently with improved coordination should be the elimination of such practices as the assignment of complex medical issues, such as neurology or oncology issues, to nurse practitioners.

Temporary Authority for Performance of Medical Disabilities Examinations by Contract Physicians

In 1996 DVA entered into a contract with QTC to outsource compensation and pension ("C&P") disability benefit exams. The contract was procured under the Pilot Program for Use of Contract Physicians for Disability Examinations (Pub.L.104-275, Title V, Sect. 504, Oct. 9, 1996, 110 Stat. 3341). The pilot contract was for approximately $4 million. The initial legislation required a report to Congress in three years on the efficacy of the program.

Subsequently, a further authorization was enacted in 2003, as "Temporary Authority for Performance of Medical Disabilities Examinations by Contract Physicians" (Pub. L. 108-183, Title VII, Sect. 704, Dec. 16, 2003, 117 Stat. 2672). That legislation provided, inter alia: (c) "Expiration, - the authority in subsection (a) [of this note.] shall expire on December 31, 2009. No examination may be carried out under the authority provided in that subsection after that date." Subsection (d) also provided for a report by the Secretary to Congress on the efficacy of the program. It does not appear that either report ever materialized. Section105 of the Veterans Benefits Improvement Act of 2008 (Pub. L. 110-389; 122 Stat. 4145) further extended the expiration date to December, 2010.

The proposed legislation forwarded to the House and Senate veterans committees by Secretary Shinseki on May 26, 2010, in section 105, proposed to extend the contract authority for C&P examinations again for another two years. There does not appear to have ever been a report from the Secretary addressing "an assessment of the effect of examinations under that authority on the cost, timeliness, and thoroughness of examinations with respect to the medical disabilities of applicants for benefits under laws administered by the Secretary" as required by the implementing legislative authorization in 2003.

It should be noted in this regard that the VA-OIG audit of timeliness and accuracy of C&P exams noted that VBA had budgeted, for FY 2009, a total of $136 million for QTC exams, including $2.5 million in administrative and support costs. For FY 2010, VBA obligated $144 million for the QTC contract from its General Operating Expense Discretionary account. MES contract funding for six Regional Offices came from the same source, in FY 2009 $15 million and in FY 2010, $20 million was obligated. At the same time, they were able to determine that QTC had performed 17% of the C&P exams performed for VBA. There are no studies or reports available to this Committee by

which it is determinable what the comparative cost of departmental C&P exams may be. We strongly urge this Committee, prior to authorizing this significant expenditure of taxpayer funds, to determine the comparative costs of C&P exams performed by VHA for VBA and those by QTC and MES Solutions as well as require an audit of the timeliness, accuracy and adequacy of these examinations, as was done in the VA-OIG audit of those provided by VHA in the VA-OIG Report of March 17, 2010.

In light of the history of overbilling for these services in the reported amount of $6 million, it is essential that great care be taken in determining appropriate contracting practices with QTC and MES Solutions. We further urge this Committee to ensure that any contract for these services be secured through arms-length competitive bidding consistent with generally accepted government-wide contracting procedures, not through what amounts to sole-source resourcing.

The Review Process

We continue to encourage VBA to enhance the position of Decision Review Officer as the immediate supervisor over the Claim Processing Teams within the POD structure. The DRO program was initially designed to limit the number of appeals to the Board by resolving the issues at the RO appeals level. Built into the program was the opportunity for hearing, paper review and/or dialogue with the veteran and/or representative. The process is susceptible to an expanded role. Each DRO, tested and certified to the position, would then exercise quality review over the decisions rendered by the teams assigned to him for adequacy of development, as well as accuracy of the decisions. The DRO would provide mentoring for the RSVRs as part of the quality review.

