

LEGISLATIVE HEARING ON H.R. 1137, H.R. 3047,
H.R. 3249, H.R. 3286, H.R. 3415,
H.R. 3954, AND H.R. 4084

HEARING
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS
OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS

FIRST SESSION

NOVEMBER 8, 2007

Serial No. 110-60

Printed for the use of the Committee on Veterans' Affairs



U.S. GOVERNMENT PRINTING OFFICE

39-469

WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON VETERANS' AFFAIRS

BOB FILNER, California, *Chairman*

CORRINE BROWN, Florida	STEVE BUYER, Indiana, <i>Ranking</i>
VIC SNYDER, Arkansas	CLIFF STEARNS, Florida
MICHAEL H. MICHAUD, Maine	JERRY MORAN, Kansas
STEPHANIE HERSETH SANDLIN, South Dakota	RICHARD H. BAKER, Louisiana
HARRY E. MITCHELL, Arizona	HENRY E. BROWN, JR., South Carolina
JOHN J. HALL, New York	JEFF MILLER, Florida
PHIL HARE, Illinois	JOHN BOOZMAN, Arkansas
MICHAEL F. DOYLE, Pennsylvania	GINNY BROWN-WAITE, Florida
SHELLEY BERKLEY, Nevada	MICHAEL R. TURNER, Ohio
JOHN T. SALAZAR, Colorado	BRIAN P. BILBRAY, California
CIRO D. RODRIGUEZ, Texas	DOUG LAMBORN, Colorado
JOE DONNELLY, Indiana	GUS M. BILIRAKIS, Florida
JERRY McNERNEY, California	VERN BUCHANAN, Florida
ZACHARY T. SPACE, Ohio	
TIMOTHY J. WALZ, Minnesota	

MALCOM A. SHORTER, *Staff Director*

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

JOHN J. HALL, New York, *Chairman*

CIRO D. RODRIGUEZ, Texas	DOUG LAMBORN, Colorado, <i>Ranking</i>
PHIL HARE, Illinois	MICHAEL R. TURNER, Ohio
SHELLEY BERKLEY, Nevada	GUS M. BILIRAKIS, Florida

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Veterans' Affairs are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

CONTENTS

November 8, 2007

	Page
Legislative Hearing on H.R. 1137, H.R. 3047, H.R. 3249, H.R. 3286, H.R. 3415, H.R. 3954, and H.R. 4084	1

OPENING STATEMENTS

Chairman John J. Hall	1
Prepared statement of Chairman Hall	34
Hon. Doug Lamborn, Ranking Republican Member	3
Prepared statement of Congressman Lamborn	35
Hon. Shelley Berkley	8

WITNESSES

U.S. Department of Veterans Affairs, Bradley G. Mayes, Director, Compensation and Pension Service, Veterans Benefits Administration	18
Prepared statement of Mr. Mayes	41

American Legion, Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission	10
Prepared statement of Mr. Smithson	38
Brown, Jr., Hon. Henry E., a Representative in Congress from the State of South Carolina	7
Prepared statement of Congressman Brown	36
Filner, Hon. Bob, Chairman, Committee on Veterans' Affairs, and a Representative in Congress from the State of California	5
Paralyzed Veterans of America, Richard Daley, Associate Legislation Director	9
Prepared statement of Mr. Daley	37

SUBMISSIONS FOR THE RECORD

American Veterans (AMVETS), Raymond C. Kelley, National Legislative Director, statement	45
Disabled American Veterans, Kerry Baker, Associate National Legislative Director, statement	46
Gold Star Wives of America, Inc., Rose Elizabeth Lee, Chair, Government Relations Committee, statement	51
Langevin, Hon. James, a Representative in Congress from the State of Rhode Island, statement	52
National Funeral Directors Association, Lesley Witter, Director of Political Affairs, letter	53
National Veterans Legal Services Program, Ronald B. Abrams, Joint Executive Director, statement	54

MATERIAL SUBMITTED FOR THE RECORD

Hon. James B. Peake, M.D., Secretary, U.S. Department of Veterans Affairs, to Hon. Bob Filner, Chairman, Committee on Veterans' Affairs, letter dated March 6, 2008, transmitting Administration views for H.R. 4084	58
--	----

**LEGISLATIVE HEARING ON H.R. 1137,
H.R. 3047, H.R. 3249, H.R. 3286, H.R. 3415,
H.R. 3954, AND H.R. 4084**

THURSDAY, NOVEMBER 8, 2007

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

The Subcommittee met, pursuant to notice, at 2:01 p.m., in Room 334, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Berkley, Lamborn and Turner.

Also Present: Representatives Filner and Brown of South Carolina.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. Good afternoon, ladies and gentlemen. The Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, will come to order for a legislative hearing on H.R. 3047, H.R. 3249, H.R. 3286, H.R. 3415, H.R. 1137, H.R. 3954, and H.R. 4084.

Before we begin, I ask unanimous consent that Congressman Filner and Congressman Brown be invited to sit at the dais and prevent their testimony for the Subcommittee hearing today.

Hearing no objection, so ordered.

Congressman Filner and Congressman Brown, welcome.

Good afternoon, and I would ask that we all rise for the Pledge of Allegiance. Flags are at either end of the room.

[Pledge of Allegiance.]

Mr. LAMBORN. Mr. Chairman, are we presenting or preventing their appearance?

Mr. HALL. I misspoke. They are presenting their testimony.

First of all, thank you to all the witnesses for your testimony on these seven noncontroversial but critical bills concerning memorial benefits, pensions and the U.S. Department of Veterans Affairs (VA) claims processing system. I would specifically like to thank my colleagues, Mr. Filner, the Chairman of the full Committee; Ranking Member Lamborn; Ms. Berkley; Mr. Langevin; and Mr. Brown for joining us today. I look forward to hearing their testimony on their respective legislation.

Four of the bills that we will consider today address the memorial assistance and death benefits provided to the families of our

veterans. At these times of grief, it is important that we honor our veterans' service and sacrifice.

Due to the current deployment schedule of our active-duty troops and the aging of our veterans from previous conflicts, it has become increasingly difficult to ensure military presence for proper honors details at veterans' funerals. The "Providing Military Honors for Our Nation's Heroes Act," H.R. 3954, introduced by Chairman Filner, attempts to increase the number of details available to veterans' families and help ensure that the proper honor is provided at veterans' burials. This legislation would authorize the Secretary of Veterans Affairs to reimburse volunteers from approved organizations for expenses incurred while providing these vital ceremonial duties.

The "Veterans Burial Benefits Improvement Act of 2007," H.R. 3249, introduced by my colleague from Nevada, Ms. Berkley, would increase burial allowances and plot allowances for both service-connected and non-service-connected veterans. This legislation allows for annual adjustments to ensure that these benefits will continue to keep pace with rising funeral and burial costs, ensuring that all of our veterans can be interred in a proper and respectful manner.

H.R. 3415, introduced by Mr. Langevin, aims to assist family members of those buried in the American Battle Monument Commission cemeteries abroad by providing them with a remembrance of their loved one on U.S. soil. As it may prove difficult for family members to travel to these overseas grave sites, this legislation would authorize memorial markers for this limited population of servicemembers, which could then be placed in national veterans' cemeteries closer to home.

Today, we will also consider the appropriateness of current law regarding Dependency and Indemnity Compensation (DIC). H.R. 3286, also introduced by Chairman Filner, will shorten the time period under Section 1318 of Title 38, United States Code, for which a veteran with a service-connected injury must be rated continuously totally disabled immediately preceding his or her death before the veterans' survivors are eligible for DIC benefits from 10 years to 1 year.

Given the current backlog of pending claims, veterans wait years, even decades, to receive their final rating. In the case of totally disabled veterans, the resulting benefits may, unfortunately, come too late. These delays should not negate our responsibilities to these veterans' families, and this legislation will ensure that their survivors receive the benefits due to them.

We will also hear testimony on updating the Special Pension awarded to Medal of Honor recipients and their spouses. H.R. 1137, introduced by Mr. Brown, would increase this Special Pension to \$2,000 per month from \$1,104. This pension was last adjusted in 2006, but the acts of these extraordinary veterans, currently 109 living, resulted in the receipt of our highest military honor, and the benefits that we provide to them should reflect nothing less.

Today we will also consider the VA claims processing system and address two pieces of legislation that seek to make the process more efficient and more effective for our Nation's veterans. Ranking Member Lamborn introduced the Veterans Claims Processing Innovation Act of 2007, H.R. 3047, which among other things seeks

to increase the effectiveness of claims filing and addresses the VA's work credit system. I look forward to hearing more about this bill.

Lastly, the "Veterans Quality of Life Study Act of 2007," H.R. 4084, which I recently introduced, would take an important step toward opening the dialog in this Subcommittee to examine one of the groundbreaking recommendations set forth by the Veterans' Disability Benefits Commission, the Institute of Medicine and the President's Commission on Care for America's Returning Wounded Warriors regarding quality of life. Answering the call of these recommendations, this legislation would require the VA to commission a study to determine whether, to what extent and how its disability rating system should compensate veterans for the loss of quality of life these impairments impose on their lives.

This legislation also seeks to allow substitution of claimants, ensuring that eligible family members can take the place of a veteran in the event of his or her death in the disability claims processing system and not have to begin the process all over again.

Lastly, this bill would expand the categories of reporting requirements of the annual report of the U.S. Court of Appeals for Veterans Claims (CAVC) that would further assist Congress in analyzing and addressing the CAVC's workload and backlog. The last provision deals with the concerns the CAVC has raised here about space allocation and the proposed construction of a Veterans Court-house and Justice Center.

During times of war such as our Nation is experiencing today, we must simultaneously ensure the proper compensation and support for our current veterans while also creating and implementing innovative solutions that will allow us to care for those who will become veterans, I look forward to hearing from the veterans service organizations (VSOs) and the VA's representatives on these bills.

Mr. HALL. Thank you very much, and I now recognize Ranking Member Lamborn for his opening statement.

[The prepared statement of Chairman Hall appears on p. 34.]

OPENING STATEMENT OF HON. DOUG LAMBORN

Mr. LAMBORN. Thank you, Mr. Chairman, for yielding; and I thank you and your staff for holding this hearing today. I requested it earlier in the session, and I commend your bipartisanship in holding it today.

This afternoon, we are considering several pieces of legislation, all of which are of interest and potential value. While I am currently not opposed to any of the proposed legislation, I am concerned about the mandatory offsets that would be necessary to pass some of these bills under PAYGO rules. That being said, I look forward to hearing more about these bills from our colleagues and from the other witnesses who are with us here today.

Mr. Chairman, I would like to focus the rest of my statement on discussing the bill I introduced, H.R. 3047, the "Veterans Claims Processing Innovation Act of 2007." This bill has the bipartisan support of 32 cosponsors and is supported by many of our witnesses here today.

H.R. 3047 will bring VA's compensation and pension system into the 21st century. By increasing accountability and leveraging technology at the Veterans Benefits Administration (VBA), this bill

would improve the accuracy and speed of benefits claims processing. Section two of the bill will require VA to create a new system for claims processors to acquire credit for their work. One way to reduce the disability compensation backlog is to ensure that VA adjudicators rate the claim correctly the first time.

While I believe that the system described in section two will help achieve this goal, I am open to other suggestions that will ensure that VA adjudicators focus on accuracy as well as speed. As I have said before, most veterans would rather wait a few more days for their claim to be adjudicated correctly the first time, than having it to be adjudicated quickly and have it be wrong.

Section three of my bill would require VA to establish a pilot program to create a regional Office of the Future where all claims would be processed electronically. Mr. Chairman, we have heard from numerous witnesses at several hearings during this session that processing claims electronically is the way of the future and could help prevent future VBA backlogs.

After several questions and concerns were raised about this section, I was happy to work with veterans service organizations, and the majority staff, to create the amendment in the nature of a substitute for H.R. 3047 that I will offer when this bill is marked up. I want to make it clear that this provision would only establish a pilot program for electronic claims processing to aid VBA employees with their adjudication and would not replace them.

Section four of the bill would allow substitution of family members for a deceased veteran for the purposes of acquiring accrued benefits for which they are due. I am happy to see that a similar provision was included in your bill, Mr. Chairman; and I look forward to working with you on this important measure.

The final section of my bill would require VA to use a reputable private entity to evaluate its quality assurance and training programs. While I understand and support VA's current attempt to centralize and improve training, I would like an independent organization to verify that they are on the right path.

Mr. Chairman, I am very disappointed in the testimony from VA on H.R. 3047. I understand that this bill is not perfect. But rather than offering a simple out-of-hand dismissal of the bill, I would have appreciated constructive input from them on how to perfect this legislation to improve the system.

My staff has asked VA numerous times for ways that we could help them improve this outdated system with little response. That is why I am happy to read about the three initiatives in their testimony which seem to be moving in this direction.

I am committed to working with you, Mr. Chairman, with the VA and with other stakeholders to perfect legislation that will revolutionize the disability compensation system and bring it in line with modern technology. I would like to thank the veterans service organizations for their support of this legislation, and I suggest to my colleagues that they also read the testimonies from American Veterans (AMVETS) and Mr. Ron Abrams of the National Veterans Legal Services Program (NVLSP) who both support H.R. 3047 but were unable to be with us today but have submitted for the record.

Mr. Chairman, I extend my thanks to you and your staff for holding this hearing; and I look forward to hearing the testimony of our colleagues and the other witnesses today. And I yield back.

[The statement of Congressman Lamborn appears on p. 35.]

Mr. HALL. Thank you, Mr. Lamborn.

Welcome to the club of those who have had, shall I say, negative comments to their legislation submitted by the VA. But I am sure that that is not the whole story and that there is a constructive side to come, to be revealed.

Now I would like to recognize the Chairman of the full Committee on Veterans' Affairs, Mr. Filner, for remarks on his legislation or anything else.

STATEMENT OF BOB FILNER, CHAIRMAN, COMMITTEE ON VETERANS' AFFAIRS, AND A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. FILNER. Thank you, Mr. Chairman.

I am president of that club, by the way. You are mere freshmen. They have been tearing apart my stuff for 15 years.

Thank you, Mr. Hall, for your leadership of this Subcommittee, and Mr. Lamborn, for your energetic work on this. Together, you have done an incredible amount of work this year; and you are going to do even more in the coming year, I am sure. This Subcommittee is going to be at the focus of the changes that have been recommended by the Dole-Shalala Commission and the Veterans Disability Benefits Commission.

The President asked the Chairmen and Ranking Members of the House and Senate Veterans' Affairs Committees and Armed Service Committees to meet with him on these issues last week, and I think we all agree that a lot of the Dole-Shalala Commission recommendations could be passed very quickly. But the recommendation on the wholesale change in the disability system needs a much more detailed look. And I think there was general agreement to that.

For example, creating a two-tiered system, as they recommend, can lead to other problems. So I think you have to carefully consider that with some detail. I am committed to them and said to the press today that we would be very aggressive between now and, say, February to do the work that we have to do to change that system. I think we need to cut through the backlog and then move toward that new system, if that is the best as quickly as we can, given whatever changes we want to make to that.

I just want to talk to you briefly about two bills that are on your agenda today. One, H.R. 3286, is legislation to reduce the period of time for which a veteran must be totally disabled before the veteran's survivors are eligible for VA benefits at the time of the veteran's death.

Currently, in order for surviving spouses and children to be eligible for VA dependency indemnity compensation, known as DIC, the veteran who is disabled must have been rated totally disabled for at least 5 years immediately preceding the death from the date of discharge or other release from active duty, and must have been rated totally disabled for at least 10 years immediately preceding the death. There are other kinds of requirements for former pris-

oners of war who died after September 30, 1999, and on and on. And that is just a summary of the legalese that is in the regulations. It is very arbitrary, very difficult to understand; and the waiting periods can deny benefits and create an unbelievable hardship for many widows and children.

We should be in the business—and I know you will agree—of helping veterans and their families and not as being as miserly as Scrooge might be. Too often, in our current system, the welfare of veterans and their families is ignored and promises made to veterans when they sign to serve are forgotten.

This bill would eliminate the various categories and would shorten restricted time limits to 1 year for all deaths occurring after the enactment of this bill. The benefits will continue to go only to children born before the death of the veteran, and that is just to keep in mind as you go through H.R. 3286.

H.R. 3954, the “Providing Military Honors for Our Nation’s Heroes Act,” would provide reimbursement to members of VSOs and other approved groups who volunteer to provide funeral honors details at the funerals of veterans. I am sure all of us have confronted a situation of a funeral without proper honors or with volunteers who would like to do it but don’t have any reimbursement for their car expenses or uniform or ammunition or whatever they feel they need; and they want to be at these funerals. We ought to help them be there.

As you know, thousands of servicemembers from World War II and the Korean war die each day, and there is not enough military to provide a proper set of personal honors for these funerals. Some families have to make do just with a CD playing “Taps;” and it is a very sad and outrageous situation when that occurs. And I hope that this Congress will take action to help provide proper military funeral honors for all families who request them.

Currently, the members of VSOs voluntarily assist the military by providing a color guard, pallbearers, a bugler or firing party, but the law does not address ceremonies in which VSOs render honors without military representation. My bill will allow reimbursement to volunteers who have been approved by the Secretary of the Department of Veterans Affairs. Transportation costs, uniform cleaning costs, ammunition incurred in providing such honors details will be reimbursed.

And a second change in the law will allow reimbursements to details that are requested by funeral homes and the VA as well as by the Department of Defense (DoD), which is the current practice. So we could have volunteers be reimbursed if this legislation passes when no military person is a part of the honor guard, this increases the number of honor details available to our families.

So these two may be small bills but they will demonstrate that we in Congress know and understand the hardships of our Nation’s veterans and their family members.

Mr. Chairman, thank you for allowing me to explain these bills; and I look forward to working with you to move them forward.

Mr. HALL. Thank you, Mr. Chairman; and I also look forward to hearing testimony on your two bills.

Sitting here in a chair that you usually occupy, I am wondering if you have ever used this button that says “mute all” on it. In our

Subcommittee, we haven't had the occasion to use the mute all button yet.

Mr. FILNER. It has been used, but you haven't noticed it.

Mr. HALL. Mr. Brown, would you like to be recognized now to tell us about your bill?

STATEMENT OF HON. HENRY E. BROWN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. BROWN. Thank you, Mr. Chairman and Ranking Member Lamborn. We appreciate the opportunity to come before you, and thanks for letting me sit on the dais up here and be here with the Chairman.

I am glad to be with you, Mr. Chairman; and I thank you for allowing me to testify today before the Subcommittee on Disability Assistance and Memorial Affairs on H.R. 1137, which would increase the Medal of Honor Special Pension. This bill, which I have worked on with my colleague Mr. Michaud in both the 109th and 110th Congress, seeks to further recognize the bravery and exceptional service of the recipients of the Medal of Honor.

The Medal of Honor is the highest military declaration awarded by the United States of America. It is awarded for conspicuous gallantry and intrepidity of the risk of life, above and beyond the call of duty, in actual combat against an armed enemy force. Since its initial presentation to Private Jacob Parrott in 1863, 3,445 Americans have been awarded the Medal of Honor.

Today, there are 109 living recipients of the Medal of Honor. The average age of a living recipient is 74 years old, and 47 percent of recipients earned their medals more than 50 years ago while serving in World War II and Korea. The oldest living recipient, John W. Finn, is 98 years old. He received his medal for action during the attack on Pearl Harbor, December 7, 1941. In addition to Mr. Finn, 34 other living recipients are World War II veterans.

Sixty-one living recipients of the Medal of Honor earned their medals while serving in Vietnam, including my good friend General James Livingston. At this time, I would like to thank General Livingston not only for his heroic service to our country during the Vietnam War, but also for his tireless work on behalf of American veterans in the years since.

The most recent Medal of Honor was awarded posthumously on October 22, 2007, to Lieutenant Michael Murphy, a Navy SEAL recognized for his service in Afghanistan. Lieutenant Murphy is the second Medal of Honor recipient from the current Iraq and Afghanistan conflicts. Marine Corporal Jason L. Dunham was posthumously awarded the Medal of Honor for his action in Iraq in 2004.

In recognition of their exceptional service, Medal of Honor recipients are entitled to a Special Pension, as first authorized by the Congress in 1916. Currently, the 109 living recipients receive an inflation-adjusted \$1,000 per month. In 2002, Congress increased the Medal of Honor pension, citing evidence that a majority of Medal of Honor recipients live solely on Social Security, supplemented by the Medal of Honor pension. On a specific note, many recipients travel extensively to speak at commemorative and patriotic events, often at their own expense, presenting an additional fi-

nancial strain for which VA in 2002 deemed those heroes ought to be compensated.

My bill, H.R. 1137, will increase the base payment of the Medal of Honor Special Pension to \$2,000 per month and extend the benefits to surviving spouses. This benefit acts as a token of appreciation for the selfless leadership, courageous activities and extraordinary devotion to duty shown by medal recipients.

And I yield back the balance of my time. Thanks.

[The prepared statement of Congressman Brown appears on p. 36.]

Mr. HALL. Thank you, Mr. Brown.

We do have a vote that is being called just now, but if we could take the time to stay and hear from Ms. Berkley about her legislation that would be good.

Ms. Berkley, you are now recognized.

OPENING STATEMENT OF HON. SHELLY BERKLEY

Ms. BERKLEY. I thank you very much, Mr. Chairman; and I will be brief.

As Veterans Day approaches, we remember and honor the sacrifices veterans have made for our Nation. As veterans from previous wars age and countless young men and women continue to make the ultimate sacrifice, paying for the burial expenses of veterans is a growing concern for many families and State veterans' cemeteries. The burial benefits provided to our Nation's veterans by the Department of Veterans Affairs have seriously eroded due to inflation, leaving the States and families to supplement the cost.

