

**IMPLEMENTATION AND STATUS UPDATE ON  
THE VETERANS' BENEFITS IMPROVEMENT  
ACT, P.L. 110-389**

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

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**IMPLEMENTATION AND STATUS UPDATE ON  
THE VETERANS' BENEFITS IMPROVEMENT  
ACT, P.L. 110-389**

**WEDNESDAY, FEBRUARY 3, 2010**

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 2:06 p.m., in Room 334, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Halvorson, Rodriguez, Lamborn, and Miller.

**OPENING STATEMENT OF CHAIRMAN HALL**

Mr. HALL. Good afternoon. Welcome to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, hearing on the Implementation and Status Update of Veterans' Benefits Improvement Act of 2008, Public Law 110-389.

This meeting will now come to order and I will ask us all to rise for the Pledge of Allegiance.

[Pledge of Allegiance.]

Thank you all for being here today to receive an update on the status and implementation of the Veterans' Benefits Improvement Act of 2008 (VBIA 2008), Public Law 110-389.

At the time of its enactment, this law was embraced by many stakeholders as a way forward for the VA to revamp and modernize its claims processing system to bring relief to those veterans, their families and survivors who were languishing in an antiquated system in dire need of reform. I was proud to lead that effort for the Committee. I am proud of the bipartisan cooperation of the Committee in unanimously voting for Public Law 110-389, which also received the unanimous support of both houses of Congress before being signed into law by President Bush.

Under this law we created the Office of Survivors Assistance. This measure also made it possible for survivors to step into the shoes of deceased claimants. We also put critical pilot programs in place to expedite ready-to-rate claims and to provide a checklist with Veterans Claims Assistance Act (VCAA) notices so veterans are less confused about what they actually need to substantiate their claims.

In addition, we created the Disability Advisory Commission to provide ongoing expert input on the claims processing system, particularly with updating the VA Schedule for Ratings Disabilities (VASRD), and we created additional checks and balances with required studies of VA's work credit system and its Work Management system, currently known as the Claims Processing Initiative (CPI).

On a separate note, I wish we could have included Section 101 of H.R. 5892 in Public Law 110-389 to help the many combat veterans who are still forced to prove stressor exposure for post-traumatic stress disorders (PTSDs). While this fix was not included in Public Law 110-389, it is now a separate bill, which I have introduced, H.R. 952.

However, I am heartened by the U.S. Department of Veterans Affairs' (VA's) separate executive rule making efforts concerning PTSD claims and look forward to issuance of a final rule soon so that veterans suffering from PTSD can get the benefits that they have earned and deserve in a more timely fashion.

I am pleased that Public Law 110-389 also laid the foundation for a number of initiatives that VA is currently undertaking, particularly its Veterans Benefits Management System and Veteran Relationship Management initiatives, as well as the Business Transformation Lab in Providence, Rhode Island, the Claims Processing Pilot in Little Rock, Arkansas, and the Virtual Regional Office (RO) in nearby Baltimore, Maryland.

You clearly have listened to the clarion call from this Committee and many veteran stakeholders that the current system is broken and in need of a major overhaul. These efforts hopefully will result in a system that reflects improved accountability, accuracy, quality assurance and timeliness of claims processing for our veterans, their families and survivors.

I applaud VA's more deliberative approach on these fronts and welcome the opportunity to support the VA in the upcoming budget cycles in the VA's efforts to transform the Veterans Benefits Administration (VBA) claims processing model.

I look forward to hearing about how all of these forward-thinking pilots and laboratory initiatives will put VA on a track to processing its compensation and pension (C&P) claims in a virtual environment using a 21st century processing platform. I also look forward to hearing how VA plans to move to an electronic rules-based processing environment by the year 2012.

While electronic claims processing is not the panacea for eliminating the backlog, coupled with business reformation efforts, it will transform the claims processing system in a manner that will improve accuracy, consistency and quality and accountability, and we all hope, at long last, reduce the backlog of claims. We owe our Veterans nothing less.

I now would like to welcome and recognize Ranking Member Lamborn for an opening statement.