A cogent, intelligible rating decision should issue that clearly and straightforwardly sets out the issue, the reason for the decision and the options available to the veteran. Section 205 of The Claims Processing Improvement Act, S. 3517, calls for specificity of notice to the claimant of the facts, regulations and laws relied on and the rationale of RO decisions. We support the elimination of the SOC and note that specificity in the rating decision and the provision of a form for the Notice of Disagreement should make the NOD somewhat easier to file. The provision in Sect. 206 of S. 3517 for electronic filing of the NOD should also expedite the appeal process. VLS supports this provision.

VLS continues to have reservations about the truncated period of time within which a claimant may file an NOD, pursuant to Section 206 of S. 3517, particularly in light of the significant numbers of unrepresented claimants, many of which, in the current generation of veterans from Southwest Asia conflicts, have significant impairments. Many of these veterans simply require a considerable period of time to realize that a rating decision is not in their best interest. We continue to support the perspective that statute and regulations at this stage should accommodate the most vulnerable claimants. Contacts with them and their families should be well documented in the file for purposes

of determinations of good cause for delayed NODs, and consistent with the perception of the non-adversarial nature of the proceedings at the RO level.

The expanded role of the DRO should provide enhanced clarity for the transition from rating decision to appellate status. The right to DRO review and a hearing should be clearly stated. The enhanced provision for communication between the claimant, representatives and the rating team should result in clearly defined factual and legal issues remaining for appeal to the Board, as proposed in section 208 of S. 3517.

Training Issues

The statistics from the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims give a strong indication that there are and will continue to be serious training issues in both the rating and appeals process. CAVC routinely remands 70-80 percent of the cases coming before it. Another 5 percent are reversed and then remanded. The CAVC agrees with the Board only 20-25 percent of the time, according to Judge Kasold's testimony of May 2009. In a system in which the Board has claimed an accuracy rate of in excess of 90%, there is clearly a disconnect. Similarly, the Board, in FY 2009 either remanded or allowed 61 percent of the 48,800 appeals in which they made decisions, thus finding that the Regional Office decision was correct in only 39 percent of the cases. This level of error is strongly suggestive of serious training deficiencies from the Benefits Academy to the continuing education which every rating employee is required to receive annually.

We encourage VBA to re-examine the curriculum and the qualifications of the instructors at the Academy, with the result that specific protocols be in place for appointment as an instructor. We also urge that advances in adult education methodology and recruitment of experts and consultants external to VA be utilized. The statistics indicate that the instructional and training entities have become cocooned, such that too often errors are repeated through instruction. The Academy should be the focal point and resource for all instruction agency-wide with a Director directly accountable to VBA management.

A complex array of disabilities affects the veteran population residual from Vietnam, the Gulf War, and Operation Enduring Freedom/Operation Iraqi Freedom. Rating employees have expressed the need for instruction in TBIs, and a significant error rate has been found with PTSD and herbicide exposure. VBA must ensure that the medical instruction blocs meet the needs of the demographics of the veteran population. The medical issues of exposure to toxins from the Gulf War to the burn pits in Iraq must be included as these affect multiple body systems.

We also encourages the POD modality to include a full-time training co-coordinator who on site monitors the training needs and requirements, sets a curriculum consistent with those universal to the agency, and ensures that instruction and Q&A are available to the individual employee. Additionally, on-site proficiency testing is then

available for VSRs ready for promotion to RVSRs and RVSRs aspiring to the position of DRO. (The exam certifying the DRO should equate with the Agent's exam and re-certification should be required bi-annually to ensure currency with case law and regulatory changes.) On-site training should also include training in medical issues.

Attorney Representation

We continue to urge legislative amendment of current law (at 38 U.S.C. section 5904(c)) to expand the availability of fee-based representation to veterans filing the initial claim with VA. The regulations governing fee-based practice before the agency are the most restrictive of any agency in the federal government. We must remember that when the original fee limitation was imposed in the mid-1800's, the veteran was in nearly all instances marginally educated and lawyers were generally looked upon with disfavor. There was little licensing and few restrictions on practice or ethics. Since that time, veterans have become better-educated and discerning. And rules of professionalism and conduct in the legal profession have become more restrictive, requiring less need for fee limitations within the disability claims process.