My bill, the "Veterans Burial Benefits Improvement Act," which is supported by AMVETS, Disabled American Veterans, the Veterans of Foreign Wars, the Paralyzed Veterans of America (PVA) and the American Legion, will correct this oversight by increasing the benefits to cover the same percentage—and let me repeat that—the same percentage of veterans burial costs that were covered in 1973 when the legislation was first passed; and it seems to me in the year 2007, with a war going on, the least we could do is as well as our predecessors on the VA Committee in 1973.

America's veterans have stood on the frontlines, protecting freedom and safeguarding the values that we hold dear. Those veterans deserve our gratitude and respect.

Instead of living up to our promises made to our men and women in uniform, our government sadly has consistently shortchanged our vets. By increasing burial benefits and helping to ensure a proper and fitting ceremony, this legislation restores some of the dignity and respect to the status of our veterans.

Thank you very much.

Mr. HALL. Thank you, Ms. Berkley.

And at this time, if I could ask the patience and forbearance of our witnesses, we will—and since Mr. Langevin is not with us—we will recess and go across the street and vote and come back as quickly as we can.

Ms. BERKLEY. Mr. Chairman, it might be very difficult for me to come back. I don't know what to do, because I want to be able to vote in favor of my own legislation as well as everybody else's. We are not voting? We are just hearing testimony today?

Mr. HALL. It is a hearing today. Not a markup.

Ms. BERKLEY. We are not sending—what are we waiting for?

Mr. HALL. Well, we are going to hear some expert witnesses and testimony shortly. But you can submit questions in writing, if you wish.

Ms. BERKLEY. I will do my best to get here. But, if not, I will indeed. But I will be voting in favor at the appropriate time for each of these legislation.

Mr. HALL. Thank you all. We stand in recess.

[Recess.]

Mr. HALL. Thank you for your patience, and the Subcommittee will resume its hearing on multiple pieces of legislation.

We have been informed that, unfortunately, Mr. Langevin will not be able to join us, so his written testimony will be entered into the record.

[The statement of Mr. Langevin appears on p. 52.]

Mr. HALL. Therefore, we will now go to Panel 2, and I will invite the Panel 2 witnesses to come to the witness table, please: Richard Daley, Associate Legislation Director for the Paralyzed Veterans of America; and Steve Smithson, Deputy Director of Veterans Affairs and Rehabilitation Commission for the American Legion.

Gentlemen, thank you for joining us; and thank you for your patience with our unpredictable schedule.

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

STATEMENTS OF RICHARD DALEY, ASSOCIATE LEGISLATION DIRECTOR, PARALYZED VETERANS OF AMERICA; AND STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, AMERICAN LEGION

STATEMENT OF RICHARD DALEY

Mr. DALEY. Thank you.

Chairman Hall, Ranking Member Lamborn, PVA would like to thank you for the opportunity to testify today on the several pieces of important legislation.

To start with, H.R. 1137, the Medal of Honor Special Pension, PVA supports H.R. 1137, a bill that would increase the Medal of Honor Special Pension from the current \$1,000 a month to \$2,000 a month. As we have heard already from several sources, there are only 109 living recipients of the prestigious award, dating back to the Second World War. PVA supports this increase of this Special Pension for these heroic Americans that have served so gallantly at one time.

We generally support H.R. 3047, the “Veterans Claims Processing Innovation Act of 2007.”

Section two of the bill would establish a process and places emphasis on the accuracy of the claim completed. If the VA regional office cannot receive credit for the claim until it is finally decided, we believe that this would create an incentive to process the claim correctly the first time.

Section three of the bill involves electronic processing of claims. If software is available or can be developed to help with the processing of claims, we would support a pilot program to test the efficiency and accuracy of this program. The legislation suggests that

software would somehow replace the human ability to review and evaluate evidence in order to render a final evaluation. PVA does not believe that software exists that can replace the human element.

Section three requires the VA to electronically scan all files created by or submitted to such office. We believe that requiring the VA to retroactively scan in claims would create an additional burden. Perhaps this new system should be tested on new claims only.

Section four of this bill would treat the beneficiaries of the veterans' accrued benefits as a claimant for the purpose of completing the submission of the claim. PVA supports this section.

Section five of the bill requires evaluation of training and assessment programs for employees of the Veterans Benefits Administration. The VA has taken significant measures to standardize and improve training for the Veterans Benefits Administration employees. They currently have rigorous online training available for the veterans service representatives, and they are rating veterans service representatives throughout the system. We agree that the VA must continue to improve its quality assessments to their systematic technical accuracy review program and other programs to ensure that the right decision is made the first time. PVA supports section five of this bill.

H.R. 3749, the "Veterans Burial Benefits Improvement Act of 2007." PVA supports the increase in the burial payments, which are in accordance with the recommendations of the *Independent Budget*, the comprehensive budget policy document created by veterans for veterans.

PVA supports H.R. 3286. This bill would reduce the period of time for which veterans must be totally disabled for the purpose of benefits provided by the Secretary of Veterans Affairs for survivors of certain veterans rated totally disabled at the time of death. It would reduce the required time for a veteran's totally disabled rating from the current 10-year period to 1 year.

H.R. 3415. PVA supports H.R. 3415, a bill to authorize memorial markers in a national cemetery for the purpose of commemorating servicemembers and other persons whose remains are interred in the American Battle Monuments Commission cemetery system.

H.R. 3954, PVA supports H.R. 3954, the "Providing Military Honors for our Nation's Heroes Act."

H.R. 4084, the "Veterans Quality of Life Study Act of 2007." PVA would like to submit our comments on this legislation after we have time to further review it.

Chairman Hall and Ranking Member Lamborn, that completes my testimony. I would be available to answer any questions you may have.

[The prepared statement of Mr. Daley appears on p. 37.]

Mr. HALL. Thank you, Mr. Daley.

Mr. HALL. Mr. Smithson, you are now recognized. Your written statement is in the record, and you have 5 minutes.

STATEMENT OF STEVE SMITHSON

Mr. SMITHSON. Good afternoon, Mr. Chairman and Members of the Subcommittee. The American Legion appreciates the oppor-

tunity to present our views on the bills being considered by the Subcommittee today.

We have provided written testimony addressing all seven bills, but my oral remarks this afternoon will be limited to H.R. 3047 and H.R. 4084.

Regarding H.R. 3047, the American Legion has been a vocal critic of the end product work measurement system which emphasizes and awards quantity of work produced, rather than quality, currently used by the Department of Veterans Affairs. The American Legion has testified before the Subcommittee in the past, advocating for the very changes proposed in this legislation, namely allowing work credit to be given only when the Board of Veterans' Appeals (BVA) has issued a final decision or the claimant has not filed an appeal within the one-year statutory appeal period. We are confident that removing the incentive for producing poor quality decisions by rewarding quality of work rather than quantity will result in an increase of accurate decisions.

We also support allowing a deceased veteran's survivor to continue the pending claim upon the veteran's death, rather than VA terminating the claim and requiring the survivor to file a separate claim for accrued benefits as is the current practice. Not only does the current practice cause duplication of effort and adds to the existing claims backlog by requiring a new claim to be filed, it poses an arbitrary one-year deadline for the filing of such claim. This deadline is often missed by grief-stricken family members who were either unaware of the deadline or are not emotionally ready to go forward with the claims process within a year of their loved one's death.

The American Legion fully supports the commonsense approach that allows VA to avoid reinventing the wheel by not having to start over from scratch with a new claim and, at the same time, provides the deceased veteran's survivor with a more user-friendly and less complicated claims process.

The American Legion also agrees with having a private entity to evaluate VA's quality assurance program. Receiving input on VA's training and performance assessment programs from an independent entity would undoubtedly provide new insight on how to enhance the current process.

Regarding proposed section four, Electronic Processing of Claims for Benefits Administered by the Secretary of Veterans Affairs, the American Legion welcomes innovative ideas regarding the processing of benefits claims and does not oppose the electronic claims processing. We were, however, initially concerned that this portion of legislation appeared to be calling for a centralized or consolidated processing of such claims, a concept the American Legion has generally opposed. It is now our understanding that the intent of this portion of the legislation is to establish a pilot program, and it is not intended to create a centralized VA claims processing system. It is also our understanding that this point will be clarified with the appropriate amendment language during the markup process. This being the case, the American Legion is not opposed to the creation of a pilot program for electronic claims processing.

Now moving on to H.R. 4084. As this legislation was not available at the time my written remarks were prepared, I will address it at this time.

The American Legion generally supports the numerous provisions of this draft legislation. However, regarding the section two study on Department of Veterans Affairs Schedule for Rating Disabilities, we note that the Institute of Medicine (IOM) conducted a study on the VA rating schedule for the Veterans Disability Benefits Commission and that study did address quality of life factors in disability ratings. If an additional study is necessary, as proposed in this legislation, we ask that IOM's previous study be used as a base and the new study focus on areas that need to be expanded on or require additional information and clarity.

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

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

Mr. HALL. Thank you, Mr. Smithson and Mr. Daley both, for your comments.

I have a question regarding both of your comments on the information technology (IT) component of H.R. 3047.

A couple weeks ago, on my way back from Iraq, the delegation I was with stopped in Landstuhl, Germany, and visited the hospital where our servicemen and women who are recovering stay, and we spoke to the Colonel who was Director of the hospital. He was telling us that, whereas at the beginning of the military operation in Iraq, soldiers would come to them with their medical records written in magic marker on their foreheads when they were wounded, what drugs they had been given in the helicopter or on the plane, what their treatment had been thus far, that now it has advanced to an electronic record which was being sent to them with each patient.

So the field treatment was surrounded by or had added to it the treatment that was given at Balad and then the treatments given on the plane to Germany, and they added there in Landstuhl a layer of what treatment and what medications were given, what therapies, what surgery, et cetera, and the whole thing was sent back with the serviceman or woman to the United States, whether they were going to Walter Reed or another DoD facility. He was under the impression that this was already starting in December to be handed off to the VA so that they would receive the entire record intact, which certainly would make the process of figuring out a disability or a claim, not to mention the service-relatedness of it, easier to do. And, of course, many of us have been looking for that kind of electronic hand-off.

Have either of you heard anything to that effect? Or have any opinion about what would be required for that to happen?

Mr. SMITHSON. Obviously, we feel the technology is there to do a better job than is currently being done with the records process. However—and VA in their testimony noted improvements that are being made in the electronics claims processing and things like that. However, we are seeing problems occur, especially with records, paper records. There is still an issue. So I think there is a lot that has been done to make improvements. And you men-

tioned that example, but we still think there is a long way to go to improve the process. It is not quite there yet.

Mr. HALL. I would agree with your comment that software will never completely replace the human analysis of a situation, medical or otherwise.

Mr. Daley, in considering H.R. 3047, on what basis does—I wanted to ask you, on what basis does PVA contend that the software does not exist yet? And exactly at what point does subjectivity kick in and inconsistencies in the rating system become a problem? In other words, how much of the process do you think could be handled with IT?

Mr. DALEY. Well, the software, it doesn't exist. They do handle some claims electronically, but they can't handle everything electronically. The software is not out there yet from what I understand.

About the issue of the human element, if a veteran was claiming that he has tremendous back pains that he can hardly live with and the evaluator is taking notes and maybe the veteran bends over to tie his shoe or something, the computer can't pick that up. But that evaluator puts that in the notes, that it doesn't seem to be, as serious as he claims. And the scale of pain? You would have to create a scale of pain from 1 to 10, which doesn't exist in the VA medical system now. How bad is that pain? So there is just some areas that the humans will have to be involved in using their judgment.

Mr. HALL. Thank you.

If I could jump to H.R. 3496 and ask you first, Mr. Daley, and then Mr. Smithson, what do you think should be the standard for reimbursing volunteers? And how would this function be funded? And is it not already the mission of several VSOs to provide funeral honors?

Mr. DALEY. I haven't thought about the amount. There are some State programs out there that I am aware of that do provide reimbursement now. If we did some research, contacting those States and say, how much does it cost when you get the 10 guys together, sometimes there is a trip involved, and it involves a lunch, and dry cleaning of the clothes. How much does it cost?

There is a figure available. I don't know what it is. We certainly support your reimbursing these people. I said in my written testimony, most of the time these people are retired, old veterans. Some of them are still World War II veterans out there doing that. They really can't afford to drive 30, 40 miles and have their nice jacket dry cleaned every week to perform this. But they do it anyway because they do it for a fellow veteran.

Mr. HALL. Thank you.

Mr. Smithson.

Mr. SMITHSON. There are, obviously, already provisions within the DoD for reimbursement for volunteers for funeral honors. So we would have to look at how this legislation would complement that to ensure that there would be no duplication.

However, to address the VSO's obligation, obviously speaking for the American Legion, providing funeral honors to veterans and deceased military members is something that we are honored to do. We take great pride in it. However, realistically, our posts and our

facilities sometimes cover large areas and need to travel great distances just to cover these areas to fill in the gaps. So, obviously, reimbursement for those activities is crucial, especially for the posts in the regions that don't have a lot of money to provide that honor.

Mr. HALL. Good point. And since there are only two of us members up here, I will just take the liberty of asking another question or two and then offer Mr. Lamborn extra time as well if he needs it.

I wanted to ask you again, Mr. Smithson, what the basis is for the American Legion's contention that the BVA's work measurement system emphasizes quick action at the expense of accurate decision making. Is this based on an American Legion study or site visits focused on the end product work measurement system?

Mr. SMITHSON. A lot of it is based on all our site visits. The American Legion has a quality review team that has been operating for the last 10 or 12 years. We visited over 40 regional offices during that period of time. We go into an office, we meet with the Director, the senior staff service center manager, and we spend the majority of time reviewing cases, looking for errors, things like that.

We also interview VA personnel, raters, developers, all key personnel within the regional office, and we often hear from these personnel that there is a tremendous amount of pressure—and, obviously, there is a great backlog of cases that have to be put out, but there is a tremendous amount of pressure to get cases out.

We often hear anecdotally from people that they will—when a case comes in, it is rated. They are going to rate it, but the examination, for example, is not accurate. So proper procedure would be to send it back, get the point clarified, have a new exam done, whatever it calls for. But oftentimes they are pressured to make a decision because they have to get that case out. So they prematurely will, you know, adjudicate the claim, deny it because the exam wasn't accurate, for example.

That claim comes back. The VSO files an Notices of Disagreement or asks for reconsideration. They rate the case again. They get an end product for doing it prematurely. They rate the case again. This time, they get the exam clarified or whatever needed to be done and rerate it, and they grant the claim this time. They get another end product. So they get two end products. Whereas, if they would have done it right the first time, they would have only gotten one end product. And we hear that the reason that happens is because they are pressured to get these cases out. And the way the system is set up, it does seem to reward quantity over the quality. End results are premature adjudications and other types of errors.

Mr. HALL. Good points there. And in spite of all that, or in addition to that, would you agree that timeliness should be a performance measure along with accuracy?

Mr. SMITHSON. Obviously, timeliness is a concern. I think we need to—in the backlog of the concern, I think we need to reach a good middle ground where timeliness and quality of work is also factored in, not just the putting out the quantity in work. So I think a compromise somewhere in the middle needs to be achieved.

Mr. HALL. Okay. Lastly, I just wanted to ask a general question and, obviously, a discussion concerning the Dole-Shalala Report kicked it off in a big way. Have either of your organizations, either the American Legion or PVA, had at least preliminary discussions about the concept of quality of life reimbursement?

It seems to me that most of what we have been focusing on is caretaking, loss of income, medical treatment, providing for rehabilitation of homes, for mobility, for practical measures. But some measurement of what—especially a young person's life will consist of if there is a debilitating injury for which they will suffer the effects of for the rest of their life.

Obviously, it is a big question that is being raised and a big expense that goes with it. But H.R. 4084 is attempting to, among other things, study that. And I am just curious if your organizations have kicked this idea around.

Mr. Daley?

Mr. DALEY. We haven't formulated an idea yet. Quality of life is such a subjective area. I went to PVA's research department and asked, what can you tell me about quality of life for some of the dramatically injured veterans? And our Director of Research he gave me a stack of five books all dealing with quality of life. I have some homework to do to get up on the issue of quality of life.

But certainly, the Dole-Shalala Commission said as much as 25 percent should be added to their monthly payment for quality of life. In some cases, it probably does justify that amount. We will give you more details as we study quality of life further.

Mr. HALL. Thank you, Mr. Daley.

Mr. SMITHSON. Obviously, quality of life is a concern, and there are great challenges involved with the determining how to compensate for quality of life. The Dole-Shalala Commission makes the recommendations which would create a separate payment. The Veterans Disability Benefits Commission also addressed quality of life issues. They contracted with the Institute of Medicine to study the entire VA rating schedule, and they also looked at quality of life aspects.

We think there is a good base there, that any study produced by this legislation, H.R. 4084 could use that as a base and then focus on areas that need to be expanded. Obviously, it is not something I think—it is going to require more study to get a grasp on.

Mr. HALL. That is an understatement. I believe one example recently that involved quality of life assessment was pertaining to survivors and families of 9/11 in terms of their compensation. But, nonetheless, we obviously have a lot of work to do to quantify that.

And now I would like to recognize Mr. Lamborn for his questions.

Mr. LAMBORN. Thank you, Mr. Chairman.

For both of you, I just wanted to make it clear that the amendment in the nature of a substitute would make it clear that the electronically based claims processing system would be for where there was not a need for much or any subjectivity.

One example would be in the case of a Vietnam veteran. It is assumed, under the law, that diabetes is covered because there had to have been exposure to Agent Orange. So, that is an example where no subjectivity was needed.

So, with that in mind, do you see a benefit to developing the software where there is little or no subjectivity that would be needed to free up those people for where subjectivity is needed or is that unnecessary in your opinion? Either one of you.

Mr. SMITHSON. I think it would help in those areas, like you said, that do not—that are fairly objective and clear cut. I think they could free up resources for the areas that are more subjective, and we wouldn't have a problem with that.

Like everyone else, I think we have concerns about taking the human element completely out of the picture, which from our understanding, talking with your staff, that is not going to happen, and that is not the aim of this legislation. So, based on what you said, we wouldn't have a problem with that.

Mr. LAMBORN. Okay. Do you think it is helpful for this Subcommittee to direct the VA to contract with an independent or outside agency or group of some kind to certify and review training and quality review?

Mr. SMITHSON. Yes. We think it would be helpful to have fresh eyes looking at the VA system in those areas. We have been critical of some of those areas, in quality assurance, in the training program; and VA, obviously, has their own internal review processes in place. But we think a fresh set of eyes, an independent set of eyes, would certainly not hurt and would most likely help the situation.

Mr. LAMBORN. Okay. Mr. Daley, did you want to add anything?

Mr. DALEY. Sure. As Mr. Smithson said, a fresh set of eyes.

In my comments, I mentioned the training that the VA has rolled out. They have developed online training, and that is a brand-new program, for their service officers. It is supposed to be the most up-to-date and it takes into consideration a lot of medical issues. Before that, the training was on a regional basis and an office basis, and it wasn't nationalized. Their new training system, online system, is supposed to be the greatest thing. And it is brand new. So we need to give it a chance and let it get, circulated and used. It is standardized, and everybody is going to get the same message, the same way. Certainly, VA needs to evaluate and update some of the training. Constantly update, because they are running into new situations with the current conflict that the VA hasn't dealt with in the past.

Mr. LAMBORN. Now a related question. Would you be in favor of competency testing for Rating Veterans Service Representatives (RVSRs) and Veterans Service Representatives (VSRs) to improve accuracy and quality?

Mr. SMITHSON. We have testified on that previously, and it is our understanding that VA is currently in the process of testing VSRs for competency and efficiency. I don't believe they conducted any test this year. However, their goal was to do two tests a year, and they are in the process of developing a test for the RVSRs and the Decision Review Officers (DROs).

Our concern is that—obviously, with the tests that have been conducted for the VSR so far, there is still a very low pass rate. And, it is also our understanding that the testing is not a condition for employment, for keeping that job. It is optional. They can

choose to test or not. Of course, if they don't test, they won't be easily promoted. They are using it mainly for promotion basis.

And, we feel that any testing that is conducted, whether it be for VSRs or RVSRs or DROs, be mandatory and be a condition of employment and individuals that fail be given remedial training and other actions to correct their performance; and that is not being done right now.

Mr. LAMBORN. Now in a similar vein, what emphasis is currently being placed on the quality of a ratings decision versus the quantity of rating decisions? Or that a rating decision was made, period.

Mr. SMITHSON. We think, from our observations of the system, looking at cases, talking to people in the VA system at the regional office level, doing our quality reviews, that there has been a greater emphasis, I think placed on quality of work. But, there is still—I think the greater emphasis is still on quantity over quality, and we still see that as a problem.

Mr. LAMBORN. Now a slightly different question. If a survivor were to step in and take over a pending claim, should that person be able to introduce new evidence? Or should it stick to the claim as it was at the time that the original claimant passed away?

Mr. SMITHSON. Basically, we do not have a problem with the person, the eligible dependent submitting additional evidence with the claim. We feel that allowing that, allowing that individual to advance that claim upon—the pending claim upon the veteran's death is a very good thing in that, under the current process, you have 1 year to file accrued benefits claim. A lot of times the deadline is missed, as I mentioned in my oral remarks, because people are grief stricken, they don't know the process, so they miss the date. Allowing them to advance the claim automatically without having to file a separate claim, it gets away from reinventing the wheel, and it allows for a more streamlined process and is obviously more user friendly. So we agree with that.

Mr. LAMBORN. Okay. Thank you for your testimony and for answering these questions.

Mr. HALL. Mr. Smithson and Mr. Daley, thank you very much for your testimony and your dedication to our Nation's veterans. You are now excused.

We will invite our third panel to the witness table: Bradley G. Mayes, Director of Compensation and Pension Service for the Veterans Benefits Administration, U.S. Department of Veterans Affairs; accompanied by Richard J. Hipolit, Assistant General Counsel for U.S. Department of Veterans Affairs; Dr. Paul Tibbits, Deputy Chief Information Officer at the Office of Enterprise Development, U.S. Department of Veterans Affairs; and David K. Schettler, Director of Communications Management Service for National Cemetery Administration, U.S. Department of Veterans Affairs.

Thank you all for your patience and for being with us today to offer your testimony, and your written testimony is entered in the record.

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

STATEMENT OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS; PAUL TIBBITS, M.D., DEPUTY CHIEF INFORMATION OFFICER, OFFICE OF ENTERPRISE DEVELOPMENT, OFFICE OF INFORMATION AND TECHNOLOGY, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND DAVID K. SCHETTLER, DIRECTOR, COMMUNICATIONS MANAGEMENT SERVICE, NATIONAL CEMETERY ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. MAYES. Chairman Hall, Ranking Member Lamborn, thank you for giving me the opportunity to be here today to discuss a number of bills of great interest to veterans.

I will start with H.R. 1137, this bill would increase the monthly rate of the Medal of Honor Special Pension from \$1,000 to \$2,000 and would require VA to pay the Special Pension to the surviving spouse of a person who was awarded a Medal of Honor. VA does not oppose H.R. 1137 subject to Congress finding offsets for the increased cost. The benefit cost is estimated to be \$11.9 million during the first year, \$58.8 million for 5 years, and \$113 million over 10 years.

The next bill, H.R. 3047, the "Veterans Claims Processing and Innovation Act of 2007," would require VA to establish a work credit system for evaluating regional offices (ROs). Under the system, ROs would receive work credit for a claim only after the appellate period for the claim has expired or the Board of Veterans Appeals issues a final decision on the claim.

Most VA claims are resolved well within 1 year, and in 2007 only 12 percent of claims resulted in the filing of a notice of disagreement. Substantive appeals were filed in only 5 percent of cases. Yet, the bill would require VA to wait 1 year before assigning credit to these cases. It would make it extremely difficult to monitor both VA's progress and the magnitude of the workload still awaiting action, and it would fundamentally alter our basic management systems and principles.

Section three would require VA to develop and maintain a claims processing system employing artificial intelligence. VA would be required to maintain one RO that would exclusively process claims electronically under this system. We don't believe this section is necessary. We do believe that the use of rules-based and decision-support technologies can be greatly expanded in the near term to automate and streamline the claims process, and we are working aggressively toward that end.

Specific efforts are currently underway, and we are exploring these. They include expansion of the use of electronic records and image management technology and investment in the development of electronic claims processing assistance tools. In fact, a recently published request for information has yielded a variety of potential products that might meet our needs in this area. And, finally, development of electronic processes for submission of applications for VA benefits. This will facilitate the receipt of electronic claim infor-

mation and provide the initial data load into the claims processing systems.

And I might add that VA has received \$20 million in a supplemental appropriations to support the initiatives described above, and we appreciate that. We believe that we will be in a position to execute necessary contracts to support implementation of our plan over the course of the next 12 months, and we will be able to report on our progress in approximately 1 year.

Section four would require VA, in the case where a veteran claimant dies before completing the submission of a claim, to treat as a claimant the person who would receive any accrued benefits due to the veteran under 38 U.S.C. 5121.

We do not support the proposal as drafted because the reference to completing the submission of the claim is ambiguous and could be construed to apply to cases where there was no claim pending before VA when the veteran died. Of course, that would enable a survivor to advance a claim potentially decades after the veteran's death, which the veteran did not properly present to VA before his or her death. We would not object to legislation that will allow the addition of evidence to a claim that was pending before VA prior to the veteran's death, even if the claim had not been fully developed or adjudicated when the veteran died.

H.R. 3249 would increase several monetary burial benefits provided by VA. We defer taking a position on this legislation until we have had an opportunity to review the results of our memorial benefits program evaluation that is currently under way, and we expect this program evaluation to be completed by April 2008. We estimate benefit costs of this bill as drafted would be \$2 billion over 10 years.

H.R. 3286 would reduce from 10 years to 1 year the period of time during which a veteran must have been rated totally disabled due to service-connected disability. We do not oppose this bill, subject to offsetting savings and subject to one amendment. We believe the bill should be amended to require the veteran's total evaluation also be rated as permanent.

H.R. 3415 would make servicemembers, and others interred at American Battle Monuments Commission cemeteries, eligible for placement of a memorial marker in a stateside cemetery. We support enactment of this bill. However, we recommend consultation with the American Battle Monuments Commission regarding its views on this bill and the coordination between the agencies that this bill would require.

And finally, H.R. 3954 would authorize VA to reimburse a member of a veterans' service organization or other organization approved by VA for appropriate transportation and other expenses incurred in connection with the voluntary provision of funeral honors detail at the funeral of a veteran, including funeral honors detail requested by a funeral home.

We are concerned that reimbursement under this bill may duplicate expenses paid by the Department of Defense. DoD is required by 10 U.S.C. 1491(a) to provide, upon request, a funeral honors detail at the funeral of any veteran. As such, DoD is currently authorized by statute to reimburse persons who participate in a funeral honors detail. And so, we don't support H.R. 3954. This con-

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

[The prepared statement of Mr. Mayes appears on p. 41.]

Mr. HALL. Thank you very much for your testimony. First of all, a little bit off the—well, it is sort of on the topic of H.R. 3047 because it has to do with the IT capabilities of the Veterans Administration and the smooth acquisition or hand off of information from DoD. Are you aware of this rumor that I heard in Landstuhl that veterans coming back will, starting in December, be able to have their records transferred from DoD to the Veterans Administration electronically?

Mr. MAYES. I am aware that we are working very closely with DoD as part of the entire review of the disability evaluation system. And in fact, Deputy Secretary Mansfield and Deputy Secretary England are coordinating that effort. They have what is called an OIPT, an Overarching Integrated Project Team, and on that team is the Under Secretary for Benefits, I believe the Under Secretary for Health, and a variety of members. These groups are getting together. And in fact, Admiral Cooper commented that he has been over at the Pentagon more now than when he was working for the Navy over there. And I believe they are working on this data exchange. We have Dr. Tibbits here from our Office of Information Technology. He is very involved in that. I am going to defer to him.

Mr. HALL. Please.

Dr. Tibbits?

Dr. TIBBITS. Yes, sir, Mr. Chairman, thank you so much for the opportunity to be here today. The way that process is set up, the Senior Oversight Committee is chaired by the Deputy Secretaries of both Departments. The Under Secretaries do sit on that Committee, as Brad, as Mr. Mayes alluded to. There are various lines of action that are set up under that. One of them is for information technology. I happen to be the co-lead of that information technology subgroup, if you want to call it that. My co-chair is the Principal Deputy Assistant Secretary of Defense for Health Affairs, Dr. Steve Jones. Our express purpose of that entire apparatus is to focus on VA-DoD collaboration. Our focus is the IT aspect of that. And indeed, we have plans afoot and activities under way, by the way, I would also add, to enhance the exchange of information between VA and DoD. I don't have the schedule of all the events here in front of me. But yes, one of the pieces—it is true, that one of the pieces of information is the exchange—one of the pieces addressed in the plan is the clinical information necessary to deliver healthcare, yes. And from that, there would be—much of that would be relevant to claims processing. Another piece of that is the piece of that information that originates in theater, yes. And the Department of Defense is in fact actively—and they would have to describe their programs to you in detail. I don't know them in detail. But yes, they are actively engaged in making the connections within the Department of Defense to capture that theater information, send it back to the continental United States, if you will and then, within the continental United States, through the systems that we connect to, transfer that information to us, yes. Those

transfers involve both what we call structured computable data, i.e. data a computer can recognize, unstructured data which a human being has to read on the screen but the computer can't compute, and images. To summarize all that, we have agreed, the VA and DoD have agreed to synthesize together all the ongoing activities and those that are needed to fill the gap into a plan addressing information interoperability, which should be available in the March timeframe of 2008. So that would be the synthesis and the final lay down of the current activities combined with the future activities that are necessary to meet active-duty servicemember and veterans needs by way of information exchange.

Mr. HALL. Thank you, Dr. Tibbits.

That is really good news that many of us have been asking for and looking forward to. Mr. Mayes, you enumerated several reasons why the VA is opposed to section 2 of H.R. 3047 by stating that work credit is undefined and unclear how it would be relevant to funding and would cause a delay in feedback to Regional Office Directors. However, it appears that the American Legion and the NVLSP think that the opposite is true. They have submitted statements that describe the end product system as a poor management tool, and see it as too focused on productivity rather than quality. They have documented that 56 percent of all appeals were reversed or remanded, and 63 percent of court decisions were reversed, and attribute these egregious errors to premature adjudications. If your system is working and should not be changed, as you described, how do you explain this high reversal rate and the concerns raised by the veterans community?

Mr. MAYES. Okay. Let me start by saying that the system that we use, the end product control system, is really a result of our legacy Benefits Delivery (BDN) system. In other words, back in the mid-seventies, we created a payment system. And we have added to that payment system and created an electronic identifier for a claim that tracks the claim through its life until we make a decision for a veteran. We know that legacy system needs to be replaced, and we are in the process of doing that with VETSNET, which will be much more robust and give us more ability, rather than having an end product code, a three-digit code, to know whether a claim is a reopened claim for benefits or an original claim. We are moving already toward a more robust system that will allow us to track our claims. As for the overturn rate, of all of the decisions that we make that require a rating decision—and there were over 840,000 of them in this past fiscal year—really only 12 percent of those do veterans disagree with. And of that 12 percent, only 5 percent end up filing formal appeals. So, in most cases, we make a decision, and we notify the claimant, and that is pretty much it until they file a new claim down the road.

But in 12 percent of claims, they file a notice of disagreement. They say, "I disagree with the decision that you made." And it is at that point that we relook at the decision—we have de novo review authority to do that—and determine, did we make a mistake or not? Did we apply the rules properly? If we did not, then we overturn that decision right there. If we think we applied the rules properly, then we notify the claimant and the claimant has the opportunity, and this is key here, to submit new evidence before we

certify the case to the Board of Veterans Appeals. Frequently, after a veteran has filed a notice of disagreement, we do get new evidence, or there is a new exam or a new opinion. And so the decision that is rendered down the road in the appellate process is not necessarily based on all of the facts and evidence that were in place at the time the agency of original jurisdiction made a decision. And that is a big difference, this appellate process, as opposed to other appellate processes in our society. What happens is, we notify the claimant we think we are right; the veteran doesn't think we are right. Maybe new evidence comes in or not. We certify it to BVA. They have a backlog there. Sometimes there is a significant amount of time that elapses. We need a more contemporaneous exam. It goes back to the regional office. We order a new exam. It goes back to the Board of Veterans Appeals. My point here is that I think the data that you cited there, I don't think you can make the correlation that because 50 percent of the cases were remanded that they were all wrong. There was something else that was needed likely. Maybe it was an exam. And in most of the cases, it is to get a new exam.

Mr. HALL. Thank you. You know, there seems to be a discrepancy between what we as individual Members of Congress experience dealing with veterans in our districts and the people who come to us asking for help with claims that they feel have not been accurately or satisfactorily resolved and the statistics that we hear when we hold these hearings. And I wonder if that is perhaps due to the possibility that some veterans choose to continue pursuing a different outcome depending upon whether they can decipher the VA's letter denying their claim or whether they get discouraged. I know that the same thing happens in the private health insurance industry, where I am told by appeals administrators for hospitals that approximately 50 percent of all insurance claims, private insurance claims this is, are denied as a matter of course by health maintenance organizations. They have figured out, there are actuaries who have figured out that something approaching half of them will walk away because they are older, less educated, less literate, less inclined to fight. Some people have a disposition that is more accepting or come from a generation that is more accepting of authority and of people who they look up to as experts. So I would say my parents might fall into this category. It was like if the doctor says, oh, no, you are not covered, they go, oh, gee I will write a check myself. Whereas my generation and certainly, younger ones have learned that sometimes, one needs to stand up for one's self. So I am just trying to figure out why. Because it seems that what we hear in the district anecdotally is—and I have heard this from other Members—that it seems to be more problematic than the 12 percent that you are citing.

I wanted to ask you, you noted in your statement that the VA is engaged in an aggressive planning effort to identify opportunities for using technology to improve efficiencies in claims processing. In March of 2007, the U.S. Government Accountability Office (GAO) reported on the backlog and inaccurate decisions, finding VA to be "limited in its ability to make and sustain significant claims processing performance improvements" and recommended changes to program design and consolidation into fewer regional offices. The

disappointment in the veterans' community with the backlog is not new. The issue has been ongoing for at least a decade, and frustrations have been expressed to this Committee. I have only been here for 10 months, but I have heard from other members who have been here longer, and certainly been reading about it in the media. So with all the evidence to the contrary, could you be more specific about how, in recent times, VA has been aggressive in improving its services through technology?

Mr. MAYES. Well, one of the things we are doing right now is migrating away from this legacy system to the VETSNET system. That is a big one for us because it puts us on a modern platform so that we can actually make some programming changes, as opposed to being on that very old system that, granted, has been a good system in making payments, it is interfaced with Treasury and made payments for many, many years and not missed a beat. But as we have moved into the information age, it really has not had the capability to allow us to do things like put information out of our claims processing system up onto a Web platform. Once we move onto this new platform, we think that we are beginning to migrate toward that kind of IT infrastructure that will give us these capabilities.

We are imaging documents right now. We have an application called Virtual VA. And in this application, we are taking paper and converting it to images. We are not at a point, and I don't think we will be at a point in the near future where we are moving everything with data, we are exchanging data between DoD and VA. I think we will be exchanging some data, clearly. But I think there are awful lot of paper records out there. This application allows us to image the paper. And once we have it imaged, then we can move that paper, that claim around the country. We have a pilot program going on right now in our regional office in Winston-Salem, where we are taking claims from servicemembers, imaging the documents, imaging the claim and then sending that to—they are either rating those claims or sending them out to Salt Lake City to rate those claims as images as opposed to shipping claims files. Those are the kinds of things we are doing. But it gets complicated because we have to integrate the imaging system, which eventually we hope to become our electronic folder, if you will, we have to integrate that with our claims processing system. Then we want to have an electronic application vehicle. That has to integrate with our claims processing system.

We have engaged IBM in a study recently to take a look at our claims process, and whether there are technologies that we can leverage. That statement of work is already out there. They have started their work. We just completed a request for information (RFI). We had 10 vendors come in, and we looked at all of these technologies that are out there. And one thing I think that we are realizing is that this is a big thing with a lot of moving parts. We probably need some expert integration support to help us. I think within the next year, that is what we are talking about in the testimony, that we will have some request for proposals (RFPs) on the street to bring some of this expertise in to help us.

Mr. HALL. That is great. Thank you. I just have a couple more quick questions before I turn it over to Mr. Lamborn. Recently sev-

eral staff at the Committee were present at a demonstration of TurboVet, a program which operates similarly to TurboTax, and which would allow veterans to fill out a form 21-526 parts A, B, C and D online in a matter of minutes. I know the State of Virginia has signed onto this initiative, and others such as Maryland and Georgia are considering following suit. As presented, it seemed to have endless capabilities in helping VA convert to an electronic platform. Are you familiar with the TurboVet proposal? And what are your thoughts on its applicability to the VBA?

Mr. MAYES. I am familiar with it. I have not seen the application, but I am familiar with it. And it is exactly the kind of idea that we are talking about. It is what we want to do. The thing is we have this huge investment in the migration to VETSNET. We have a Virtual VA that we think needs to be modernized. But that is the sort of the concept for an electronic file. And it is this integration piece that TurboVet is the concept for. We like that concept. We want a veteran, to be able to log into a Web site and pull up his or her personal record. You know, the Dole-Shalala Commission called it "My eBenefits." Pull up that record, and that is theirs, and it is customizable so they can only look at the stuff they want once they set it up. They can interact with us, and they can file an application. Those are the things that we are moving toward. Whether the TurboVet application itself would lend itself to integration with our systems, I don't know. And I think Dr. Tibbits, if you want to jump in here, you are right in the middle of all of this.

Dr. TIBBITS. Okay. Well, thanks so much.

Mr. Chairman, maybe the way to think about this is to kind of fly up above the fray for a minute, say, to the 10,000-foot level so you can see the beginning to the end of a claim, the life-cycle of a claim. And if you begin to take that perspective, what we are after in the Department is an organizing framework that would tell us where the things we have underway, the pilots and so forth fit into that entire end to end process, and where there are gaps and what additional things need to be done.

The IBM study that Brad just mentioned will give us a report early next calendar year on looking at that overall end-to-end process of the life cycle of a claim from origination to final determination, as in an as-is mode what might be desirable, i.e. to be a future state, and what the gap is between the two. In those instances where that gap is amenable to information technology insertion to make something better, which many of the gaps will not be, but in those instances where there are, some of these pilot studies that Brad just mentioned will fit and will get the job done. There will be areas where we don't have something underway yet, and we will need to do something new in information technology. The RFI, the responses to the RFI from industry that Brad just mentioned a moment ago is the other big piece of that, which will give us industry's view on what products and technologies are available to insert into that process where it will make a difference in that process. And so based on that IBM road map, if you will, we would be able to better pinpoint where IT dollars will make a difference visible to the veteran and where IT dollars would be a waste of time. There are parts of that cycle that are efficiency driven and under

the control of VA. There are parts of that cycle that are statutory in nature, which no amount of information technology is going to change. So knowing all that and understanding the relative balance of where IT makes a difference and where it does not has to be part of this plan which we intend to have put together out of these pieces that we just mentioned to you, the two big pieces, by March, April of next year. That should give us this road map to understand where to best pinpoint those dollars and those efforts.

Mr. HALL. Thank you. Could you tell us how much you estimate VETSNET would cost?

Dr. TIBBITS. I can't tell you today, but I will be happy to get the number for you. I do have the number. I don't remember it right now. But that is part of the life cycle baseline for that system, and we have that.

Mr. HALL. How much is invested so far?

Dr. TIBBITS. I will have to get that for you as well.

[The information from VA follows:]

The total planned cost based on the life cycle baseline for the system is \$157,363,000.

Mr. HALL. If you can do that. While you are doing your homework, I wanted to ask—

Mr. MAYES. It is a bunch.

Mr. HALL. I am sure.

Mr. MAYES. It is a bunch. And the thing is, and I hope we are making the point, though, that we have been going down that road. What we have been working closely together on, though, is trying to come up with this overarching plan so that we know which ones we keep, which ones we turn off, which ones are missing. It is that integration plan that we are working hard on right now.

Dr. TIBBITS. And also just to put a footnote in here, VETSNET is the claims tracking system to address compensation and pension. It is not the full scope of functionality needed to address everything that the Benefits Delivery Network system does. There are additional initiatives necessary that have to be put in place to address that full spectrum.

Mr. HALL. Would you venture a guess, an approximation of what has been invested to date? I mean, a ballpark? Is it \$10 million? A \$100 million?

Dr. TIBBITS. In VETSNET? No. But again, I can certainly get that number for you.

[The information from VA follows:]

The total amount expended on VETSNET between 1996 and 2007 is \$109,107,000. The list below is an outline of the Non-pay program expenditures through FY 2007. Also included are the FY 2008 Funding Allocation and the FY 2009 Funding Estimate.

VETSNET PROJECT

Expenditures 1996-2007	(Millions)
C&P Replacement System— Awards and FAS	\$ 65.107
MAP-D	\$ 3.600
RBA2000	\$ 5.912

VETSNET PROJECT—Continued

Expenditures 1996-2007	(Millions)
BDN Conversion and Utilities	\$ 4.245
Testing and Quality Assurance	\$ 21.075
Project Management Support	\$ 1.400
VETSNET Study (SEI)	\$ 0.700
MITRE Corporation Programmatic and Strategic Support	\$ 3.070
C&P Engineering Support	\$ 0.560
St. Petersburg Development Center Operations	\$ 1.328
Miscellaneous Software	\$ 2.110
Total Expenditures 1996-2007	\$109.107
FY08 Funding Allocation	\$ 24.406
FY09 Funding Estimate	\$ 23.840
Total Planned Cost 1996-2009	\$157.363

Mr. HALL. Okay. And is it true that part of the reason that VBA is behind the eight-ball on IT is that it has not done strategic planning on this for the past 7 or 8 years? And is this the role that the IBM report is supposed to play? I am just curious. It seems like there was a lapse, and now all of a sudden there is a big push with IBM.

Mr. MAYES. Well, I think that we are making progress with, again, moving off the BDN payment system that really is a system that was developed in the mid-seventies. Would we have liked to have been off the BDN before now? You betcha. But this past year alone, we processed over 200,000 claims in VETSNET. And we have actually been using elements of VETSNET since 2004. The RBA 2000 application, that is part of that Modern Awards System, is the application that actually generates the rating decision. The MAPD system, the Modern Award Processing Development piece, that has been in place for years. What we are bringing home right now is the paid piece, the part that does the financial transactions, that sends the information over to Treasury to generate the payments. So that is the last piece to move off of the legacy system. And we would have liked to have been there sooner. I think the planning that is going on now is going beyond that, though. It is, here is how we deliver services today—it is not about just getting off the legacy system—and here is what we think it ought to be, this Web interface, they push information to us, veterans and their dependents and claimants, and then we can push information back.