Today's veteran has fought a highly technological war. This is the best educated army in history. Men and women who have fought and survived the significant horrors of today's battlefield deserve the dignity of determining for themselves whether they wish to represent themselves, be represented by an organizational VSO or retain professional counsel. This generation of veterans, like the Vietnam veterans before them, has founded their own veterans' organizations to address the issues inherent in the conflicts they experienced. Consistent with this sense of proprietorship, today's veterans want to have fee-based representation available to them when they first file their disability claims with the VA, not when they must resort to the appeal of their claim's denial.

The most recent annual report of the Chairman of the Board of Veterans' Appeals demonstrates the value of attorney representation to veterans, their families and survivors. The enactment of the Veterans Benefits, Health Care, and Information Technology Act of 2006, P.L. 109-461, for the first time imparted to veterans the right to retain counsel should they wish to do so. In FY 2009, those claimants who had attorney representation at the BVA received a larger percentage of favorable results than did those without attorney representation and a larger percentage of favorable results than did those who were represented by VSOs, as documented in the following chart:

FY 2009

	Allowed		Remanded		Positive Outcome	
Representation	**No.**	**%**	**No.**	**%**	**No.**	**%**
VSO's Overall	7,688	24.8	11,714	37.8	19,402	62.6
American Legion	2,100	23.5	3,469	38.8	5,569	62.3
Amvets	65	25.6	91	35.8	156	61.4
DAV	3,853	25.5	5,607	37.1	9,460	62.6
MOPH	179	31.7	191	33.8	370	65.4
PVA	118	28.7	156	38.0	274	66.6
VFW	1,138	24.2	1,746	37.2	2,884	61.3
VVA	235	23.8	454	46.0	689	69.8
State Svs. Org	1,975	24.1	2,802	34.2	4,777	58.3
Attorney	853	22.7	1,743	46.4	2,596	69.0
Agents	21	23.1	32	35.2	53	58.2
Other Rep	304	28.1	357	33.1	661	61.2
No Rep	886	18.7	1,554	32.9	2,440	51.6
Total	11,727	24.0	18,202	37.3	29,929	61.3

We strongly support the repeal of the restriction on attorney representation. We further support the rejection by this Committee of the proposed legislation which the VA drafted and titled the "Veterans Benefits Programs Improvement Act of 2010" which is antithetical not only to according veterans the right to attorney representation in filing their claims for compensation, but to any meaningful review of Agency decisions regarding those claims. Section 207 of the proposed legislation significantly limits the application of the Equal Access to Justice Act ("EAJA") fees by limiting the veteran's payment of EAJA fees. Upon issuance of a CAVC decision remanding the case back to the Agency, and determination of the appellant to be the prevailing party with a substantially justified legal position, the appellant under this provision, would not receive the awarded fee. Only if the remand results, either before the Board or the RO in an ultimate award of monetary or other benefits, would the EAJA fees ultimately be forthcoming. We submit that this proposed approach will substantially limit attorney representation before the Court. It consequently requires the closest scrutiny by both Congressional chambers.

Appellate Issues

We do not support other provisions of the Secretary's proposed legislation, including the imposition in sections 202 and 203 of jurisdictional time limits on appeals

within the Agency. Similarly, section 207 of the proposed Claims Processing Improvement Act, S. 3517, also imposes significant procedural burdens on the claimant that are difficult to meet without skilled counsel or other representation. These provisions tend to the perception of a cynical effort to eradicate the backlog by making it extremely difficult for a generation of veterans to perfect their claims and meet shortened filing deadlines. This is particularly so when over half of them are diagnosed with TBIs, PTSD or other mental disorder, all of which impair the ability to organize and respond to deadlines. Neither do we support the proposal in section 206 of the Secretary's proposed legislation that the Board no longer be required to render decisions in which factual determinations are supported by adequate reasons and bases, but such determination must only be "plausible."