Dr. TIBBITS. And if I could add to that a little bit, your question I think is an excellent one about strategic planning. There is certainly a great deal of strategic planning that goes on at the Department. And it is a valuable piece with respect to creating an organizing framework and an end zone, if you will, a goal post for what it is IT is supposed to accomplish. It is ongoing, and perhaps it could be better. But I want to go one level below that, because that is only part of the answer. One level below that is what connects

strategic planning to real IT investment? There is a level of analysis between strategic planning and actual IT investment that has to happen. And it is actually at that connection point that this IBM initiative is more directly focused, where one actually depicts the actual processes, creates maps on a wall that actually looks at the processes of the life cycle of a claim and says, where can we make a difference and where can we not? That connection piece has really not necessarily been pursued very well, and we now are, yes.

Next, with respect to program management discipline, if you go one level further down, and this is well documented in the VA in many instances by Carnegie-Mellon studies, which are available, I am sure that could be gotten, but anyway, in the health arena for HealthVet, for VETSNET itself, and then for our financial management systems. And they all indicate that, again, if you just go down to the rudimentary Mach one, Mod zero elements of good program management, the Department has not, it is well documented in those studies, engaged in a very mature form of program management on these big programs. So we are undertaking to fix all of those in multiple levels. So it is not just the strategic planning level, we have to address several levels to get to the point that we want to and that you want us to be.

Mr. HALL. Thank you very much. I appreciate that. And I am just wondering is there a target date for completion of the IBM study?

Dr. TIBBITS. January.

Mr. MAYES. January.

Mr. HALL. Good. And one relatively mundane, low-tech question now before I turn it over to Mr. Lamborn is, can you provide us with data on what are the actual costs or average costs today for burial in a national cemetery?

Mr. MAYES. Average costs for burial in a national cemetery. Can you do that?

Mr. HALL. 2007.

Mr. SCHETTLER. I am afraid we don't have that number with us today, but I can get back to you with that. I am not sure of the actual cost.

[The following was subsequently received from VA:]

Burial services in a VA national cemetery are comprised of a committal service, and burial of casketed or cremated remains. The committal service for a veteran may include Military Funeral Honors.

- The cost for the interment component of burial services in VA national cemeteries varies depending on the type of burial chosen and the topography, soil conditions, and other conditions unique to each national cemetery. Casket burials generally cost in the range of \$500 to \$800. Cremation burials (whether in-ground or in a columbaria) are in the range of \$300 to \$500.
- The Military Funeral Honors program is under the jurisdiction of the Department of Defense (DoD). At VA national cemeteries, Military Funeral Honors are provided by active duty members, reservists, National Guard and volunteer honor guards who may or may not be recognized as Authorized Providers by DoD. All volunteer honor guards participate in the various components of the funeral honor detail as necessary including flag folding, firing party and providing bugler or recorded taps.

23 VA national cemeteries have volunteer honor guards:

- Sixteen are volunteer honor guards who function independently from any DoD entity and do not receive DoD reimbursement;

- Seven are recognized as an AP3 Partner (Authorized Provider) with DoD and receive DoD reimbursement for local travel expenses.

The seven honor guards recognized by DoD as AP3 Partners (Authorized Providers) at VA national cemeteries have received training by the respective branches of service they represent and have been certified to provide honors with that specific branch. They file an SF 1164, Claim for Reimbursement for Expenditures on Official Business, to receive reimbursement for local travel expenses incurred in conjunction with authorized Military Funeral Honors detail. Note: one additional group plans to be certified as an AP3 Partner by the end of 2007.

All volunteer honor guards at VA national cemeteries, whether a DoD Authorized Provider or not, are registered as volunteers with the VA Medical Center Volunteer program. The volunteer program provides lunch vouchers to all volunteers who are on duty for a minimum of 4 hours each day at a nominal cost to VA. There are no other costs associated with the provision of Military Funeral Honors at VA national cemeteries.

Mr. HALL. Thank you. And I would ask if you would do me the favor of submitting a written response or comments on H.R. 4084.

Mr. MAYES. Oh, yes. And we just didn't have time to put those together. And our intent was to formally respond, Mr. Chairman. [The Administration views for H.R. 4084 appear on p. 58.]

Mr. HALL. Very good. Thank you. That is good for me. Mr. Lamborn?

Mr. LAMBORN. Thank you, Mr. Chairman.

Mr. Mayes, can you describe the process of a STAR review, and how many claims are reviewed during that kind of a process, and what do you do when a mistake is found, and are procedural errors considered in that kind of a review process?

Mr. MAYES. The STAR review process, the Systematic Technical Accuracy Review program, is one element of our quality assurance programs. It looks at the outcome for veterans. We do a sampling of cases from all of our regional offices. Right now, it is 110 cases per year per office; a little bit larger for some of our really large offices. That was up until this fiscal year. We are going to double the size of those reviews this year. We are going to move up to 240 per regional office per year. That is one of the things that came out of the Institute for Defense Analyses (IDA) study that was recently completed at our request. It was looking at the consistency of decisions across States. We randomly select cases from a station, out of the claims they completed, in categories: whether they required a rating decision, whether we are looking at authorization activity, or fiduciary activity, etc. We call those in and we look at the case and we determine if there were any decision entitlement errors. In other words, did we make an error that caused the veteran to receive the improper payment amount? And we either say yes or no on that. We collect that information. It is reported on our STAR Web site. We also look at decision documentation and notification. Did we dot all the i's and cross all the t's, if you will, regarding the correspondence process, the notification process, and things like that. So we break the review down into those categories for rating, for authorization, and for fiduciary. Those reviews are conducted in Washington, and also we have staff in Nashville, Tennessee. We send those cases back to the service center manager at the station. The service center manager looks at those cases. If it was an error that resulted in improper payment, then they fix it at the station. And then what they do, and some do it better than others, I will acknowledge, but what they do is look at those errors as they are

coming back from the STAR review process to identify trends, which ideally are fed back into the training loop at the regional office.

As I said, because of the IDA study, we are going to increase the number of reviews; we are going to double the size of the number of reviews. There are actually four elements to our quality assurance program. There is STAR, there are compliance surveys, or site visits, where we go out to regional offices and check and see if they are doing all these things; we do special reviews. For example, if we think we have a problem in exams in a certain area, we might call some cases in and look at them. But this year, we are adding a fourth element, and that fourth element is looking at consistency, which was one of the recommendations out of the IDA study. We are looking at particular body systems, especially those where we evaluate claims we get frequently from veterans. Then we are breaking that down into the diagnostic codes where there are lots of decisions made across the country. From there, we are plotting by regional office the grant rates and the most prevalent evaluation, the mode. We are looking to see if a regional office appears to be an outlier. Then we are calling cases in, again, about 240 cases in that very specified area to make sure that they are following the procedures properly or that, perhaps, we have an area where we need to improve our policy. That is starting this year. I have approval from the Under Secretary to hire 16 additional people. We are expanding space in Nashville. We intend to have, at the end of the day, a quality assurance center down there. I am being allowed to almost double the size of the current STAR staff. So we are taking steps to be much more robust in our quality assurance program, which already has been recognized; the Center for Naval Analyses recognized it as superior to that of Social Security's and Office of Workmen's Comp in their review for the Disability Benefits Commission.

Mr. LAMBORN. Now if there is a mistake discovered that an employee has made, are they in any way penalized for that?

Mr. MAYES. That particular STAR error is not used in their Individual Performance Management. The STAR program is one of the four elements of our national Quality Assurance Program. But at every regional office, every decisionmaker, whether they be a Veterans Service Representative or a Rating Veterans Service Representative, has a performance plan. The Director of that office has a performance plan. And in every single one of those performance plans, there is an element for production and there is an element for quality, from the Director to the RVSR to the DRO to the VSR. Five cases per RVSR per month are reviewed for individual quality. They are having their cases reviewed for quality.

We don't take that STAR error and apply that to their monthly Individual Performance Plan number. We do not do that. We didn't want the purpose of the National Quality Assurance Program to be a gotcha. We wanted to really have a program that would provide feedback and information to the regional offices so that they could alter course if they needed to. Maybe they were having problems with effective dates or, you know, something very specific.

Mr. LAMBORN. Would you be in favor of competency testing for RVSRs and VSRs to improve accuracy and quality?

Mr. MAYES. We are actually testing Veterans Service Representatives. We have a skill certification program that tests the skills and abilities of VSRs. Now, I have to qualify that. It is only for promotion to the journey level, the GS-11 journey level for the VSR. And so I think Mr. Smithson talked about it a little bit. Between the interim grade levels there is not a test in place. But to achieve the journey level, you have to pass this test. We are in the process of developing an RVSR test instrument, with 100 questions. We are bringing in subject matter experts. We are working with a contractor to help develop this test. Once we have that in place, of course, we have to fulfill our bargaining obligations with our labor partners to get that in place. That has been a bit of a challenge for us. Because we are promoting people to the RVSR level when they have time in grade. The way the process works right now we don't have the leverage to say, "you are not going to get promoted until you pass that test." Because we have to invest so much time and energy into the training of an RVSR. And, by that time, the employee has already been with the organization for a while. They are typically a GS-10 or 11. The RVSR is a GS-12.

Mr. LAMBORN. Now more of a general question. I believe that we must invest in the development of claims processing assistance tools. We have been discussing that. The Chairman had some questions. I have questions, and you have provided testimony on that. Your testimony describes an RFI that would use tools like rules-based engines and evidence organization software to improve the current system. Can you expand on the results of the RFI and what the next step for these improvements would be?

Mr. MAYES. Yes, sir. I would just like to say, Mr. Lamborn, you had mentioned earlier in your testimony that we had not been available. I want to say on the record, I would be glad to work with your staff or have your staff come over. I have had one member of your staff over, and I am willing to come over here and talk about the things that we are doing. I believe that is beneficial for all of us. It is early in the process. We had 10 vendors come in and they talked to us about a variety of things, to include rules-based processing technology, project integration, things that some of these companies were already working with. I remember one was working with the Internal Revenue Service. So they came in and basically demonstrated their wares. I think what did it for me, and I attended many of these briefings, is that it helped me understand what it is we need. Because it is so complex and because there are so many moving pieces. The next step would be for us to get a RFP out on the street to engage some of this expertise. I believe that is going to happen in the very near future. In fact, I know that the Acting Secretary is very interested in getting this moving. He wants us to take an application from a claimant, not the way we do today. We have a veterans online application that will allow a veteran to go online and file an application, but we are generating the form on the other end. What we need to do is take the information that is collected in that exchange and move it right into our data system. I think what you will see in the near future is an RFP maybe initially to help us with that project integration.

Dr. TIBBITS. Let me also add a few comments to that, if I might. I mentioned earlier the two big elements, the IBM study and then

the response to this RFI, which we are discussing right now as being two elements of a planning activity that has to come together and will come together in the March or so timeframe. That will be a requirements-driven or a business-driven plan that will actually tell us where to best apply the IT dollars based upon an overall assessment of the business of processing claims. Out of that will come an acquisition strategy. That acquisition strategy will include if we need to do more pilots, if we need to go buy things. It may be in-house development. It may be speeding up some programs. It may be slowing down some programs. Out of that acquisition strategy we would depict whether we need an RFP, three RFPs, two systems integrators, whatever those piece parts are would be a mosaic of activities to undertake things to achieve the capabilities necessary to meet what shows up in that gap analysis. So it may turn out to be a single RFP. It may turn out to be multiple RFPs. It may turn out to be combined with a bunch of internal activities, all in accordance with that plan. So that plan becomes a key element of concatenating together all the piece parts to achieve that result.

Mr. LAMBORN. Okay. Thank you. Two more questions. We have had some discussion today about survivors being able to step into the shoes of a claimant who has passed away. Specifically what would you like to see there, assuming we go forward one way or another and do something there?

Mr. MAYES. Well, I think the way this draft legislation was structured, it talked about completing the submission of a claim.

Mr. LAMBORN. And I believe that it is in both H.R. 3047 and H.R. 4084. Okay. Just H.R. 3047? Okay.

Mr. HALL. Different language, but same general idea.

Mr. MAYES. Right. And I understand the intent of the proposed legislation. We have said we would be supportive of that. That is, if a claim is pending at the time the claimant passes away, then we would go ahead and adjudicate that claim as though it were the claimant's. That is the idea of substitution. But only if that claim is pending at the time that the veteran dies. The way the regulation reads today, the claim will be adjudicated, but it will be adjudicated based on the evidence of record at the time of death. There might be some evidence that we hadn't collected yet, that we hadn't gone out and gotten. For example, an opinion that says this disability is due to this incident in service. So what we are suggesting is that, with some tweaking of the language, I think there is common ground here, and we would make a commitment to go out and secure that evidence and make a decision as though it were the claimant's in an accrued claim. And Dick, am I missing anything on that?

Mr. HIPOLIT. No. I think that is an accurate statement. We said we have problems with this bill because of the language that would allow someone to come in with a claim many years later. But I think we could work with you to develop language that would be acceptable to VA and to the Committee.

Mr. LAMBORN. Well, that is an example where the opportunity to have talked more would have helped us maybe overcome that technical hurdle. And I would like to take you up on that. My last question, and this is not having to do with any of the bills we are looking at, but I am really exercised about what happened out in Cali-

ifornia with that flag-folding ceremony. And I think there was an overreaction by the part of someone in the National Cemetery Administration to crack down in an overreacting kind of way to that particular ceremony. Is there anyone here today who could address that, how that problem came about and how we could fix that?

Mr. SCHETTLER. Yes, I would be happy to address that. I hope everyone understands the background about military honors. The DoD is in charge of doing military honors for the whole country: they do not provide this flag recitation during their ceremony. Some of the VA sponsored volunteer honor guards do provide this. We found at a couple of our National cemeteries, voluntary honor guards were approaching the families as they drove up in the funeral cortege, putting this in front of them and saying "we want to read this at your ceremony." We thought that was inappropriate. We wanted to clarify that and stop that from happening. We didn't want to stop the flag-folding ceremony. We didn't want to stop the opportunity for the family to have the recitation if they wanted that. We put out a second memo, clarifying our stance on that. Now, the honor guards and our own staff are available for the families if they want to have anything said, regardless of their religion, regardless of what they want to do at their service. We have a whole variety of ceremonies at our committal shelters all the time. That is available for the families now. We didn't really have anything to ban. But we did want to stop these volunteer honor guards in some instances approaching and imposing on the families at a time when they were really vulnerable. And they didn't understand in some cases—what it was they were receiving and what they were going to have at their service. Many families didn't even know that existed. There is no official flag-folding recital that I am aware of. When this issue broke, I went online, and I found many versions of this 13-fold recitation, and with variations. We didn't know what was being handed to the families. We didn't know what was being put on the walls of our offices for the families to see. So we tried to put a stop to that but to allow the families to have anything they wanted or asked for at their service. They can certainly have the flag recitation if they want it. And that is where we are now.

Mr. LAMBORN. I think everyone would agree the families' needs and desires comes first. And that goes without question. I just would be concerned if there was a chilling effect on volunteers not being able to even discuss the recitation during the flag-folding ceremony, or families not knowing that it was available when to many families it would be a comforting thing.

Mr. SCHETTLER. Well, first of all, there is no official flag-folding recitation. And we have not been able to find anything like that. I believe this—the research I found was, an Air Force chaplain wrote it maybe 60 years ago, and it was used in retirement ceremonies for Air Force officers. And then it started getting used at some of our cemeteries. It is not used very much at our national cemeteries. We have about 70,000 burials of veterans in our cemeteries and over 100,000 burials all together each year. It is not used very often. Most of our volunteer honor guards do not use any flag recitations. It is only used in isolated instances. I would venture a guess there are only a few thousand of those 70,000 burials that the flag recitation is used.

Mr. LAMBORN. Okay. Thank you.

Mr. HALL. Thank you, Mr. Lamborn.

Thank you all for your testimony and dedication to our Nation's veterans. Just an observation or a comment that I am happy to hear about Winston-Salem and Nashville and Las Vegas, was it? And I just hope we don't hear Bangalore next in terms of the IT work. I hope that we continue to, especially as it is privately contracted to IBM or whoever else it gets contracted to, that we can keep that work in the United States. With that said, I want to thank you for your dedication and your testimony and the help that you provide every day to our Nation's veterans. Thank everyone for their statements this afternoon and for your patience with our coming and going. This hearing now stands adjourned.

[Whereupon, at 4:34 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

Good Morning,

I would ask everyone to rise for the Pledge of Allegiance—flags are located in the front and in the rear of the room.

I would first like to thank all of the witnesses for their testimonies on these seven non-controversial but critical bills, concerning memorial benefits, pensions, and the Department of Veterans Affairs claims processing system. I would specifically like to thank my colleagues, Mr. Filner, Chairman of our Committee, Ranking Member Lamborn, Ms. Berkley, Mr. Langevin and Mr. Brown, for joining us today. I look forward to hearing their testimony on their respective legislation.

Four of the bills that we will consider today address the memorial assistance and death benefits provided to the families of our veterans. At these times of grief, it is important that we honor our veterans' service and sacrifice appropriately.

Due to the current deployment schedule of our active duty troops and the aging of our veterans from previous conflicts, it has become increasingly difficult to ensure military presence for proper honors details at veterans' funerals. The Providing Military Honors for our Nation's Heroes Act, H.R. 3954, introduced by Chairman Filner, attempts to increase the number of details available to our veterans' families and help ensure the proper honor is provided at veterans' burials. This legislation would authorize the Secretary of Veterans Affairs to reimburse volunteers from approved organizations for expenses incurred while providing these vital ceremonial duties.

The Veterans Burial Benefits Improvement Act of 2007, H.R. 3249, introduced by my colleague from Nevada, Ms. Berkley, would increase burial allowances and plot allowances for both service connected and non-service connected veterans. This legislation allows for annual adjustments to ensure that these benefits will continue to keep pace with rising funeral and burial costs, ensuring that all of our veterans can be interred in a proper and respectful manner.

H.R. 3415, introduced by Mr. Langevin, aims to assist family members of those buried in American Battle Monument Commission cemeteries abroad by providing them a remembrance of their loved one on U.S. soil. As it may prove difficult for family members to travel to these overseas grave sites, this legislation would authorize memorial markers for this limited population of servicemembers which could be placed in national veterans cemeteries closer to home.

Today, we will also consider the appropriateness of our current regulations regarding Dependency and Indemnity Compensation (DIC). H.R. 3286, also introduced by Chairman Filner, would shorten the time period for which a veteran must be rated continuously totally disabled immediately preceding his or her death before the veteran's survivors are eligible for these benefits from 10 years to 1 year. Given the current backlog in the VA's claims processing system, veterans wait years, even decades, to receive their final rating. In the case of totally disabled veterans, the resulting benefits may, unfortunately, come too late. These delays should not negate our responsibility to these veterans' families and this legislation will ensure that their survivors receive the benefits due to them.

We will also hear testimony on updating the special pension awarded to Medal of Honor recipients and their spouses. H.R. 1137, introduced by Mr. Brown, would increase this special pension to \$2,000 per month from \$1,104. This pension was last adjusted in 2006, but the acts of these extraordinary servicemembers, currently 111, resulted in the receipt of our highest military honor, the benefits that we provide to them should reflect nothing less.

Today we will also consider the VA Claims processing system and address two pieces of legislation that seek to make the process more efficient and effective for our Nations' veterans.

Ranking Member Lamborn introduced the Veterans Claims Processing Innovation Act of 2007, H.R. 3047, which among other things seeks to increase the effectiveness

of claims filing and addresses the VA's work credit system. I look forward to hearing more about this bill.

Lastly, the Veterans Quality of Life Study Act of 2007, H.R. 4084, which I recently introduced, would take an important step toward examining one of the groundbreaking recommendations set forth by the Veteran's Disability Benefits Commission, the Institute of Medicine and the President's Commission on Care for America's Returning Wounded Warriors regarding quality of life. Answering the call of these recommendations, this legislation would require the VA to commission a study to determine whether and to what extent its disability rating system should compensate veterans for the loss of quality of life these impairments impose on their lives.

This legislation also seeks to allow substitution of claimants, ensuring that eligible family members can take the place of a veteran, in the event of his or her death, in the disability claims processing system and not have to begin all over again. Lastly, this bill would expand the categories of reporting requirements of the annual report of the CAVC that would further assist Congress in analyzing and addressing the Court of Appeals for Veterans Claims workload and backlog. The last provision deals with concerns the CAVC has raised about space allocation and the proposed construction of a Veterans Courthouse and Justice Center.

During times of war, such as today, we must simultaneously ensure the proper compensation and support for our current veterans while also creating and implementing innovative solutions that will allow us to care for those who will become veterans of our current conflicts. I also look forward to hearing from the Veterans Service Organizations and the VA's representatives on these bills.

Thank you.

**Prepared Statement of Hon. Doug Lamborn, Ranking Republican Member,
Subcommittee on Disability Assistance and Memorial Affairs**

Thank you Mr. Chairman for yielding and I thank you and your staff for holding this hearing today. I requested this hearing earlier in the session and I commend your bipartisanship in holding it today.

This afternoon, we are considering several pieces of legislation, all of which are of interest and potential value. While I am currently not opposed to any of the proposed legislation I am concerned about the mandatory offsets that would be necessary to pass many of these bills under PAYGO rules.

That being said, I look forward to hearing more about these bills from our colleagues and the other witnesses who are with us today.

Mr. Chairman I would like to focus the rest of my time on discussing the bill I introduced H.R. 3047, the Veterans Claims Processing Innovation Act of 2007. This bill has the bipartisan support of 32 cosponsors and is supported by many of our witnesses here today.

H.R. 3047 will bring VA's compensation and pension system into the 21st century. By increasing accountability and leveraging technology at the Veterans Benefits Administration, this bill would improve the accuracy and speed of benefits claim processing.

Section two of the bill will require VA to create a new system for claims processors to acquire credit for their work. One way to reduce the disability compensation backlog is to ensure that VA adjudicators rate the claim correctly the first time.

While I believe that the system described in section two will help achieve this goal, I am open to other suggestions that will ensure that VA adjudicators focus on accuracy as well as speed. As I have said before, most veterans would rather wait a few more days for their claim to be adjudicated correctly the first time than have it be adjudicated quickly and have it be wrong.

Section three of my bill would require VA to establish a pilot program to create a "Regional Office of the Future" where all claims would be processed electronically. Mr. Chairman we have heard from numerous witnesses at several hearings during this session that processing claims electronically is the way of the future and would prevent future VBA backlogs.

After several questions and concerns were raised about this section, I was happy to work with Veteran Service Organizations and the Majority staff to create the amendment in the Nature of a substitute for H.R. 3047 that I would offer when this bill is marked up. I want to make it clear that this provision would only establish a pilot program for electronic claims processing to aide VBA employees with their adjudication and would not replace them.

Section four of the bill would allow substitution of family members for a deceased veteran for the purposes of acquiring accrued benefits for which they are due. I am happy to see that a similar provision is included in your bill Mr. Chairman and I look forward to working with you on this.

The final section of my bill would require VA to use a reputable private entity to evaluate its quality assurance and training programs. While I understand and support VA's current attempt to centralize and improve training, I would like an independent organization to verify they are on the right path.

Mr. Chairman I was very disappointed in the testimony from VA on H.R. 3047. I understand that this bill is not perfect but rather than offering a simple out of hand dismissal of the bill I would have appreciated constructive input from them on how to perfect this legislation to improve the system.

My staff has asked VA numerous times for ways that we can help them improve this outdated system with little response. That is why I am happy to read about the three initiatives in their testimony which seem to be moving in this direction.

I am committed to continuing to work with you Mr. Chairman, VA, and other stakeholders to perfect legislation that will revolutionize the disability compensation system and bring it in line with modern technology.

I would like to thank veteran service organizations for their support of this legislation, and I suggest to my colleagues that they also read the testimonies from AMVETS and Mr. Ron Abrams of NVLSP who both support H.R. 3047 but were unable to be with us today but have submitted for the record.

Mr. Chairman I extend my thanks to you and your staff for holding this hearing and I look forward to hearing the testimony of our colleagues and the other witnesses today. I yield back.

**Prepared Statement of Hon. Henry E. Brown, Jr.,
a Representative in Congress from the State of South Carolina**

Mr. Chairman and Members of the Subcommittee:

Thank you for allowing me to testify before the Subcommittee on Disability Assistance and Memorial Affairs today on H.R. 1137, which would increase the Medal of Honor special pension. This bill, which I have worked on with my colleague Mr. Michaud and introduced in both the 109th and 110th Congress, seeks to further recognize the bravery and exceptional service of the recipients of the Medal of Honor.

The Medal of Honor is the highest military decoration awarded by the United States of America. It is awarded "for conspicuous gallantry and intrepidity at the risk of life, above and beyond the call of duty, in actual combat against an armed enemy force." Since its initial presentation to Private Jacob Parrott in 1863, 3,445 Americans have been awarded the Medal of Honor.

Today, there are 109 living Recipients of the Medal of Honor. The average age of a living recipient is 74 and 47% of Recipients earned their Medals more than 50 years ago while serving in World War II and Korea. The oldest living Recipient, John W. Finn is 98 years old. He received his Medal for actions during the attack on Pearl Harbor, December 7, 1941. In addition to Mr. Finn, 34 other living Recipients are World War II Veterans.

Sixty-one living Recipients of the Medal of Honor earned their Medals while serving in Vietnam, including my good friend General James Livingston. At this time I would like to thank General Livingston not only for his heroic service to our country during the Vietnam War, but also for his tireless work on behalf of America's veterans in the years since.

The most recent Medal of Honor was awarded posthumously on October 22, 2007 to Lieutenant Michael Murphy, a Navy SEAL recognized for his service in Afghanistan. Lieutenant Murphy is the second Medal of Honor Recipient from the current Iraq and Afghanistan conflicts. Marine Corporal Jason L. Dunham was posthumously awarded the Medal of Honor for his action in Iraq in 2004.

In recognition of their exceptional service, Medal of Honor recipients are entitled to a special pension, as first authorized by Congress in 1916. Currently, the 109 living recipients receive an inflation-adjusted \$1,000 per month. In 2002, Congress increased the Medal of Honor pension, citing evidence that the majority of Medal of Honor recipients live solely on Social Security benefits, supplemented by the Medal of Honor pension. Of specific note, many Recipients travel extensively to speak at commemorative and patriotic events, often at their own expense, presenting an additional financial strain for which the VA Committee in 2002 deemed these heroes ought to be compensated.

My bill, H.R. 1137, would increase the base payment of the Medal of Honor special pension to \$2,000 per month and extend the benefit to surviving spouses. This benefit acts as a small token of appreciation for the selfless leadership, courageous actions, and extraordinary devotion to duty shown by Medal Recipients.

**Prepared Statement of Richard Daley, Associate Legislation Director,
Paralyzed Veterans of America**

Chairman Hall, Ranking Member Lamborn, members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to testify today on H.R. 1137, H.R. 3047, "The Veterans Claims Processing Innovation Act of 2007," H.R. 3249, the "Veterans Burial Benefits Improvement Act of 2007," H.R. 3286, H.R. 3415, and H.R. 3954, "The Providing Military Honors for our Nation's Heroes Act".

H.R. 1137, the "Medal of Honor Special Pension"

PVA supports H.R. 1137, a bill that would increase the Medal of Honor Special Pension from the current \$1,000 per month to \$2,000 per month. Millions of men and women have served this nation during periods of conflict; very few have ever received this nation's highest award for valor, the Medal of Honor. There are only 109 living recipients of this prestigious award, dating back to their service in World War II. PVA supports the increase of this special pension for these American heroes.

H.R. 3047, the "Veterans Claims Processing Innovation Act of 2007"

We generally support H.R. 3047, the "Veterans Claims Processing Innovation Act of 2007." PVA along with other veterans' service organizations are very concerned about the backlog of claims in the Veterans Benefits Administration. We know from recent testimony that the VA is trying to reduce the time of processing a new claim from the current 188 days. We believe that a veteran injured while serving their country should not have to wait that long for his or her claim to be processed. PVA supports this effort to help alleviate some of the backlog.

Section 2 of the bill will establish a process that places an emphasis on the accuracy of the claims completed. If a VA regional office cannot receive credit for a claim until it is finally decided, we believe this will create an incentive to do it right the first time.

Section 3 of the bill involves electronic processing of claims. If software is available, or can be developed to help with the processing of claims we would support a pilot program to test the efficiency and accuracy of this program. The legislation suggests that the software would somehow replace the human ability to review and evaluate evidence in order to render an evaluation. PVA does not agree that software exist that can replace the human element. We believe that requiring the VA to retroactively scan in claims could create an additional burden. Perhaps this new system should be tested on new claimants only.

Section 4 of this bill would treat the beneficiary of a veteran's accrued benefits as the claimant for the purpose of completing the submission of the claim. PVA supports this modification.

Section 5 of the bill requires evaluation of training and assessment programs for employees of the Veterans Benefits Administration (VBA). We support this section.

H.R. 3249, the "Veterans Burial Benefits Improvement Act of 2007"

PVA supports H.R. 3249, the "Veterans Burial Benefits Improvement Act of 2007." The original burial allowance benefit enacted in 1973 was intended to help with the burial cost of the deceased veteran. The amount of the benefit paid to the family at that time was \$150. In 1978 the amount was increased to the current \$300 for a non-service connected veteran, and in 2001 the amount for service-connected deaths was increased to \$2000. This benefit was never intended to pay for the burial of the veteran, but help with a portion of the cost. The value of this benefit has eroded with inflation. In accordance with the recommendations of *The Independent Budget*, the comprehensive budget and policy document created by veterans for veterans, we support this legislation that will increase this benefit to \$1,270 for a veteran and \$4100 for a service-connected disabled veteran.

We also support the increase in the plot allowance from the current amount of \$300, to \$745 for qualified veterans. This provision also reflects a recommendation

of *The Independent Budget*. PVA supports the provision that would make an annual adjustment in the amounts paid for burial, funeral and plot allowance.

H.R. 3286

PVA supports H.R. 3286. This bill would reduce the period of time for which veterans must be totally disabled for the purpose of benefits provided by the Secretary of Veterans Affairs for survivors of certain veterans rated totally disabled at the time of death. It would reduce the required time for the veterans' totally disabled rating from the current 10 year period to one year.

H.R. 3415

PVA supports H.R. 3415, a bill to authorize the placement of memorial markers in a national cemetery for the purpose of commemorating service members or other persons whose remains are interred in an American Battle Monuments Commission cemetery.

H.R. 3954

PVA supports H.R. 3954, "Providing Military Honors for our Nation's Heroes Act". In National cemeteries across the country dedicated veterans regularly perform the honorable ceremony of a military burial for fellow veterans. Usually the veterans providing this service are retired, living on a fixed and limited income and they may have traveled some distance. To reimburse these veterans for their expenses for performing this ceremony of recognition of service to the nation would be appropriate.

Chairman Hall, Ranking Member Lamborn, thank you again for allowing PVA to provide our views on these important measures. We look forward to working with the Subcommittee to ensure that meaningful reforms are enacted. I would be happy to answer any questions you may have.

**Statement of Steve Smithson, Deputy Director,
Veterans Affairs and Rehabilitation Commission, American Legion**

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's views on these various bills. The American Legion commends the Subcommittee for holding a hearing to discuss these important and timely issues.

H.R. 3047

To amend title 38, United States Code, to improve the processing of claims for benefits administered by the Secretary of Veterans Affairs, and for other purposes.

The American Legion is pleased to support the overall intent of this legislation. Specifically, we fully support allowing a deceased veteran's survivor to continue the claim upon the veteran's death rather than the Department of Veterans Affairs (VA) terminating the claim and requiring the survivor to file a separate claim for accrued benefits, as is the current practice. Not only does the current practice cause duplication of effort and add to the existing claims backlog by requiring a "new" claim to be filed, it imposes an arbitrary 1-year deadline for the filing of such a claim. This deadline is often missed by grief stricken family members who were either unaware of the deadline or were not emotionally ready to go forward with the claims process within a year of their loved one's death. This legislation provides a common sense approach that allows VA to avoid "reinventing the wheel" by not having to start over from scratch with a new claim and, at the same time, provides the deceased veteran's survivors with a more user-friendly and less complicated claims process.

The American Legion also agrees with the portion of this bill that would require VA to contract with a private entity to evaluate VA's quality assurance program. Receiving input on VA's training and performance assessment programs from an independent entity would undoubtedly provide new insight on how to enhance the current processes.

Regarding proposed Section 4, "Electronic Processing of Claims For Benefits Administered by Secretary of Veterans Affairs," The American Legion welcomes innovative ideas regarding the processing of benefits claims and does not oppose the concept of electronic claims processing. We were, however, initially concerned that this portion of the proposed legislation appeared to be calling for the centralized or con-

solidated processing of such claims, a concept The American Legion has generally opposed. It is now our understanding that the intent of this portion of the legislation is to establish a pilot program and is not intended to create a centralized VA claims processing system. It is also our understanding that this point will be clarified with the appropriate amendment language during the markup process. This being the case, The American Legion is not opposed to the creation of a pilot program for electronic claims processing.

Lastly, The American Legion has been a vocal critic of the "End Product" work measurement system, which emphasizes and awards quantity of work produced rather than quality, currently used by VA. Unfortunately, this work measurement system essentially pits the interests of the claimant against the needs of VA managers. The conflict is created because the regional office managers seeking promotion and bonuses have a vested interest in adjudicating as many claims as possible in the shortest amount of time. This creates a built-in incentive to take shortcuts so that the End Product can be taken. The system, in effect, rewards regional offices for the gross amount of work they report, not whether the work is done accurately or correctly. Often, the emphasis on production results in many claims being prematurely adjudicated. Premature adjudication of claims has been a common problem identified during American Legion quality review visits at VA regional offices. These problems are caused (in part) by not taking the time to adequately develop the claim, not taking the time to identify all relevant issues and claims, and not taking the time to order a new VA examination when the previous VA examination is obviously inadequate. Such errors are often overshadowed by the desire of VA managers to claim quick End Product credit. The Board of Veterans' Appeals (BVA) combined remand and reversal rate (56 percent) for Fiscal Year 2007 is arguably a direct reflection of the greater emphasis placed on production over training and quality assurance by the VA regional offices.

Veterans Benefits Administration (VBA) management has been reluctant to establish a rigorous quality assurance program to avoid exposing the longstanding history of the manipulation of workload data and policies that contribute to poor quality decision-making and the high volume of appeals. VBA's quality-related problems and the fact that little or no action is being taken to prevent or discourage the taking of premature End Products have been longstanding issues for The American Legion. The current work measurement system, and corresponding performance standards, are used to promote bureaucratic interests of regional office management and VBA rather than protecting and advancing the rights of veterans. The End Product work measurement system, as managed by VA, does not encourage regional office managers to ensure that adjudicators "do the right thing" for veterans the first time. For example, denying a claim three or four times in the course of a year before granting the benefit sought allows for a total of five end product work credits to be counted for this one case, rather than promptly granting the benefit and taking only one work credit.

In the view of The American Legion, the need for a substantial change in VBA's work measurement system is long overdue. A more accurate work measurement system would help to ensure better service to veterans. Ultimately, this would require the establishment of a work measurement system that does not allow work credit to be taken until the decision in the claim becomes final, meaning that no further action is permitted by statute whether because the claimant has failed to initiate a timely appeal or because the BVA rendered a final decision. We are pleased that this legislation would mandate such overdue changes to VA's work credit system and we fully support this provision. We are confident that removing the incentive for producing poor quality decisions by rewarding quality of work rather than quantity will result in an increase in accurate decisions, as well as claimant satisfaction, and will ultimately reduce the overall number of appeals.

H.R. 3249

To amend Title 38, United States Code, to increase burial benefits for veterans, and for other purposes.

In general, this bill seeks to:

1. Increase burial benefits for funeral expenses for eligible veterans from \$300 to \$1,270.
2. Increase burial benefits for funeral expenses for veterans who die as a result of a service-connected disability from \$2,000 to \$4,100.
3. Increase the plot allowance from \$300 to \$745.

The American Legion fully supports this legislation. The American Legion would also like to see that the Department of Veterans Affairs be required to annually ad-

just burial allowances and the burial plot allowance for inflation by tying the increased allowances to the Consumer Price Index.

H.R. 3286

To amend Title 38, United States Code, to reduce the period of time for which a veteran must be totally disabled before the veteran's survivors are eligible for the benefits provided by the Secretary of Veterans Affairs for survivors of certain veterans rated totally disabled at time of death.

The American Legion fully supports this legislation as it would eliminate current differences between various categories of veterans, for the purpose of survivors establishing entitlement to dependency and indemnity compensation (DIC) based on the length of time the veteran was rated totally disabled for service-connected disability immediately preceding death. The current differences between certain categories of veterans are arbitrary and this legislation, if enacted, would correct the inequities resulting from current statute by establishing a fair and consistent one-year period for all totally disabled veterans (due to service-connected disabilities) for the purpose of eligible survivors establishing entitlement to DIC.

H.R. 3415

To amend Title 38, United States Code, to authorize the placement in a national cemetery of memorial markers for the purpose of commemorating servicemembers or other persons whose remains are interred in an American Battle Monuments Commission cemetery.

The American Legion has no position on this bill. The American Legion does support the establishment of additional national and state veterans' cemeteries and columbaria wherever a need for them is apparent. Congress should provide required operations and construction funding to ensure VA burial in a national or state veterans' cemetery is a realistic option for veterans and their eligible dependents.

H.R. 1137

To amend Title 38, United States Code, to increase to \$2,000 the amount of the Medal of Honor special pension under that title and to provide for payment of that pension to the surviving spouse of a deceased Medal of Honor recipient.

Since the enactment of the Medal of Honor special pension, Congress has seen fit to make increases to it in an effort to reflect the increased cost-of-living over time. Historically, The American Legion has supported such increases in the past. The American Legion therefore supports the intent of the bill to increase the amount of the Medal of Honor special pension to \$2,000.

The only concern that The American Legion has, as with all veteran's benefits, is that the special pension not be funded at the expense of other veterans' benefits.

CONCLUSION

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important bills. The American Legion welcomes the opportunity to work closely with you and your colleagues on these and any other issues that concern veterans in the future.

This concludes my testimony.

ADDENDUM

H.R. 3954, "Providing Military Honors for our Nation's Heroes Act" and Draft Legislation "The Veterans Quality of Life Study Act of 2007"

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's views on these various bills and those in this addendum. The American Legion commends the Subcommittee for holding a hearing to discuss these important and timely issues.

H.R. 3954, "Providing Military Honors for our Nation's Heroes Act"

This bill would reimburse a member of a veterans' service organization or other organization approved by the Secretary of the Department of Veterans Affairs (VA) for transportation expenses and other expenses the Secretary determines are appropriate that are incurred in connection with the voluntary provision of a funeral hon-

ors detail at the funeral of a veteran, including a funeral honors detail requested by a funeral home.

Due to the Global War on Terrorism (GWOT), the Department of Defense has been having difficulty fulfilling the requests for military funeral honors. This is because of the unprecedented role of the Reserves and the National Guard in GWOT. Veterans' service organizations, which have a proud history of providing such honors, have been doing their best to fill in the gap. However, the need is greater than it has ever been. Almost 2000 veterans a day pass away, most of them are World War II veterans. If they request military funeral honors, it is the duty of this Nation to fulfill the request.

The American Legion supports this bill in the hopes that it will make providing these honors more possible by assisting those already overstretched volunteers.

Draft Legislation "The Veterans Quality of Life Study Act of 2007"

The American Legion does not have a position on this legislation, as it was not available for review at the time of this statement was prepared. However, The American Legion has been advocating that veterans of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) be tracked by VA as their own group and not be included in the current tracking of Gulf War veterans.

Extended deployments, different types of exposures, and the nature of the conflict (where there are no longer any real frontlines) have made this generation's experience different to a large extent. This should warrant that they be tracked as a separate and different group than their first Gulf War comrades. This data will be critical in tracking the quality-of-life for the generation of wartime newest veterans.

Conclusion

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important bills. The American Legion welcomes the opportunity to work closely with you and your colleagues on these and any other issues that concern veterans in the future.

This concludes my testimony.

**Statement of Bradley G. Mayes, Director,
Compensation and Pension Service, Veterans Benefits Administration,
U.S. Department of Veterans Affairs**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on five bills. We did not receive the text of the Veterans Quality of Life Study Act of 2007 in sufficient time to provide our views today. We will address the bill in a subsequent letter to the Subcommittee.

H.R. 1137

The first bill, H.R. 1137, would increase the monthly rate of the Medal of Honor special pension from \$1,000 to \$2,000 and would require VA to pay the special pension to the surviving spouse of a person who was awarded a Medal of Honor if the surviving spouse was married to that person either for at least one year or for any period of time if a child was born to them before or during their marriage. It would also prohibit a surviving spouse from receiving more than one Medal of Honor special pension based on multiple marriages, but would permit the special pension to be paid despite the remarriage of a surviving spouse if the remarriage occurred after the surviving spouse attained age 57 or has been terminated by death or divorce, unless the Secretary determines that the divorce was secured through fraud or collusion. It would also permit the special pension to be paid to a surviving spouse if the surviving spouse ceases living with another person and holding himself or herself out openly to the public as that person's spouse. These provisions would apply to special pension payments made for months beginning after the date of enactment of the bill.

VA does not oppose H.R. 1137, subject to Congress finding offsets for the increased costs. The benefit cost is estimated to be \$11.9 million during the first year, \$58.8 million for five years, and \$113.0 million over ten years.

H.R. 3047

Section 2 of H.R. 3047, the "Veterans Claims Processing Innovation Act of 2007," would require VA to establish a work credit system for evaluating regional offices (ROs). Under the system, ROs would receive work credit for a claim only after the

appellate period for the claim has expired or the Board of Veterans' Appeals issues a final decision on the claim.

We do not support section 2 of H.R. 3047 for several reasons. First, the term "work credit" is undefined, and it is unclear whether and to what extent "work credit" would be relevant to the operation or funding of VA's regional offices. Moreover, withholding work credit until after the one-year appellate period has passed, or until the claim is finally decided by the Board of Veterans' Appeals (Board), will likely delay our ability to provide feedback to RO Directors, individual employees, and their supervisors. Moreover, once the work credit is assigned it is unlikely to produce any meaningful data about the current status of a particular regional office. Individual claims can be the subject of multiple remands by the Board or may be developed after the notice of disagreement is filed or post-remand. In such cases, work credit might not be assigned for more than a year after the issuance of the RO decision. Waiting for such an extended period is likely to conceal organizational weaknesses, such as in training or official guidance.

Most VA claims are resolved well within one year after the claim is filed. In FY 2007, only 12 percent of claims resulted in the filing of a notice of disagreement, and substantive appeals were filed in only 5 percent of cases. Yet, H.R. 3047 would require VA to wait one year before assigning credit for all cases, making it extremely difficult to monitor both VA's progress and the magnitude of the workload still awaiting action. As such it would provide a distorted picture of VA's performance and current needs. We must have accurate information for budgetary and long-range planning, resource allocation, workload management, and performance accountability. This proposal would render our basic management systems and principles ineffective.

There are no mandatory costs associated with this section, as it has no effect on benefit entitlement. We have not had sufficient time to consider any potential discretionary costs, but cost is not our primary concern regarding this bill. Rather, we are concerned with how the bill would impede workload and performance management.

Section 3 of H.R. 3047 would require VA to develop and maintain a claims processing system employing "artificial intelligence" that uses medical and military service data to generate recommended disability ratings. Under the bill, VA would be required to maintain one RO that would exclusively process claims electronically under this system, and that RO would be required to electronically scan all files created or submitted to that office in connection with a claim. VA would be required to submit quarterly reports to Congress on the status of the system during the period beginning 90 days after enactment of this section and extending through the first full fiscal year of operations of the RO employing this system.