We support the automatic waiver of AOJ jurisdiction once the appeal is at the Board. However, while the matter is still at the RO, but in appellate status, Section 209 of S. 3517 deprives the RO of the opportunity to correct errors in decisions which, because of a change of law or regulation or discovery on final review have become erroneous prior to transmission to the Board.

We do not support the provision in section 210 of the proposed Claims Processing Improvement Act, S. 3517, which appears to severely limit the claimant's right to the choice of forum for a hearing, and which delegates to the Board the determination of the manner and location of the claimant's hearing. We are concerned that there may be a chilling effect on a severely mentally or physically impaired claimant's election of a hearing if the perception arises that the circumstances are totally within the control of the Board. We urge that any regulatory implementation of this provision guard against any potential for abuse.

Qualifications of Board of Veterans Appeals Judges

We continue to strongly support legislative and regulatory amendments to require that judges hearing appeals at the Board be required to meet ALJ qualification standards, consistent with such positions elsewhere in the federal government. We urge the recognition that the statutory and regulatory structure of issues considered by the Board is no more complex, comparatively, than similar issues considered by ALJs with Social Security, Department of Labor or any other government entity. We also continue to support the decentralization of the hearing function of the Board to permit more access for veterans to in-person hearings in the same way as occurs with Social Security hearings, reducing the psychological barriers of video cameras in increasing the ability of the judge to assess the demeanor and credibility of claimants and witnesses within the relatively informal context of a veteran-friendly hearing atmosphere.

Court Decisions

We strongly support the requirement that CAVC render a decision of all issues

raised before it, rather than relying on the *Best/Mahl* rule to narrow the basis of their rulings so as to require a further return to the Court for resolution of those issues left unresolved. This practice has resulted only in expanding the backlog and adding further turns on the "hamster wheel" for the appellant. We also support the expansion of jurisdiction of the Court to include class action jurisdiction for the resolution of issues common to all veterans, with continued availability of appeal to the Federal Circuit.

Needs and Interests of Indian Veterans

Section 213 of the proposed S. 3517 creates an opportunity for the use of Memoranda of Understandings with at least two tribal councils to improve the quality of claims for compensation by Indian veterans. This is a welcome beginning in an area long overdue for revision. We believe that in order to establish meaningful improvements in the number and quality of claims for compensation coming from Indian Country, particularly from those landed reservations in the West, it is necessary to go much further than Memoranda of Understanding of intent.

The Federal Bar has called for the establishment of Traditional Tribal Veterans Centers on for the delivery of a wide range of programs, cooperative (with IHS) health care and providing access to independently trained tribal veterans representatives. The tribal veterans' representatives, employed by the tribal councils, would be accredited to serve as advocates, providing access to the claims process in the same manner and on the same footing as state and county representatives. In order for that to occur, considerable amendments must be made to the current regulatory language providing for certification of state and county veterans' representatives.

We have attached hereto as appendices, proposed legislative language amending Sect. 213 to establish a pilot project that remains consistent with the intent of the original proposal and underlying language. \

We thank the Committee for the opportunity to share with the Committee the foregoing views and recommendations. We must all take whatever actions are necessary to make as whole as we can, without regard for ethnicity, the men and women who have put their lives on the line in order that we may have the luxury of this discussion. We owe them not only treatment of wounds seen and unseen but as much restoration of their quality of life as is humanly possible. With now over a million pending claims, it matters not who represents whom, or on whose shoulders the blame properly lies. The job must be done, and rather than ensure that each recommendation for revision or reform is nibbled into oblivion by the ducks of turf protection, it is time to recognize, as did Pogo, that we have met the enemy and he is us.

APPENDIX 1

Proposed Language Amending The Claims Processing Improvement Act, S. 3517

To Establish Traditional Tribal Veterans Centers As Cooperative Enterprises between the Veteran Health Administration and the Indian Health Service

Section 213. Pilot Program on Participation of Local and Tribal Governments in Improving Quality of Claims for Disability Compensation Submitted to Department of Veterans Affairs.