We do not support this section for many reasons. We believe that the use of rules-based and decision-support technologies can be greatly expanded in the near term to automate and streamline much of the claims process, and we are working aggressively toward that end. However, we do not believe it is feasible in the near future to entirely remove the human element from the decision process for all veterans' claims. We also do not believe it is possible to accomplish all of this simultaneously at one physical location. Because the programs we administer are national in scope, we further believe that ensuring consistency in outcome for veterans becomes much more difficult if processed using different systems and processes. We therefore believe it is better to approach the integration of new technologies, including rules-based processing, by systematically developing process component requirements through business modeling and introducing technology changes incrementally at a national level, rather than attempting to change all processes at a single regional office location.

The administrative costs and burdens of establishing such a program would be significant.

However, we note that VA is engaged in an aggressive planning effort to identify opportunities for using technology to improve efficiencies in claims processing. We are taking a multi-faceted approach to this important endeavor. Specific efforts we are currently exploring include:

- Expansion of the use of electronic records and image management technology. This includes the collection and use of both images and data to create a paperless claims file, and enhances our current paperless claims processing initiative.
- Investment in the development of claims processing assistance tools, such as rules-based engines, knowledge couplers, and evidence organization software. A recently published Request for Information (RFI) has yielded a variety of potential products that may meet our needs in this area. We are currently meeting

with respondents and are encouraged by the potential we have seen in their presentations.

- Development of electronic processes for submission of applications for VA benefits. This will facilitate the receipt of electronic claim information and provide the initial data load into the claims processing systems. This is a critical first step in the paperless claims process, avoiding the receipt of paper and eliminating re-keying of data to begin the claims process.

VA has received \$20 million in a supplemental appropriation to support the initiatives described above. We believe that we will be in a position to execute necessary contracts to support implementation of our plan over the course of the next 12 months and will be able to report on our progress in approximately one year.

There are no mandatory costs associated with this section, as it has no effect on benefit entitlement. Although we have not been able to estimate the administrative costs that would result from this provision in the time provided, they would clearly be substantial.

Section 4 would require VA, in the case where a veteran claimant dies before completing the submission of a claim, to treat as the claimant (for purposes of completing the submission of the claim) the person who would receive any accrued benefits due to the veteran under 38 U.S.C. § 5121(a)(2).

We do not support this proposal as drafted because the reference to “completing the submission of a claim” is ambiguous and could be construed to apply to cases where there was no claim pending before VA when the veteran died. We cannot support legislation that would enable a survivor to advance a claim that the veteran did not properly present to VA before the veteran’s death. Allowing a survivor to advance a putative or unfiled claim could enable survivors to file claims decades after the veteran’s death. However, we would not object to legislation that would allow the addition of evidence to a claim that was pending before VA before the veteran’s death, even if that claim had not been fully developed or adjudicated when the veteran died. Such legislation would be consistent with the recommendation by the Veterans Disability Benefits Commission to allow the veteran’s survivors, but not a creditor, to pursue the veteran’s due but unpaid benefits and any additional benefits by continuing the claim that was pending when the veteran died, including presenting new evidence not in VA’s possession at the time of death. Because the language of section 4 is not clearly limited to cases involving claims pending before VA at death, we cannot support it.

At this time, we are unable to estimate the cost of this section because we do not have sufficient data to determine the number of veterans who die with an “incomplete” claim (i.e., a claim that a veteran would have provided additional evidence for had he or she not died). Additionally, we cannot determine whether their claims would be granted with a compensable evaluation. Further, the amount of any accrued benefits payable would depend on the status of the substituted party (i.e., whether the substituted party is a surviving spouse, qualifying child, or parent; or is the person paying last expenses).

Section 5(a) would require VA to contract with a private entity to evaluate those items in VA’s annual report required by 38 U.S.C. § 7734 that relate to training and performance assessment programs for employees responsible for matters relating to compensation or pension benefits. The private entity would be required to provide the results of the evaluation to VA not less than 180 days after the date of enactment of this bill. Under section 5(b), VA would be required to submit those results to Congress in the first annual report submitted pursuant to 38 U.S.C. § 529 after VA receives those results, but not later than 180 days after the date of enactment of this bill. We note that there is an apparent inconsistency in the time requirements of section 5(b), because the timing of the first end-of-fiscal-year report under 38 U.S.C. § 529 following VA’s receipt of the evaluation results will most likely be beyond the 180-day period following enactment of this bill. Under section 5(c), VA would be required to report to Congress not later than 180 days after it submits the report required under section 5(b) on any actions it has taken or plans to take in response to the results of the evaluation.

There has been significant attention given to VA’s quality assurance and training programs in recent months. The Center for Naval Analyses reviewed VA’s training efforts for the Veterans’ Disability Benefits Commission and was highly complimentary of VA’s training efforts in testimony before the Commission. Also, the Government Accountability Office, in a recent assessment of the Department of Defense’s Disability Evaluation System, referenced the VA Compensation and Pension Quality Review program as a favorable model for adoption.

There are no mandatory costs associated with this section of the proposal as it has no effect on benefit entitlement. It is estimated that discretionary costs for this

legislation, based on previous contracts, would be approximately \$2 million. Given the recent positive reviews of VA's quality assurance and training programs, VA does not see the need for this provision, and therefore, cannot support this provision.

H.R. 3249

H.R. 3249 would increase several monetary burial benefits provided by VA. Section 2(a) would increase from \$300 to \$1,270 the benefit payable to reimburse expenses related to the burial and funeral of a veteran who dies due to a non-service-connected cause and would increase from \$2,000 to \$4,100 the benefit payable to reimburse expenses related to the burial and funeral of a veteran who dies due to a service-connected disease or injury. Section 2(b) would increase the plot allowance from \$300 to \$745. Section 2(c) would provide an annual cost-of-living (COLA) adjustment for both burial and funeral expenses and the plot allowance.

VA has embarked upon an independent evaluation of VA's memorial benefits program. The main objectives of this evaluation are to determine the extent to which the VA memorial benefits program is achieving its expected outcomes and to identify the program's impact on the eligible veteran population. The evaluation will assess the appropriateness of VA's current memorial benefits and recommend changes to the program based on the data obtained and beneficiary needs. We expect this program evaluation to be completed by April 2008. We believe it would be premature to take a position on H.R. 3249 before we have completed our memorial benefits program evaluation. Accordingly, we defer taking a position on this legislation until we have had an opportunity to review the results of this program evaluation. We estimate benefit costs of this bill would be \$154.5 million during the first year, \$872 million over five years, and \$2.0 billion over ten years.

H.R. 3286

H.R. 3286 would reduce to one year the period of time during which a veteran must have been rated totally disabled due to service-connected disability in order for the veteran's survivor to receive dependency and indemnity compensation (DIC) as if the veteran's death were service connected. Current law requires that the veteran have been rated totally disabled for a period of ten years or more immediately preceding death; or for a period of five years or more from the date of discharge or release from active duty until the date of death; or, in the case of a former prisoner of war, for a period of one year immediately preceding death.

VA does not oppose H.R. 3286, subject to offsetting savings and subject to one amendment. However, we believe that the bill should be amended to require the veteran's total evaluation to be rated as permanent. Some total evaluations are temporary. For example, VA's schedule for rating disabilities requires total evaluations for one full year in specific situations, such as joint replacements. At the end of the one-year period, the veteran is re-examined and the disability reevaluated based on medical evidence showing residual disability. We do not support the payment of DIC based on a one-year temporary 100-percent evaluation.

We estimate benefit costs of this bill would be \$51.6 million during the first year, \$859.1 million over five years, and \$3.5 billion over ten years.

H.R. 3415

H.R. 3415 would make "servicemembers and others interred" at an American Battle Monuments Commission (ABMC) cemetery eligible for placement of a memorial marker in a stateside cemetery. We support enactment of this bill.

Currently, VA may furnish a memorial marker only for eligible individuals whose remains are unavailable because they: have not been recovered or identified; were buried at sea, whether by the individual's own choice or otherwise; were donated to science; or were cremated and the ashes scattered without interment of any portion of the ashes.

The distance and cost of travel to visit an overseas gravesite is prohibitive for many survivors of servicemembers interred in ABMC cemeteries. Public Law 80-368 provided families a limited opportunity to repatriate the remains of servicemembers from overseas to United States soil. Since that law expired on December 31, 1951, ABMC has accommodated the families of servicemembers interred overseas with fee-free passports for travel to the site, photographs of headstones or Tablets of the Missing on which the name of the deceased is inscribed, and an Honor Roll Certificate for Korean War casualties who are interred overseas, and by arranging for placement of gravesite floral decorations and photographs. Nonetheless, survivors may wish a more tangible and accessible remembrance of their de-

ceased loved one than can be provided through these measures. Provision of a memorial marker in a stateside cemetery would address this desire. For this reason, we do not object to this legislation.

Typically, in national cemeteries, memorial marker sections are established where interment of remains cannot be accommodated due to site conditions. Therefore, the provision of this benefit should not consume a substantial amount of space in national cemeteries that would otherwise be available for the interment of the remains of other eligible veterans and their family members. Thus, we anticipate that we could make a limited amount of space available in national cemeteries for placement of these markers without impacting gravesites for interment of remains.

Although the bill's purpose statement and sectional title refer to placement of a memorial marker in a national cemetery, as written, H.R. 3415 would also authorize VA to furnish upon request a memorial marker for placement in a state or private cemetery. State and private cemeteries would make their own determinations concerning placement of the memorial markers.

ABMC estimates that 124,917 U.S. war dead are interred in 24 permanent ABMC cemeteries on foreign soil. The average cost for furnishing a VA marker is \$116. VA has no data upon which to calculate how many families of those interred in an ABMC cemetery would request a memorial marker, but we anticipate that the number would be small given the passage of time since the interment of these servicemembers.

The ABMC should be consulted regarding its views on this bill and the coordination between the agencies that this bill would require.

H.R. 3954

H.R. 3954 would authorize VA to reimburse a member of a veterans' service organization (VSO) or other organization approved by VA for appropriate transportation and other expenses incurred in connection with the voluntary provision of funeral honors detail at the funeral of a veteran, including funeral honors detail requested by a funeral home.

We are concerned that reimbursement under H.R. 3954 may potentially duplicate expenses paid by the Department of Defense (DoD). DoD is required by 10 U.S.C. § 1491(a) to provide, upon request, a funeral honors detail at the funeral of any veteran. These funeral honors are provided at national cemeteries by service members, as well as by VSOs and individual volunteers on behalf of DoD. VSOs and individual volunteers may also perform this service at State veterans cemeteries and private cemeteries. DoD is currently authorized by statute to reimburse persons who participate in a funeral honors detail, other than a service member who is not in a retired status or an employee of the United States, with transportation and expenses or a daily stipend. These volunteers maintain their own log of volunteer hours and expenses.

VA does not support H.R. 3954 for the following reasons. To comply with H.R. 3954, the National Cemetery Administration (NCA) would have to add or reassign cemetery operations staff to manage and verify the time and attendance records of our volunteers, who devoted more than 400,000 hours in FY 2007 to our cemeteries, and reimburse them for conducting this DoD-administered program. Also, because no funds for this purpose have been identified or included in any VA budget request, reimbursement for this unanticipated expense would most likely have to be provided from NCA's Operations and Maintenance Account, which would divert funds from the essential activities of providing burial operations and maintaining the cemeteries as national shrines. In addition, other VA volunteers who provide essential services at our VA medical centers, assist families at committal services, place graveside flags on Veterans Day and Memorial Day, and perform landscaping at VA national cemeteries may feel their service is less valued because they receive no reimbursement for their contributions.

We have not had sufficient time to calculate the costs associated with this bill. We will address those costs in a subsequent letter to the Subcommittee.

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

**Statement of Raymond C. Kelley, National Legislative Director,
American Veterans (AMVETS)**

Mr. Chairman and Members of the Subcommittee:

Thank you for providing AMVETS (American Veterans) the opportunity to testify regarding this pending legislation. Each of these pieces of legislation proves the desire of this committee to honor and support America's veterans.

The claims backlog that plagues the Veterans Benefits Administration (VBA) has been a great concern for veterans, and AMVETS is pleased to see the Committees on Veterans Affairs have taken the time to genuinely study this issue so long-lasting, effective changes can take place. H.R. 3047 takes steps to improve the VBA claims process. AMVETS believes one of the biggest issues with the claims process is the work credit system that is in place. The current system gives points to the Veteran Service Representative (VSR) for filing the claim. This is a very quantitative system that has led to incomplete or incorrect filing of claims, but as long as the claim has been filed the Regional Office (RO) receives credit for the claim. This system lends to the backlog, by claims being resubmitted by the veteran. H.R. 3047 will assist in making sure the claims are accurate by the VSR because no credit will be given to the RO for the claim until the appellate period has expired. This should encourage the VSR to submit good claims so they are not remanded or denied. This will give veterans a more timely decision on their claim and decrease the backlog because fewer claims will be sent back through the system. In addition to the credit of claims modification, implementing electronic filing will ensure the loss of documentation is reduced and more easily accessed, and not having the beneficiary of any accrued benefits re-file a claim upon the death of a veteran will reduce redundancy in filing, and finally, providing evaluations and assessments of VBA employees will also increase the effectiveness and decrease the backlog of claims being filed by providing feedback on any trouble areas.

The value of burial allowance benefits has seriously eroded over the years. While these benefits were never intended to cover the full costs of burial, they now pay only 6% of what they covered when the National Cemetery Administration (NCA) started paying the benefit in 1973. H.R. 3249 would bring the benefit back to its original value. These increases would provide meaningful contributions to the burial cost of our veterans. AMVETS supports this legislation but would also suggest expanding eligibility to include all veterans who would be eligible for burial in a national cemetery, not just those who served during wartime.

AMVETS supports H.R. 3286, which reduces the length of time in which a totally disabled veteran's benefits can be transferred to a survivor, which in turn will greatly reduce the financial burden on the family members who are left behind. These veterans suffer and die from conditions and disabilities they received while serving our country. The period of time these veterans are 100% disabled should not be a consideration for payment of a benefit.

H.R. 3415 honors our servicemembers who have paid the ultimate sacrifice and were interred on foreign soil by providing a marker to commemorate their service in National Cemeteries. By including the servicemembers who were interred in an American Battle Monument Commission cemetery, a loophole would be closed that currently excludes a group of veterans which Section 2306 of Title 38 U.S.C. meant to include.

As of July of this year there were only 109 living Congressional Medal of Honor recipients. The modest increase in special pension H.R. 1137 suggests is justifiable for not only the sacrifices these heroes made, but for the lives they have saved. AMVETS supports H.R. 1137 in providing a \$1000 per month increase in this special pension.

Mr. Chairman, this concludes my testimony.

**Statement of Kerry Baker, Associate National Legislative Director,
Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

I am pleased to submit for the record, the views of the Disabled American Veterans (DAV) on the various bills under consideration today. In accordance with its congressional charter, the DAV's legislative mission is focused on benefits and services provided to veterans because of service-connected disabilities. We are therefore pleased to support the bills insofar as they fall within that scope. The DAV does have mandates from its membership to support issues addressed within H.R. 3249 and H.R. 3286. However, the DAV does not have mandates from its membership regarding issues within H.R. 3047, H.R. 3415, and H.R. 1137, but we have no objection to their favorable consideration as long as they support the DAV's mission.

H.R. 3249

During the most recent DAV National Convention, our members voted to again adopt a long-standing resolution calling for an increase in burial allowance, which seems worthy of mention considering the objective of this commendable legislation. This bill is consistent with the recommendation of the *The Independent Budget* (IB) on this issue. The IB is a budget and policy document that sets forth the collective views of the DAV, American Veterans (AMVETS), the Paralyzed Veterans of America (PVA), and the Veterans of Foreign Wars of the United States (VFW).

The "Veterans Burial Benefits Improvement Act of 2007" would increase the funeral expense allowance for a veteran's death, resulting from non-service connected causes, from \$300 to \$1,270, including those veterans whose death occurs in a Department of Veterans Affairs facility. This Act would also increase funeral expenses for veterans whose death results from service-connected causes from \$2,000 to \$4,100, and would increase burial plot allowances from \$300 to \$745. Additionally, this Act would allow for an annual adjustment in accordance with Section 5312(a) of title 38, United States Code, which equates to increases in accordance with title II of the Social Security Act (42 U.S.C. 401 et seq.) that is indexed to the cost of living. Overall, H.R. 3249 is very beneficial as it helps to ensure that veterans have access to a dignified burial that provides the level of honor they deserve. The DAV fully supports this beneficial legislation.

H.R. 3286

During the most recent DAV National Convention, our members voted to adopt a resolution calling for a reduction in the 10-year period currently required for a veteran to receive compensation at the 100-percent rate before a surviving spouse can, in most circumstances, receive dependency and indemnity compensation (DIC). This resolution is worthy of mention considering the objective of this commendable legislation.

This legislation would reduce the period of time for which veterans must be rated totally disabled for purposes of DIC benefits under Section 1318(b) of Title 38, United States Code. If enacted, this legislation would reduce the current 10-year period to one year. In many situations wherein the Department of Veterans Affairs (VA) rates a veteran totally disabled, the veteran's household income is severely compromised due in large part to the veteran's spouse having to care for the veteran. In these circumstances, the spouse must usually give up his or her career. In the case of elderly veterans, the surviving spouse is unable to return to the workforce after the veteran's passing due to his/her own age and/or disability. In these circumstances, when the veteran does pass away, the surviving spouse is not entitled to any of the veteran's disability compensation, which can leave the surviving spouse destitute and bankrupt.

Enactment of this legislation would prevent these inexcusable hardships from being forced onto a surviving spouse of a veteran whose service-connected disabilities rendered him or her totally disabled. Ultimately, those who stand on the battlefield and face the terrifying horrors of war, do so with the highest honor. Many are left totally disabled and must therefore depend on their spouses for care, and their government for income, in order to live their lives with a notion of that same honor. This legislation, which DAV fully supports, would ensure that totally disabled veterans' spouses continue to live with some of the honor their veteran spouses portrayed on the battlefield.

H.R. 3047

The "Veterans Claims Processing Innovation Act of 2007" would (1) revise the work credit system for VA Regional Offices (ROs) of the Veterans Benefits Administration (VBA); (2) require VA to implement electronic processing of claims utilizing artificial intelligence; (3) substitute a surviving spouse of a veteran, whose submission of a claim for benefits is not complete at the time of his or her death, as the claimant for VA benefit purposes; and, (4) require the Secretary of Veterans Affairs (Secretary) to enter into a contract with a private entity for the purpose of evaluating the quality assurance of benefits programs that are required to be included, in accordance with Section 7734 of title 38, United States Code, in the annual report of the Secretary.

The DAV fully supports a VA work credit system wherein priority for rating accuracy and personnel accountability are at least on equal parity with that of productivity. We agree with the inference that VA's current work credit system is focused more on productivity than accuracy and accountability. However, DAV is concerned that this portion of the bill as currently written, portrays, with all due respect, a

certain disconnect with the reality of how multifaceted the VA's benefits delivery system has become, particularly when considering the various types of claims a beneficiary may file, the various stages of development and decision-making within each claim, and the potential changes that can occur at any particular stage of the claim. We believe that merely withholding work credit until the appellate period expires or the Board of Veterans' Appeals issues a final decision on appeal, will not be able to account for accuracy at every stage in the process, particularly those non-rating actions performed by claims developers, adjudicators, authorizers, etc., whose work credit is fixed to the claim but not necessarily to the rating decision.

Currently, VA utilizes over 50 pending end product codes¹ for a multitude of actions. The number of end product codes may be further expanded by using "modifiers" that designate specific "issues" for types of claims within a certain broader category. The VA's end product codes are used in conjunction with its productivity and work measurement system. The productivity system is the basic system of work measurement used by Compensation and Pension (C&P) Service for report and tracking purposes. This system provides a comparison between work generated and available resources. The work measurement system provides a measure of effectiveness by comparing standard hours generated from completed end products, formal training time and other measured hours with available labor resources.²

Quantitative measurement is also a tool utilized in preparing budget forecasts and in distributing available staffing. Quantitative and productivity measurement are also tools used in comparing and tracking employment of resources. Both productivity measurement and work measurement are tools available to management for this purpose. Quantitative measurement also allows Central Office and Area Offices to compare stations and to track both local and national trends. Productivity measurement and work measurement are complementary measurement systems that each depend, in part, on VA's end product code system. The end product code system is further used in determining work credit provided to VA's employees.

Additionally, VA's end product codes are also utilized in the VA's Systematic Technical Accuracy Review (STAR) program. The STAR system is VBA's national program for measuring compensation and pension claims processing accuracy. In the STAR program, a sample is drawn each month from a regional office workload divided between rating, authorization, and fiduciary end products. For example, a monthly sample of "rating" related cases generally requires a STAR review of "10" rating-related end product.³ Therefore, one can easily distinguish the significant importance placed on productivity over and above the priority placed on accuracy. For this reason, DAV fully supports the intent of the legislation at hand.

However, we feel the legislation, as written, does not take into account the significant interplay between VA's work credit system, which utilizes completion of pending end product codes, and the foregoing measurement systems and STAR program, which also utilize completion of pending end product codes. Nonetheless, because of the positive intent of this legislation, the DAV would welcome the opportunity to discuss this issue in more depth. We would look forward to working hand-in-hand with Congress, as well as any necessary VA officials, in order to help achieve an outcome that satisfies the intent of Congress, improves the lives of disabled veterans, and assists VA in the success of each.