(a) PILOT PROGRAM REQUIRED. The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of entering into memorandums of understanding with ~~local governments~~ and trial organizations ***for the establishment of Traditional Tribal Veterans Centers as cooperative enterprises between the Veterans Health Administration and the Indian Health Service--***

(1) to provide a central resource on the landed reservation for Indian veterans and their families to receive mental health counseling within the parameters of traditional and conventional healing modalities, interface with the Veterans Health Administration and the Indian Health Service to provide training and support for home care-givers and increase the availability of health care through VHA clinics and telemedicine;

(2) to provide through memoranda of understanding with tribal councils the representation of Indian veterans on the same reservation by Tribal Veterans Service Officers in the Department of Veterans Affairs, in the same capacity as state and county Veterans Service Organizations and fully accredited through training;

(3) to improve the quality of claims submitted to the Secretary for compensation under Chapter 11, of Title 38, United States Code; and

(4) to provide assistance to veterans who may be eligible for such compensation in submitting such claims ***through a trained advocate within the cultural context of each tribal entity.***

(b) The Secretary shall make conforming regulatory amendments to

(1) 38 C.F.R. Sect. 14.628(b) by adding "(2) Tribal organization. An organization created and primarily funded by a tribal government for the purpose of serving the needs of veterans of the Tribal Reservation or other entity served by that Tribal government may be recognized. Only one such organization may be recognized in each Tribal government." And

(2) 38 C.F.R. Sect. 14.629(a)(2) to include: "or in the case of a county veterans service officer recommended by a recognized State organization, ***or a Tribal veterans service officer recommended by the Tribal Council,*** meets the following criteria: (i) is a paid employee of the county ***or Tribal Council*** working for it not less than 1,000 hours annually.

(c) MINIMUM NUMBER OF PARTICIPATING TRIBAL ORGANIZATIONS – In Carrying out the pilot program required by Subsection (a), the Secretary shall enter into memorandums of understanding with at least two tribal organizations.

(d) TRIBAL ORGANIZATION DEFINED. – In this section, the term "tribal organization" has the meaning given that term in Section 3765 of title 38, United States Code.

APPENDIX II

FEDERAL BAR ASSOCIATION
VETERANS LAW SECTION

PROPOSAL TO ESTABLISH
TRADITIONAL TRIBAL VETERANS CENTERS

Introduction

The National Congress of the American Indian estimates that 22% of the Indian/Native American (including Alaskan and Hawaiian Natives and Pacific Islanders) are either members or veterans of the U.S. Armed Forces. This is the largest single ethnic group within the American Armed Forces. When there was a draft, the numbers of draftees from this group were relatively few, and those that did receive notices tended to enlist to receive choice of service.

There are several reasons for the extraordinary level of participation in the armed services, many of which are consistent with those of other segments of our society. Three other reasons stand out.

First is the warrior tradition, which remains strong and much honored in Indian Country. There is a strong family tradition of military service. American citizenship was not granted to American Indians until 1924. When the draft was instituted, Indians were included. However, the tradition of military service has been strong since the 1700s in the Revolution and French and Indian Wars.

Second, until 1962 Indians living on some reservations were not permitted off of the reservations without "good Indian" cards, and the armed services provided an exit from reservations.

Third, since that time the "economic draft" has provided incentive for those living on reservations where the unemployment rate is historically up to and frequently in excess of 90% and the opportunities for social and economic upward mobility are otherwise limited.

Needs of Indian/Native American Veterans

Meaningful access to the Veterans benefits claim system, A large number of Indian/Native American veterans lack access to the Veterans Benefits claim system. Traditional veterans service organizations do not maintain a strong presence in Indian Country, leaving representation for the most part to state and county personnel. In too many instances these individuals either never go on the reservations or go infrequently and ineffectively. Racism plays a significant role.

Claims are often pursued if at all, only to the first rating decision. The element of distrust of non-Indian governmental entities and personnel plays a significant role in this situation, particularly when the issues involve psychological injury. In many instances, if a relative was denied VA benefits or treatment, the veteran will simply not ask at all. Regional Offices are frequently hundreds of miles away, and are virtually inaccessible. Access to C&P exams and Decision Review Officer hearings is limited or unavailable entirely for lack of adequate notice and transportation for the distances involved as well as other economic factors.

Encouragement to pursue appeals of denials of Veterans benefits claims. There are proportionally far fewer appeals of denials of benefits among Native American veterans than with any other group. There is a cultural inhibition against questioning what is perceived as governmental refusal. The long history of failures in the trust relationship between Indians and the US Government has resulted in an extremely fatalistic attitude about benefits. Added to this is the fractured state of the VA benefits claim system with inadequate notice provisions and arbitrary decisions. Educational deficiencies limit the ability to understand the complex language of rating decisions and statements of the case.

Limited or non-existent capable representation before the Regional Office nearly excludes any potential for appellate representation. Limited internet availability or capability further limits availability of legal representation from the relatively limited pool of attorney and non-attorney practitioners. Without meaningful representation, the appellate rights are significantly limited. Appeals from Board decisions to the CAVC are limited by the same factors: inadequate and confusing notice of appellate rights and decisions turgid with incomprehensible bureaucratic prose.

Culturally-compliant counseling. PTSD is statistically at 50% or higher in the veteran population as a whole that served in Vietnam, Afghanistan and Iraq. It may be even higher among Indian/Native American veterans. The incidence of suicide, particularly among all military personnel with multiple deployments in Southwest Asia and veterans of those deployments is a serious concern for VA and DOD. It is of particular concern in Indian country where suicide is already a mental health issue.

There is little or no culturally compliant counseling available to Indian/Native American veterans and their families, particularly in dealing with the secondary issues of self-medication, substance abuse, domestic violence and petty crime. Unaddressed issues of PTSD that lead to commission of offenses punishable by imprisonment have populated the federal prisons in the West with Indian/Native American veterans. There are few statistics kept on these veterans incarcerated, although in Montana there is some estimate that of the Indian/Native American population of the federal prisons (over 50 %of the population), three quarters of them are veterans.

Mental health care for Indian/Native American women veterans. The mental health care needs of Indian/Native American women veterans, especially for treatment of

PTSD and co-morbidity, are huge and unaddressed. The statutory and regulatory definitions of "combat" for the purposes of the presumption of a stressor are particularly difficult for all women veterans. A Combat Infantry Badge has traditionally been the prerequisite for presumptive stressors. The exclusion of women from any combat MOS places a more onerous burden on women veterans seeking compensation for PTSD and ignores the reality of counter-insurgency warfare. In many ways the needs for culturally compliant counseling and community support are greater with this group of veterans.

The plight of Indian/Native America women veterans with PTSD resulting from Military Sexual Trauma is significant and especially difficult for Indian/Native American women veterans because of the cultural ramifications attached to these experiences. These incidents are rarely reported, often not even to relatives or close friends. "Evidence" required to "prove" stressors has become reliant on other illnesses, behavioral issues, declining performance evaluations, requests for transfer and other indirect indicia of the occurrence of the event. The requirements of specificity of detail for MST are thus rarely met and the cultural ramifications of even discussing such matters pose a significant burden for the Indian/Native American woman veteran.

Medical record sharing between IHS, VHA and DOD. There are still large gaps in the interface between IHS, VHA and DOD medical records. Proposed legislative and regulatory initiatives, if adopted expeditiously, should ameliorate some of the record sharing issues. There are similar gaps in available health care for the wounded warrior. Those returning from OIF/OEF with severe trauma, both male and female, often require continuing wound care, physical rehabilitation and prostheses, as well as care for TBIs and paralysis. There are insufficient mechanisms in place to insure that veterans are sent to VA facilities when needed rather than IHS or IHS contract facilities.