Regarding the implementation of an electronic claims processing system using artificial intelligence, the DAV is not opposed to VA utilizing a test facility to begin implementation of artificial intelligence on an experimental and limited basis. The DAV's support on this issue at present, is limited to the foregoing on this novel idea. Further, the DAV would appreciate an opportunity to participate in any effort to develop such technology, and would further appreciate an opportunity to participate in the experimental phase once such technology has been introduced.

The DAV does not oppose legislation that would allow a veteran's surviving spouse to be substituted as the VA claimant when a veteran's death occurs prior to him or her filing a complete claim for benefits. Likewise, the DAV does not oppose legislation that would strengthen the VA's training and assessment programs as the complexity of VA's benefits delivery system is continuously evolving into a complex legal structure. The DAV would welcome an opportunity to consult with VA and/or any private entity responsible for development of such program.

¹ M21-4, App. A, Glossary of Terms and Definitions. *Manpower Control and Utilization in Adjudication Divisions* (Pending End Product: "A claim or issue on which final action has not been completed. The classification code identified refers to the end product work unit to be recorded when final disposition action has been taken.")

² See M21-4, Ch. 5, § 5.02.

³ See M21-4, Ch. 3, § 3.02.

H.R. 1137 and 3415

The purpose of H.R. 1137 is to amend Section 1562(a) of title 38, United States Code, to increase the amount of the Medal of Honor special pension from \$1,000 to \$2,000. The DAV does not oppose increasing this special pension rate, particularly for those wartime veterans whose acts of uncommon bravery and selfless sacrifice have earned them the highest possible military honor of this great Nation.

The DAV does not oppose H.R. 3415. This bill would authorize the placement of memorial markers in a national cemetery for commemorating servicemembers or other persons whose remains are interred in an American Battle Monuments Commission cemetery.

H.R. 3954

The "Providing Military Honors for Our Nation's Heroes Act" would, if enacted, authorize the Secretary to reimburse a veterans' service organization, or other organization approved by the Secretary, for transportation and other expenses which the Secretary determines appropriate when such expenses are incurred in connection with details for voluntary funeral honors. Under this legislation, the Secretary would be responsible for promulgating regulations for carrying out these functions.

The bill would assist volunteers across the Country that routinely go above and beyond the call of duty to ensure their fellow veterans are buried with the honor they deserve. These volunteers cover much of the expenses associated with these honors on their own. The DAV believes that this legislation would help to ensure more veterans across this nation receive access to military funeral honors upon their death than do currently. Therefore, the DAV does not oppose this legislation as it rightfully helps to provide the kind of final farewell our nation's veterans deserve.

The Veterans Quality of Life Study Act of 2007

The "Veterans Quality of Life Study Act of 2007" (the "Act") would (1) require the Secretary to enter into a contract with the Institute of Medicine (IOM), or similar entity, to conduct a study analyzing the extent to which VA's Schedule for Rating Disabilities (the "Rating Schedule") accounts for, or should be amended or expanded to account and compensate for loss of quality of life due to a veteran's service-connected disability or disabilities; (2) replace a veteran's beneficiary as the claimant for purposes of claims pending at the time of the veteran's death; (3) modify the required annual workload report of the Court of Appeals for Veterans Claims (Court); and (4) require the General Services Administration (GSA) to report on the feasibility of leasing additional space for the Court within its current location, the impact of such action upon the other tenants within the Court's current location, and based on such impact, the cost of constructing a new facility as the Veterans Courthouse and Justice Center.

The DAV does not oppose the Act's requirement that the Secretary contract with an entity, preferably the IOM, to conduct a quality of life study. While the DAV does not have a resolution from its members on this specific topic, we do however have two resolutions that would apply, but only in certain worst-case scenarios. DAV resolution number 056 opposes any change that would, *inter alia*, redefine service-connected disability. DAV resolution 061 opposes any recommendation by any commission to reduce or eliminate benefits for disabled veterans. However, the likelihood of the Act imposing such radical suggestions seems rather miniscule.

The DAV also noted that the "Veterans' Disability Benefits Commission," (the "Commission") established by Public Law 108-136, the National Defense Authorization Act of 2004, suggested that VA compensate service-connected disabled veterans for, *inter alia*, the impact disabilities have on a veteran's quality of life. The Commission listed the following as one of its eight principles that should guide the development and delivery of future benefits for veterans and their families: "Benefits and services should be provided that collectively compensate for the consequence of service-connected disability on the average impairment of earnings capacity, the ability to engage in usual life activities, and quality of life." The DAV supports the Commission's recommendation and therefore does not oppose the Act's requirement for a quality of life study insofar that it complies with the recommendation of the Commission. The DAV also appreciates the Committee's willingness to take into account advice from veterans' service organizations on how to manage any changes for veterans' disability compensation. We look forward to actively contributing to the Committee's work on improving disability benefits for all veterans.

Section three of the Act would allow a beneficiary to replace a veteran as the claimant for VA purposes when the veteran dies prior to the complete adjudication of a pending claim for benefits from the VA. This legislation is similar, although not

identical, to section four of the foregoing legislation, H.R. 3047. The DAV is not opposed to this legislation.

Many veterans' claims, especially those in appellate status, linger for years before final and favorable disposition. Currently, when filing a claim for accrued benefits following the death of a veteran with a pending claim before the VA, a surviving spouse or other beneficiary must start the VA's long procedural quagmire of its claims process from the beginning. Such requirement disregards how long the claim has been pending or how close the VA is to completing the claim. For decades, the VA's archaic requirement that a surviving spouse recreate the proverbial wheel of a veteran's claim upon his or her death has caused countless surviving spouses innumerable hardships—many of which would be eliminated by this beneficial legislation.

Section four of the Act would require the Court to amend its annual report to Congress summarizing its workload. While the DAV does not have a resolution on this specific topic concerning the Court, we do not oppose this legislation.

As with the VA, the greatest challenge facing the Court is the backlog of appeals. Due to long delays in claims processing at the VA, it can take years for appeals to reach the Court. A significant number of disabled veterans are elderly and in poor health, and many do not live to witness resolution to their claims.

Over the years, the Court has shown a reluctance to reverse errors committed by the Board. Rather than addressing an allegation of error raised by an appellant, the Court has a propensity to vacate and remand cases to the Board based on an allegation of error made by the Secretary of Veterans Affairs (Secretary) for the first time on appeal, such as an inadequate statement of reasons or basis in the Board decision. Another example occurs when the Secretary argues, again for the first time on appeal, for remand by the Court because VA failed in its duty to assist the claimant in developing the claim notwithstanding the Board's express finding of fact that all development is complete. Such actions are particularly noteworthy because the Secretary has no legal right to appeal a Board decision to the Court.⁴

Further, once the Court remands a case based on error by the Board, unlawfully alleged by the Secretary, the Court will generally decline to review alleged errors raised by an appellant that actually serve as the basis of the appeal. Instead, the Court remands the remaining alleged errors on the basis that an appellant is free to present those errors to the Board even though an appellant may have already done so, leading to the likelihood of the Board repeating the same mistakes on remand that it had previously. Such remands leave errors by the Board, and properly raised to the Court, unresolved; reopens the appeal to unnecessary development and further delay; overburdens a backlogged system already past its breaking point; exemplifies far too restrictive and out-of-control judicial restraint; and inevitably requires an appellant to invest many more months and perhaps years of his or her life in order to receive a decision that the Court should have rendered on initial appeal. As a result, an unnecessarily high number of cases are appealed to the Court for the second, third, or fourth time.

In addition to postponing decisions and prolonging the appeal process, the Court's reluctance to reverse Board decisions provides an incentive for the VA to avoid admitting error and settling appeals before they reach the Court. By merely ignoring arguments concerning legal errors rather than resolving them at the earliest stage in the process, the VA contributes to the backlog by allowing a greater number of cases to go before the Court. If the Court would reverse decisions more frequently, we believe the VA would be discouraged from standing firm on decisions that are likely to be overturned or settled late in the process.

Therefore, to provide Congress with an accurate measure of the Court's performance, section 4(a)(4) of the Act should be amended to require the Court to submit an annual report to Congress that includes: (1) The number of BVA decisions affirmed; (2) the number of dispositions based on (a) joint motion for remand, and (b) settlement; (3) the number of dispositions both reversed and remanded by a single judge decision; and (4) the number of voluntary dismissals. The draft legislation should also be amended to require the Court's annual report to include the number of single-judge decisions by "each" judge, the number of cases appealed to the Court more than once, and the number of appellants who die while awaiting a decision from the Court. This additional data will allow Congress to more accurately assess the Court's workload and its need for additional resources.

Actions that fall under category two and four are of an administrative nature and are generally accomplished by the Clerk of the Court. The Court's judges must ac-

⁴ 38 U.S.C.A. § 7252(a) (West 2002) ("The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision.")

complete categories one and three, thus presenting the information in this suggested format would give Congress a clearer picture of (1) the Court's accomplishments and (2) its failures.

We appreciate the Committee's interest in these issues, and we appreciate the opportunity to present the DAV's views, which we hope will be helpful.

**Statement of Rose Elizabeth Lee, Chair, Government Relations Committee,
Gold Star Wives of America, Inc.**

"With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the nation's wounds, to care for him who has borne the battle, his widow and his orphan."

. . . President Abraham Lincoln, Second Inaugural Address, March 4, 1865

INTRODUCTION

The Gold Star Wives of America, Inc. was founded in 1945 and is a Congressionally chartered service organization comprised of surviving spouses of military servicemembers who died while on active duty or as a result of a service-connected disability. We could begin with no better advocate than Mrs. Eleanor Roosevelt, newly widowed, who helped make GSW a truly national organization. Mrs. Roosevelt was an original signer of our Certificate of Incorporation as a member of the Board of Directors. Many of our current membership of over 10,000 are the widows of servicemembers who were killed in combat during World War II, the Korean war, the Vietnam War and the more recent wars including the one we are currently in.

In this testimony, we are delineating the views of Gold Star Wives on H.R. 1137, to increase to \$2,000 the amount of the Medal of Honor special pension under that title and to provide for payment of that pension to the surviving spouse of a deceased Medal of Honor recipient, H.R. 3047, to improve the processing of claims for benefits administered by the Secretary of Veterans Affairs, and H.R. 3286, to reduce the period of time for which a veteran must be totally disabled before the veteran's survivors are eligible for the benefits provided by the Secretary of Veterans Affairs for survivors of certain veterans rated totally disabled at time of death—topics of the November 8, 2007 hearing before this Subcommittee. One basic point we would like to make at the outset across all these pieces of legislation is that it is important that Congress set its priorities from the perspective of the "big picture" so survivor benefits are not fragmented by funding as opposed to merit, and that benefits for a small group do not override the legitimate needs and rights of a larger group, simply because the cost is lower.

H.R. 1137: We are a fortunate country to see many heroes throughout various walks of life and one great list of heroes is that of Medal of Honor recipients. We want nothing stated here to be misconstrued as not paying the appropriate honor to these servicemen who served their country so valiantly. We urge you to look closely at the proportionate amounts which widows of service-related deaths receive. The DIC is 43% of disability compensation, not the 100% for the Medal of Honor recipient. H.R. 1137 provides for a special pension and does not offset SBP, yet for non MOH recipient survivors still must undergo a reduction of SBP by DIC.

GSW is requesting a modest increase in the DIC benefit from 43% to 55% of the VA Disability Compensation, but Social Security survivor payments of 100% and this legislation both seem to indicate that a fair standard would be 100% of the VA Disability Compensation to allow the surviving spouse to retain financial stability.

It should be noted that many of the surviving spouses of severely disabled veterans spent many years of their lives as full-time, around-the-clock caregivers. These caregivers had no opportunity to establish a career in which they earned a living wage and retirement benefits. In addition to the fact that many of these caregivers are now too old to embark upon a significant career, it is well documented in medical literature that caregiving does significant damage to the health of the caregiver. These caregivers saved the VA millions of dollars by doing this caregiving for their injured or disabled spouses. By doing the caregiving for the veteran, these spouses also served their country. When the injured spouse dies they deserve enough income to provide them with a decent standard of living. We present this to seek equity for the entire class of survivors.

H.R. 3047: We encourage that section 4 specifically state, to avoid confusion, that a surviving spouse not only have the right to complete submission of a claim but

also be able to continue with a claim already in process at the time when a veteran dies.

H.R. 3286: The greatest interest of the Gold Star Wives rests with this legislation, which would reduce, from ten years to one, the amount of time a veteran must be rated totally disabled before his or her surviving dependents can receive certain death benefits. We are concerned that the way the bill is written, it does not mention the fact that DIC eligibility can be derived when the veteran dies of a NON service-connected disability. It makes the reader think that they only have to be rated totally disabled one year at time of death, without mention of how the death occurs. Hence, this DIC payment acknowledges a "non service" connected death with the same recognition as an active duty death or service connected disability.

VA Dependency and Indemnity Compensation (DIC) payments are provided as "indemnity" for the survivors of those who died on active duty or as the result of a service connected disability. Indemnity is often used as a synonym for compensation or reparation. Compensation implies a sum paid to make good the loss of another (service related deaths) without regard to the payer's identity, or their reasons for doing so. An indemnity is a sub-species of compensation, in the same way that damages and reparations are.

Gold Star Wives of America believes that DIC benefits should be awarded to the surviving spouse only when a servicemember dies on active duty or when a veteran or retired servicemember dies due to a service connected disability or illness.

The survivors of a veteran who dies of a non-service connected cause are already eligible to receive DIC if the veteran was rated with a 100 percent service connected disability for 10 years, rated with a 100 percent service connected disability for 5 years from date of discharge from the military, or if the veteran is a former POW who died after September 30, 1999.

Spousal survivor benefits have always stemmed from the benefits and rating of the veteran. Awarding DIC to survivors of those who die of a non-service connected cause creates a whole new and expensive class of survivor benefits. It would be far better to review the veteran's medical records and death certificate and take action to have the veteran's rating changed or the death certificate corrected.

Providing DIC to a surviving spouse of a veteran due to a non-service connected death lessens and diminishes the dignity, respect, and value placed on the supreme sacrifice of an active duty death or a death due by a service connected disability.

To increase benefits for survivors of non-service connected veterans of today while leaving many survivors of veterans of previous wars in poverty situations is unconscionable.

If Congress is entertaining the idea of providing DIC to the survivors of veterans whose death was not due to a service connected disability, GSW asks why Congress has not found the money to remove the DIC offset to the Survivor Benefit Plan (SBP). SBP is a survivor benefit, like life insurance, paid to the survivors of retired military personnel who purchased this benefit with steep premiums and to the survivors of military personnel who died on active duty.

CONCLUSION

We appreciate this opportunity to comment on these three bills and how our perspectives have shed some light on how the Committee should move forward.

Statement of Hon. James Langevin, a Representative in Congress from the State of Rhode Island

Chairman Hall, Ranking Member Lamborn and distinguished Members of the Subcommittee, thank you for having this important hearing today, and especially for the opportunity to discuss H.R. 3415, a bill that would authorize memorial markers in a national cemetery to commemorate servicemembers buried in an American Battle Monuments Commission cemetery.

As Members of Congress, we all have the great opportunity to hear stories of duty and honor from our constituents. I had such a chance right after Memorial Day in 2004 when I received a letter from Henry Stad, a resident of Rhode Island and a veteran of World War II. Mr. Stad asked that I sponsor a bill that would allow family members of servicemembers that were killed in action and buried overseas to be able to request a burial plaque to be set in a family burial plot in the United States. I was happy to look into this request from a man who gave so much to his country.

Mr. Chairman, as you know, the United States currently has 24 permanent overseas burial grounds that are the final resting place for nearly 125,000 of the brave men and women who died serving our country. These sites are the responsibility of the American Battle Monuments Commission and are a wonderful tribute to those

who sacrificed for our Nation. However, the Department of Veterans Affairs maintains that because these graves can be visited, there is no need to provide families at home with a memorial marker for their deceased loved ones buried there.

As a result, I introduced a bill that will help families memorialize those who died in service to our country and are buried in cemeteries overseas. According to the Department of Veterans Affairs, those servicemembers whose remains are classified as “unavailable for burial” are eligible for government-provided memorial markers or headstones. While this classification includes those whose remains have not been recovered or who were buried at sea, there is one glaring exception to this definition—those it does not permit markers to be issued in cases when servicemembers died fighting for freedom abroad and were laid to rest there.

Families are proud of these courageous men and women who answered the call to protect our country and then paid the ultimate price. Unfortunately, for many families, a trip abroad to visit their loved ones is not possible due to finances or old age. A memorial marker is a way to keep the memory of their loved one alive, while also teaching younger generations about sacrifice. We should not deny the families of these courageous men and women the ability to obtain memorial markers when we already do it for so many others. To correct this, my legislation will add overseas burials to the VA’s “unavailable for burial” classification and finally let these men and women be memorialized by their families here at home.

Mr. Chairman, in closing, I urge you to help memorialize those that accepted the call to protect our country. Thank you again for this opportunity, and I look forward to working with you in serving our veterans.

National Funeral Directors Association
Washington, DC
November 8, 2007

Hon. John Hall
United States House of Representatives
Chair, Committee on Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs
335 Cannon House Office Building
Washington, D.C. 20515

RE: H.R. 3249—Veterans Burial Benefits Improvement Act of 2007 and H.R. 3954—Providing Military Honors for our Nation’s Heroes Act.

Dear Chairman Hall:

With a membership that exceeds 13,000 funeral homes and over 21,000 licensed funeral directors and embalmers in all 50 states, the National Funeral Directors’ Association (NFDA) represents all funeral directors in the United States.

As you know, Chairman Filner has introduced H.R. 3954; this bill would authorize the Secretary of Veterans Affairs to reimburse certain volunteers who provide funeral honors details at the funerals of veterans. The NFDA has a great interest in veterans’ burial benefits as our members provide both funeral and burial services to our Nation’s veterans on a daily basis. The NFDA supports the reimbursement of volunteers who provide funeral honors for our Nation’s fallen heroes as set forth in H.R. 3954.

The NFDA would also like to express our support for H.R. 3249—Veterans Burial Benefits Improvement Act of 2007. This important legislation, which was introduced by Subcommittee Member Rep. Shelley Berkley, seeks to increase burial benefits for Veterans from \$300 to \$1,270; it also seeks to raise the plot allowance for Veterans from \$300 to \$745. Our members strongly believe that the surviving spouses and dependents of military personnel who died while in active military service and the survivors of veterans who died after active service deserve an increase in burial and funeral expenses, and plot allowances, as the current allowances are insufficient. NFDA supports an increase in burial benefits for Veterans.

The National Funeral Directors’ Association appreciates the opportunity to comment on H.R. 3249 and H.R. 3954. If you have any questions, or if the NFDA can provide further information, please contact me at 202-547-0877.

Thank you for your consideration.

Lesley Witter
Director of Political Affairs

cc: Chairman, Bob Filner and Representative Shelley Berkley

**Statement of Ronald B. Abrams, Joint Executive Director,
National Veterans Legal Services Program**

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to submit this testimony on behalf of the National Veterans Legal Services Program (NVLSP). NVLSP is an independent, non-profit veterans service organization that has been assisting veterans and their advocates for 27 years. We publish numerous advocacy materials, recruit and train volunteer attorneys, train service officers from veterans service organizations, such as The American Legion and Military Order of the Purple Heart, in veterans benefits law, and conduct quality reviews of the VA regional offices on behalf of The American Legion. NVLSP also represents veterans and their families in claims for veterans benefits before VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts.

My testimony today will focus on H.R. 3047 which, in Section 2 would change when VA regional offices (VAROs) can claim work credit. Also, I would like to comment on section 4 of H.R. 3047 which mandates that, in the event of the veteran's death, the person who would be entitled to accrued benefits would be treated as the claimant.

ESTABLISHMENT OF A WORK CREDIT SYSTEM FOR VA REGIONAL OFFICES

NVLSP supports this bill because the current VA work credit system prevents the fair adjudication of many claims for VA benefits. The current VA work credit system is an abomination that needs to be overhauled because the current system rewards VA managers and adjudicators who claim multiple and quick work credit by not complying with the statutory duties to assist claimants obtain evidence that would substantiate their claims and notify claimants of what evidence would substantiate their claims.¹

Background

No matter how much the average VA employee tries to help the client population, the VA decisionmaking culture, created by the VA work measurement system, prevents many VA adjudicators from doing a good job. The VA has created a work measurement system for deciding critically important claims that is driven by weighty incentives to decide claims quickly. How the VA measures its work and evaluates the performance of its employees has had a major impact on the adjudication of claims for veterans benefits.

Each year, after a complicated process involving the executive branch and Congress, the VA is given its budget. The budget can be defined as the resources available to the Secretary of Veterans Affairs to be used to accomplish the mission of the VA. Managers at different levels within the VA are then given their allocation from the overall VA budget. This allocation is determined by the workload and performance of the various VA components. For example, the money budgeted to a VARO determines how many workers can be hired or fired, how equipment is maintained, and what new equipment can be purchased.

Claims received in VARO are described as "pending issues." These claims are assigned an "end product code," alternatively described by the VA as a unit of work. When final action is taken on a pending claim, or pending issue, the regional office (and eventually the VA) receives a credit.²

End products are assigned values based on the *average* number of work hours it takes an employee or group of employees to complete all action necessary for that type of claim. Each end product code has a different value. For example, VA managers receive more credit for work completed on an original claim than they do for adjusting the income of a current pension beneficiary. No matter how much work the VARO does on an individual claim, however, it receives as credit only the value that is provided for the end product code assigned to that particular type of pending claim. Therefore, VA managers receive the same credit whether or not the claim is granted or denied or whether the claim takes the VARO one day or two years to decide.

VA manuals describe the end product system as a "management tool" and indicate that its measure should not be used to evaluate individual performance. As is the case with many management information systems, however, the measurement system tends to drive what and whom it measures, rather than the converse. VA managers are evaluated by how many end products they produce, how quickly they can

¹ 38 U.S.C. §§ 5103A, 5103(a).