Access to Job Training and Economic Opportunity. There is little meaningful availability of training and incentives for entrepreneurial, economic and educational development tailored to the needs of Native American veterans utilizing the resources of VA, Small Business Administration, Department of the Interior, Department of Labor and others. Significant benefits and programs exist for all veterans. Meaningful, informed access to these opportunities is significantly lacking in Indian country. The mechanics of applying for programs providing economic opportunities are extremely difficult to navigate without the availability of skilled counselors.

The only mention in the entire Department of Veterans Affairs budget of "Native Americans" is the reference to funds allocated to the Native American Veterans Housing Loan Program. Veterans applying for these loans frequently require advocacy within the tribe, since loans are made subject to tribal council approval. There is no provision in either the DVA budget or the Independent Budget, in which the terms "Indian" or "Native American" appear at all, for reconciling and coordinating economic opportunities available to Indians who happen to be veterans.

Proposed Solution: The Establishment of Traditional Tribal Veterans Centers

Mission of the Centers. The start-up on the reservations of "Traditional Tribal Veterans Centers" would address a wide range of issues for the Native American veteran. Veterans Centers, established by VA after Vietnam, many in non-hospital suburban and urban settings, primarily provide counseling and treatment for PTSD and other mental health issues. They were designed to provide outreach for the significant number of veterans diagnosed with PTSD who were reluctant to go to medical centers. There is currently legislation to increase the number of these centers. It is important that legislation include a pilot program for start-up of Traditional Tribal Veterans Centers.

On the reservations, "Traditional Tribal Veterans' Centers" would provide an expanded range of services. They would be created as cooperative enterprises between VA, the Indian Health Service, Department of the Interior and the tribal councils, fully implementing the provisions of the MOU entered into by VA and IHS in 2003. This would provide Indian/Native American veterans with mental health services by both Western and Traditional Healing practitioners. The resurgence of cultural and religious traditions and their importance in everyday life throughout Indian Country mandates that the availability of centuries old traditional healing practices be included in any mental health program implemented for the Centers. Provisions must be made for documentation of the implementation of traditional healing as "continuing treatment" for benefits purposes.

These Centers would also provide resources for family counseling, health care for women veterans, including MST/PTSD and other women veterans' health issues. The dual modalities are particularly important for veterans in transition between combat and civilian life. DOD, VA and IHS records are currently gearing up for inter-departmental access.

How the Centers Would Work. Each reservation already has social services entities and some measure of family counseling. Incorporation of some of these elements with guidance and specialized training from VA through the tribal councils and IHS into services tailored to the veteran and his/her family would represent a significant focus of each Center. This approach should reduce the number of prosecutions of veterans in tribal courts and legitimize veterans' issues within the reservation community. If "Veterans Treatment Courts" programs are developed on the reservations, this approach would provide the treatment modality.

The Centers would also serve as sites for training of the family caregivers provided for in current legislation. Integrating home health care programs with training, certification and re-certification of home care providers at the Centers would result in heightened community awareness of the issues faced by the veterans' families. It also would obviate the necessity for long-term care in VA or state facilities that do not provide for cultural or familial needs and are far removed from the reservations and families.

Caregiver training by necessity addresses care of the residuals of trauma, including care of prostheses, and service connected diseases and disorders. Given this capability, continuing care by VA and IHS interfacing with area VA clinics and VA Medical Centers would provide a continuum of care with referral to VA facilities when deemed appropriate. A substantial part of the VA/IHS interface would be the availability of VA medications at the Centers overseen either by VA pharmacists or IHS pharmacists provided with specialized training in the VA formulary. VA/IHS interface would also provide for medical care coordination that ensures the maintenance of VA standards of care for veterans that require medical intervention at IHS facilities, as well as oversight for use of fee-based care off the reservation.

Benefits counseling and representation would be a substantial feature of the Traditional Tribal Veterans Centers. Benefits counseling and representation by a trained Tribal Veterans Representative, accredited to the agency on the same legal footing as current state and county employees who represent veterans before the DVA would provide meaningful access to Compensation and Pension benefits. Meaningful access to the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims would also improve substantially. This would require statutory and regulatory changes, as existing regulations provide only for state and county employees, excluding by definition tribal representatives from this status. Tribal representatives would be employees of the tribal councils.

Currently there are Tribal Veterans Representatives ("TVRs") in many areas, particularly the Northern Plains and the Northwest. Originally this highly innovative concept was designed and implemented by James R. Floyd, currently Network Director of VISN 15 in Kansas City, MO. It represents an effort to provide the Indian/Native American veteran with a trustworthy emissary to assist in seeking benefits and an advisor in dealing with the VA benefits and health care bureaucracy.

The drawback of TVRs, at least on the benefits side, is that they may only function as emissaries, in cooperation and as liaison with accredited VSOs. They lack accreditation in their own right, and are trained by VA personnel who do not have an advocate's perspective and who of necessity function within a system that has become de facto adversarial over the last two decades. This gives rise to issues of conflict of interest as well as a wholly unintended contribution to the inadequacy of representation. They should serve as a valuable resource for transition into accredited representation. The result of appropriate training would be availability of and incentive for appeal of unfavorable decisions by the Agency to the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims.

TVRs could serve a valuable role the delivery of veterans benefit claim assistance at Traditional Tribal Veterans Centers. They would be trained to serve as veterans advocates, rather than as advisors, and would be stationed at each Center, equipped with IT networking and library resources. Their training would include annual CLE and regular legislative, regulatory and case law updates. The Centers would also provide internship opportunities for attorneys in Indian Country with an interest in Veterans Law.

Where helpful, the Centers also could provide assistance to non-Indian veterans from surrounding areas that suffer from the same geographical and economic barriers. A veteran is a veteran.

The introduction of trained TVRs would lead to greater awareness and pursuit of economic benefits by all veterans on the reservations, in applying for home and business loans, pursuing economic and employment opportunities through programs and resources offered by DVA, Small Business Administration, Department of the Interior, Department of Labor and others.

Benefits of the Centers. The economic benefits derived from these services cannot be emphasized enough. Veterans typically comprise around 10% of the population of most reservations. The delivery of entrepreneurial education, training and resources for capital, as well as increasing the flow of tax-free Compensation and Pension income, would provide economic benefits to the entire tribal community. Many of the areas of economic interest to the tribal councils and the economic development entities on the reservations, such as energy, gaming, cultural development, and general business and educational enterprises, dovetail with areas open to financial endeavor through programs designed for veterans. Even the most severely wounded veterans would gain through Vocational Rehabilitation and Independent Living programs the opportunity for economic survival and increased employment opportunities for themselves and the tribal community.

The Centers would also provide counseling in educational benefits and opportunities for veterans and dependents, including spousal benefits and benefits for widows and widowers of deceased veterans. The improvement of benefits available to widows, widowers and dependents of veterans, as well as the relaxation of re-marriage restrictions, makes this an area in which skilled counseling is a necessity. Pending legislation provides for families of severely wounded warriors to travel and be with them. This area of counseling would be available through Traditional Tribal Veterans Centers, as well the delivery of information and advice about the transition from active duty to veteran status, including the transition from one rating system to another, which remains in flux despite the intent to render the whole process "seamless."

Conclusion

The creation of an Office of Indian Affairs within the Office of the Secretary of Veterans Affairs will provide a sound basis for the improvement of rights and benefits for Indian/Native American veterans who have served their country to a much greater degree than any other group. For too long their needs and interests have been ignored by DVA, VSOs and the American public. This Office should provide further linkage with the Centers to ensure that the mission and the quality of its execution remains constant and consistent.

Establishing Traditional Tribal Veterans Centers on reservations far removed from DVA facilities is a necessity. This is particularly true because of the substantial numbers of wounded warriors in Iraq and Afghanistan with injuries seen and unseen that require special care and equipment with life-long rehabilitation needs.

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The views expressed herein represent those of the Veterans Law Section of the Federal Bar Association and not necessarily the Federal Bar Association or any other component thereof.

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