² In general, see VA Manual M21-4, Manpower Control and Utilization in Adjudication Divisions.

take credit for end products, how many employees they need to produce these end products, and lastly, the quality of the work in the office they manage. Because it is in the best interest of the VA managers to complete as many cases as quickly as they can, the interests of VA managers in many cases stands in opposition to the interests of claimants for VA benefits.

Responsibilities of VA managers that protect the fairness of the adjudicatory process—such as “control” of claims, supervisory review of unnecessarily delayed claims, thorough development of the evidence needed to decide a claim properly, recognition of all of the issues involved, provision of adequate notice, documentation that notice was given, and careful quality review—all adversely affect the productivity and timeliness statistics (that is, how many decisions on claims are made final within a particular period of time) for the VA manager. Consequently, proper attention by VA managers to their legal obligations very often adversely affects the statistics upon which their performance is rated.

The Impact of Judicial Review

The VA claims processing (or claims adjudication) system has been exposed by judicial review. To say there is a crisis in VA claims adjudication is an understatement. Statistics from the Board of Veterans’ Appeals (BVA) and the U.S. Court of Appeals for Veterans Claims (CAVC) show that nationally, for FY 2007, over 56 percent of all appeals decided by the BVA were reversed or remanded and over 63 percent of CAVC decisions on the merits were reversed, or remanded. In fact, some VAROs were even worse than the national average. Over 60 percent of the appeals from the New York RO and over 62 percent of the appeals from the St. Petersburg Florida RO were reversed or remanded by the BVA.

Based on the experience of NVLSP (over 10 years of NVLSP quality reviews of approximately 40 different VAROs for The American Legion combined with extensive NVLSP representation before the CAVC), most of the most egregious VA errors are a result of premature adjudications. For example, many errors identified by the Legion/NVLSP quality review teams reveal that VA adjudicators failed to even try to obtain evidence that could substantiate the claim, and incorrectly accepted and prematurely denied claims based on inadequate evidence (especially inadequate VA medical examinations).³

I want to emphasize that most premature VA adjudications are caused by ROs seeking work credit. If the claimant should appeal, the RO can earn another work credit for work to process the appeal. Here is an example of how this system can be manipulated. Suppose:

- In January 2005, a veteran files a claim for service connection for post traumatic stress disorder (PTSD). The veteran indicates he has symptoms of PTSD and alleges that he engaged in combat during service. (In order to obtain service connection for PTSD the evidence must show that the veteran suffers from PTSD, that he or she experienced a stressor (a traumatic event) in service, and that the stressor is linked by a medical expert to the stressful event.)⁴
- Before the RO verifies that the veteran engaged in combat, in an effort to obtain quick work credit, the RO schedules a VA examination (VAE).
- The examination is promptly conducted and the VA medical examiner, although noting symptoms of PTSD, refuses to diagnose PTSD because the veteran’s alleged stressor is not verified by the evidence of record.
- The RO then denies the claim because the veteran does not have the claimed condition. An end product (work credit) is then taken by the RO in April 2005.
- In the same month, the veteran is notified by the VA that his claim is denied because he does not have PTSD. The veteran, in an attempt to prove his claim, hires a private psychiatrist who accepts the veteran’s allegation regarding the stressor and diagnoses PTSD. The veteran, after paying the doctor, then submits this private medical opinion to the RO (within the 1-year appellate period).
- Upon receipt of the new evidence the RO sets up a new end product but promptly denies the claim because the RO finds there is insufficient evidence of the alleged stressor. The RO then informs the veteran of its decision and takes credit for a second end product in July 2005.
- Within one year of the original denial, in December 2005, the veteran submits several “buddy statements” (lay statements) that support the conclusion that he engaged in combat. The RO then erroneously denies the claim because in the opinion of the RO, the first VA examination was more probative than the pri-

³Many of the pro bono attorneys NVLSP trains and mentors ask why the VA would adjudicate claims when it is obvious that additional development of evidence is required.

⁴38 C.F.R. § 3.304(f).

vate medical opinion and therefore the veteran does not suffer from PTSD. The RO takes a third end product in March 2006.

- In March 2006, the veteran submits a notice of disagreement. The RO establishes another end product and when the case is reviewed by a Decision Review Officer (a VA hearing officer) a new VA examination is ordered. The DRO informs the VA examiner to accept the fact that the veteran engaged in combat during service. The VA examiner then concludes that the current PTSD is linked to the combat the veteran experienced in service. This process takes quite a while.
- The DRO, in January 2007, grants service connection for PTSD retroactive to January 2005. A fourth end product is then claimed by the RO.

The VARO was really entitled to only one end product for this work. But, because of premature adjudications and flat-out errors in judgment by the RO, the RO was able to claim four work credits. The RO was also able to show that these four actions were completed in a faster time than what it really took to adjudicate this claim. From the veteran's point of view it has taken the VA 24 months to adjudicate his claim. However, the RO is not unhappy. The RO, during this two year period, has earned four end products (work credits). The end products claimed by the RO also show that it took only 6 months on average (instead of the 24 months it really took for the claim to be adjudicated) to adjudicate these claims. Therefore, the VA manager gets to claim three unearned work credits and to show an erroneously low time period to adjudicate these claims. That would help the manager earn a promotion and a bonus for such "productive" work.

H.R. 3047, section 2 solves the above problem. The bill would prohibit the RO from claiming end product credit until the appellate period has expired. In the above case, the RO would not have been able to claim work credit until the appellate period expired. Because the veteran kept submitting evidence within the appellate period and because the veteran filed an appeal, the three extra end products could not be taken by the RO. The RO would have an incentive to adjudicate the claim correctly in the first place. This is something we should all want. This bill would prevent unfair, premature RO decisions.

Fixing the VA work credit system is a topic that is near and dear to my heart. I have been involved in various aspects of veterans law for over 30 years. My experience tells me that unless the system is corrected most attempts to improve VA claims adjudication will not be successful because the driving force in VA adjudication will continue to be claiming quick work credit. This bill does not tweak the current system, it forces the VA to create new systems to manage its workload that will encourage adjudicators to properly and fairly deal with claimants seeking VA benefits.

H.R. 3047—Section 4, Treatment of the Beneficiary of the Veteran's Accrued Benefits as the Claimant for Purposes of Incomplete Claims Upon the Death of the Veteran

NVLSF supports the intent of this bill. We believe the authors tried to cure the situation where a claimant for VA benefits dies before the final resolution of that claim and persons seeking accrued benefits are forced to go back and start at the beginning of the adjudication process. That is unfair and Congress should act to stop this from happening.

However, because the bill limits its impact to situations where a claimant dies before completing the submission of a claim the bill does not go as far as we hoped. The law should be amended so that when a claimant who has submitted a claim dies before the final resolution of that claim, the person who would receive accrued benefits could substitute for the veteran.

Current Law

Under the current law, if an individual who has filed a claim for VA benefits dies while the claim is pending before a VARO, the BVA, or a reviewing court, the pending claim dies as well. This is true for claims for disability compensation, pension, dependency and indemnity compensation (DIC), and death pension. See *Richard v. West*, 161 F.3d 719 (Fed. Cir. 1998); *Zevalkink v. Brown*, 102 F.3d 1236 (Fed. Cir. 1996); *Landicho v. Brown*, 7 Vet. App. 42 (1994). A survivor may not step into the shoes of the deceased claimant to continue or to appeal the claim—no matter how long the claim has been pending in the VA claims adjudication process.

A. The Route Surviving Family Members Have to Travel to Obtain Benefits Based on the Deceased Claimant's Claim

As a logical matter, some benefit claims that do not result in a final decision because the claimant dies before a final decision could be issued would result in a

grant of benefits if the claimant had lived. Congress has provided a limited opportunity for certain specific surviving family members to obtain the benefits the deceased claimant had been seeking at the time of death. This opportunity for accrued benefits is quite limited however, as I will describe below.

1. Only Certain Family Members May Apply for Accrued Benefits

In order to obtain the benefits that the deceased claimant was seeking at the time of death, a brand new claim for benefits, called accrued benefits, must be filed. *See* 38 U.S.C. §5121, 38 C.F.R. §3.1000. Only certain surviving family members may pursue a claim for accrued benefits. An individual satisfying the definition of a surviving spouse may apply for accrued benefits. If there is no surviving spouse, a surviving child may qualify as a claimant, but only if he or she is: (a) unmarried and under the age of 18; or (b) under the age of 23, unmarried, and enrolled in an institution of higher education. If there is no surviving spouse or qualifying surviving child, a surviving parent may apply for accrued benefits but only if he or she was financially dependent on the claimant at the time of the claimant's death. No brothers or sisters or other family members may apply for accrued benefits. *See* 38 U.S.C. §§101, 5121; 38 C.F.R. §3.1000(d).⁵

2. Time Limits

The application for benefits must be filed within one year of the date of the claimant's death. VA regulations do allow for extensions of time to file outside of the 1-year period, but only if the survivor is able to demonstrate "good cause". 38 C.F.R. §3.109(b). Thus, the VA may allow for an extension of time, but is not required to do so.

3. No New Evidence Can Be Submitted

The survivor also cannot submit new evidence to show that the deceased claimant is entitled to the benefits sought. Accrued benefits determinations can only be "based on evidence in the file at date of death." 38 U.S.C. §5121. The VA regulations provide that "evidence in the file" means evidence within the VA's constructive possession, on or before the date of death, but that would only include evidence like existing service personnel records or existing VA medical records. *See* 38 C.F.R. §3.1000(a); 67 Fed. Reg. 65,707 (2002).⁶

4. Limitations on the Types of Benefits that Qualify as Accrued Benefits

The opportunity for a qualified survivor to receive accrued benefits under section 5121 is restricted to pending claims of the deceased for "periodic monetary benefits." To be a claim for "periodic monetary benefits", the benefits must be the type that are "recurring at fixed intervals", such as disability compensation.

Many claims are for benefits that are not periodic monetary benefits. For example, in *Pappalardo v. Brown*, 6 Vet.App. 63 (1993), the Court held that a claim for a one-time payment for specially adapted housing reimbursement assistance under 38 U.S.C. Chapter 21 did not qualify as a claim for periodic monetary benefits for purposes of section 5121. This is so even though the family had already incurred the expense of remodeling the home in accordance with standards approved by the Boston VARO to meet the needs of the veteran, who had lost the use of both lower extremities 20 years earlier due to service-connected post-encephalitic Parkinson's disease, and who died while the housing assistance claim was pending. Thus, an accrued benefits claim may only be granted if the deceased claimant would have been entitled to a benefit like monthly disability compensation or special monthly compensation benefits.

5. Limitations on the Amount of Benefits

The amount of accrued benefits available to a survivor may also be limited. For veterans who died prior to December 16, 2003 (the date of enactment of the Vet-

⁵There is one narrow exception: Accrued benefits may be paid to reimburse any individual who bore the expense of the last sickness or burial—but only to the extent of the actual expenses incurred.

⁶The accrued benefits statute does provide that if a survivor's application "is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application." 38 C.F.R. §3.1000(c)(1) However, this "evidence necessary to complete the application for accrued benefits" is information necessary to establish that the survivor is within the category of eligible survivors and circumstances exist that make the survivor the specific person entitled to the accrued benefits. That is to say, materials including the death certificate of the deceased claimant, marriage certificates demonstrating the status of an individual as a surviving spouse, birth certificates demonstrating the status of an individual as a child, or documentation of enrollment in studies at an educational institution are the only types of additional evidence that may be introduced. 67 Fed. Reg. 65,707 (2002).

erans Benefits Act of 2003), family members cannot receive more than two years' worth of accrued benefits, even if, for example, the survivor is able to prove that the veteran was entitled to ten years worth of benefits. The enactment of the VBA of 2003 removed the two-year cap, but only when the claimant with a pending claim died on or after December 16, 2003. Pub. L. No. 108-183, § 104, 117 Stat. 2651 (Dec. 16, 2003).⁷

B. *The Recent Court Decision Carving Out an Exception to the Harsh Rules that Currently Exist*

Probably the harshest part of the rules that apply when a claimant with a pending claim dies before a final decision is rendered is that the survivor must start the claim all over again at a VARO, regardless of how far the pending claim had proceeded in the adjudication process. Even if the pending claim had made it up the chain to a reviewing court, which often takes many years, the survivor, who may be elderly or infirm, must still file a new claim at the VARO level and “go to the back of the line.” The inability of the survivor to substitute and pick up where the claimant left off can add years to the claims process and add to the burden of the agency, which must now address an entirely new claim where there had already been development of another claim raised by the deceased.

Frustrated survivors have long sought to continue to prosecute a deceased claimant's disability compensation claim at the Court level. *See, e.g., Zevalkink, supra; Landicho, supra* at 47. In *Padgett v. Nicholson*, 473 F.3d 1364 (Fed.Cir. 2007), the Federal Circuit carved out a very limited exception to the harsh rule that a claim dies with the claimant. In a case like Mr. Padgett's, in which: (a) the veteran had appealed his claim all the way to the CAVC; (b) the CAVC issued its decision before it became aware that the veteran had died; and (c) the death occurred after all of the legal briefs had been filed with the CAVC so that there was nothing left to do but to issue a decision; then (d) the CAVC could keep its decision on the books by making it effective retroactive to the date of the veteran's death, and allow the surviving spouse to substitute for the veteran in the appeal before the CAVC.

A recent VA General Counsel Opinion, VAOPGCPREC 2-2007, however, held that the decision in *Padgett* would have no effect on an appeal pending before the BVA when a claimant dies. The General Counsel held that 38 C.F.R. § 20.1302 would require the Board to dismiss an appeal pending before the Board when the claimant dies—and survivors of a deceased claimant seeking accrued benefits at the Board level will still have to go to the “back of the line”.

Thank you for holding such an important hearing.

U.S. Department of Veterans Affairs
Washington, DC.
March 6, 2008

Hon. Bob Filner
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to provide the views of the Department of Veterans Affairs (VA) on H.R. 4084, 110th Congress, the “Veterans Quality of Life Study Act of 2007.” This bill was on the agenda for the Disability Assistance and Memorial Affairs Subcommittee's hearing on November 8, 2007. VA was not able to comment on the bill at the hearing because we did not have enough time to coordinate the Administration's views and estimate costs.

Section 2(a) of H.R. 4084 would require VA, within 60 days of enactment of the bill, to contract with the Institute of Medicine or other appropriate entity to conduct a study to analyze the extent to which the VA rating schedule compensates for loss of a veteran's quality of life due to a service-connected disability and whether the schedule should be amended to compensate for such loss. Section 2(b) of the bill would require the study to be completed within 180 days after the date on which VA enters the contract. Section 2(b)(1) would require that the study examine: (1)

⁷For deaths occurring on or after December 16, 2003, successful accrued benefits claimants are now entitled to the entire amount of benefits that would have been paid had death not occurred.

the extent to which the current schedule compensates for loss of quality of life; and (2) specific approaches and instruments for measuring a service-connected disability's effect on a veteran's quality of life, including the veteran's psychological state, loss of physical integrity, and social inadaptability, and the ways other disability programs (of the Federal and State governments and of other countries) manage quality-of-life compensation. Section 2(b)(2) of the bill would require the study to make recommendations concerning the appropriate standards for determining whether a service-connected disability has caused a loss in a veteran's quality of life, the means for determining the appropriate level of compensation for loss of quality of life, and the practicability of implementing quality-of-life evaluations in the course of providing benefits relating to compensation and pension. Section 2(b)(3) would require the study to take into account advice and information received through consultations with public and private entities, veteran service organizations, agencies, and advocacy groups.

Section 2(c) would require the Secretary, within 60 days after completion of the study, to submit to Congress a report that includes VA's recommendations with respect to the study's findings and conclusions regarding VA's rating schedule accounting for the loss of quality of life, and with respect to compensation that VA should pay for such loss and the basis for determining the amount of any such compensation.

VA does not support section 2 because it is unnecessary. On November 9, 2007, VA solicited offers to conduct a 6-month study similar to that described in section 2. The study will analyze the nature of specific injuries and diseases for which disability compensation is payable under various disability programs of Federal and State governments and other countries, including VA's program. It will examine specific approaches and the usefulness of currently available instruments to measure disabilities' effects on an individual's psychological state, loss of physical integrity, and social inadaptability. The study will provide findings and recommendations on the following: (1) the service-connected disabilities that should be included in the schedule for rating disabilities; (2) the appropriate level of compensation for loss of quality of life and for loss of earnings; and (3) the appropriate standard(s) for determining whether an injury or disease, or combination of injuries and diseases, has caused a loss in a veteran's quality of life or loss of a veteran's earnings. The study will take into account the impact of medical advances on disability functioning. VA awarded the contract on January 25, 2008. Because the study will examine and make recommendations on the matters identified in subsections (b) and (c) of section 2 of the bill, legislation requiring VA to contract for such a study is not needed. The final report is expected the beginning of August 2008. We will be pleased to share the results of the study with the Committee.

There would be no mandatory costs associated with section 2 because it would have no effect on benefit entitlement. We estimate that the discretionary costs for section 2 would be less than \$2.8 million.

Section 3 of H.R. 4084 would permit certain individuals to substitute for a deceased veteran claimant for purposes of completing the prosecution of any claim for VA benefits pending when the veteran dies. Under this provision, if a veteran dies while his or her claim for VA benefits is awaiting a final adjudication, the person who under current law would receive accrued benefits due to the veteran would be treated as the claimant for purposes of processing the veteran's pending claim to completion. If the person who would receive accrued benefits does not want to be treated as the claimant for these purposes, that person would be permitted to designate as the substitute claimant the person who would receive such benefits upon the death of the person who would otherwise be treated as the claimant under the provision. Section 3 would be applicable with respect to claims of veterans who die on or after the date of enactment of H.R. 4084.

VA opposes section 3 because, as drafted, the provision raises several unresolved issues with respect to its implementation. Section 5121(a) of title 38, United States Code, requires VA to pay accrued benefits (periodic monetary benefits to which a deceased claimant was entitled at death under existing decisions or evidence in the file at the time of death) to certain specified individuals (for a deceased veteran, the veteran's spouse, children, or dependent parents). Nothing is required of those individuals other than the filing of an application within 1 year of the claimant's death and proof that the individual qualifies as a payee under section 5121. However, only if an application is timely filed and the applicant establishes entitlement to accrued benefits would that person "receive any accrued benefits due to the veteran." Only then could the person be treated as the claimant under section 3. As the claimant, the person could actively participate in the prosecution of the claim, such as by submitting additional evidence, testifying at a hearing, and appealing an unfavorable decision. Because section 3 would require only that the person be treated as the

claimant but does not authorize actual payment of any benefits to the person, presumably section 5121 would remain the authority for paying to the substitute claimant any benefits based on the successful prosecution of a deceased veteran's pending claim. However, as indicated above, section 5121 requires that such benefits be paid on the basis of decisions existing or evidence in the file when the veteran died. It does not permit the submission of additional evidence. Furthermore, permitting a substitute claimant upon a veteran's death could require VA to develop a claim, including obtaining medical evidence on a veteran who could no longer be examined or authorize the release of protected health information. The laws of the various states govern the disclosure of protected health information by private health care providers, so VA and the substitute claimant would be limited by such laws in obtaining medical evidence concerning the deceased veteran.

It would be possible under the bill language that more than one person could simultaneously be "the claimant." Under section 5121, upon the death of a veteran and in the absence of a surviving spouse, the veteran's children or dependent parents may be entitled to accrued benefits. Therefore, under section 3, in the absence of a surviving spouse, "the claimant" could be two or more children of a veteran or two dependent parents. This situation could create complications if the persons disagreed as to how to prosecute the claim.

Section 3 is unclear as to what would happen if the person who would receive a deceased veteran's accrued benefits does not want to be treated as the claimant. If, as section 3 would permit, that person designates as claimant "the person who would receive such benefits upon the death of the person who would otherwise be treated as the claimant" under the provision, but also pursues a claim for accrued benefits, then both persons would be pursuing a claim for the same benefits. Furthermore, the two claims could be decided on different evidence because a claim for accrued benefits under section 5121 is limited to the decisions existing or evidence on file when the veteran died, but a claim pursued under section 3 would not be so limited.

Finally, VA objects to section 3 because it would treat veteran claimants differently from all other claimants. The provision permits substitution only for deceased veteran claimants, but not for other claimants.

VA cannot estimate costs for section 3 because of these unresolved issues. We also do not have sufficient data to determine the number of veterans who die while awaiting final adjudication of their claims.

Section 4 of the bill would require the chief judge of the United States Court of Appeals for Veterans Claims (Veterans Court) to submit to the Senate and House Committees on Veterans' Affairs an annual report summarizing the court's workload during the fiscal year preceding the report. Because section 4 would not affect VA operations or benefits, VA defers to the Veterans Court on section 4.

Section 5(b) of H.R. 4084 would express the sense of Congress that the Veterans Court should be provided with appropriate office space to meet its needs, as well as to provide the image, stature, and security befitting a court that provides justice to veterans, and that Congress should avoid undue disruption, inconvenience, or cost to other Federal entities in providing the space. Section 5(c) of the bill would require the Administrator of General Services to submit to the Senate and House Veterans' Affairs Committees within 180 days after enactment a report on the feasibility of leasing additional space for the Veterans Court in the building where it is currently located and using the entire building as a Veterans Courthouse and Justice Center. Federal tenants of the building currently used by the Veterans Court would be provided an opportunity to comment on the subject of the report before its completion and on the draft report before it is submitted to the congressional committees. VA concurs in the bill's sense-of-Congress statement. Some of our Office of the General Counsel staff number among the building's current tenants, and we would be pleased to participate in the proposed study.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

James B. Peake, M.D.
Secretary