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

#### **OPENING STATEMENT OF HON. DOUG LAMBORN**

Mr. LAMBORN. Thank you, Mr. Chairman. And I also welcome everyone to this hearing, which is the first of our 2nd session, and

I look forward to continuing the progress that we have made so far in the 111th Congress.

We are at the midpoint and there are a lot of good provisions that we have passed. Perhaps most notably among them, the measures that we have worked on to help VA gain control over the claims process. The backlog is a major concern for everyone who is a stakeholder in veterans' issues, and I believe that through a bipartisan, collaborative effort, we will begin to resolve the issues that have hampered VA for so many years.

Of course, along with following through on pending legislation, we must take a close look at the implementation of earlier provisions that became Public Law. That is the purpose of our hearing this afternoon, and I am eager to discuss the progress that has been made regarding the implementation of the Veterans' Benefits Improvement Act of 2008.

I also look forward to how it is progressing with other measures which would increase the accuracy and timeliness of benefits' claims decisions and the use of information technology, also, of the assessment of disability compensation and the efforts to ensure due consideration is afforded to veterans for their loss of earnings and quality of life.

I am interested, as well, if the authority to allow substitution upon death of a claimant for purposes of acquiring accrued benefits has had a noticeable impact. It is my hope that this will relieve survivors of the arduous and time-consuming process of starting the entire claims process over from square one. I expect the VA to discuss the implementation of this provision.

Mr. Chairman, it is a pleasure to be seated with you here once again, and I look forward to working with you and all of our veterans' advocates in the months ahead.

Thank you, and I yield back.

[The prepared statement of Congressman Lamborn appears on p. 32.]

Mr. HALL. Thank you, Mr. Lamborn. The pleasure is mutual.

And Mrs. Halvorson, would you like to make an opening statement?

#### **OPENING STATEMENT OF HON. DEBORAH L. HALVORSON**

Mrs. HALVORSON. Thank you, Mr. Chairman. I just wanted to say thank you for having this and I look forward to working and making sure that we can get to the bottom of making sure that we can fully implement the Veterans' Benefits Improvement Act of 2008.

One of the most important things that I hear everyday is the backlog. It is about the benefits. It is about everything that is due to our veterans and that we are not doing, so I want to make sure that whatever it is that comes of this, that we do a better job. So thank you, Mr. Chairman for this hearing.

Mr. HALL. Thank you, Mrs. Halvorson.

Mr. Miller, would you like to make an opening statement?

Mr. MILLER. I would just like to submit my statement for the record, Mr. Chair.

Mr. HALL. Okay. Without objection, it will be included.

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

Mr. HALL. Once again, I remind all panelists that your complete written statements have been made a part of the hearing record so that if you wish, you can limit your remarks to the 5 minutes allotted time, so that we have sufficient time to follow up with questions.

Thank you all, again, for coming here to share your vision or your observations with us.

On our first panel is Mr. Richard F. Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America (VVA); Mr. John L. Wilson, Assistant National Legislative Director for the Disabled American Veterans (DAV); Mr. Ian C. de Planque, Assistant Director for Veterans Affairs and Rehabilitation Commission for the American Legion; Mr. Richard Paul Cohen, Executive Director for the National Organization of Veterans' Advocates, Inc. (NOVA); and Mr. John McCray, Rating Specialist in the Los Angeles Regional Office on behalf of the American Federation of Government Employees (AFGE) with AFL-CIO.

Thank you all for the work that you do. Thank you for being here today.

Mr. Weidman. You are now recognized for your statement.

**STATEMENTS OF RICHARD F. WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA; JOHN L. WILSON, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; IAN C. DE PLANQUE, ASSISTANT DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, AMERICAN LEGION; RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.; AND JOHN MCCRAY, RATING SPECIALIST, LOS ANGELES, CA, REGIONAL OFFICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS, ON BEHALF OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**STATEMENT OF RICHARD F. WEIDMAN**

Mr. WEIDMAN. Mr. Chairman, Ranking Member Lamborn, thank you. I want to echo the earlier sentiments. Thank you for having this hearing and for keeping the dialogue going.

The statute that we are discussing today really happened after a series of round tables last year where people were trying to figure out is there, in fact, common ground. The real problem there was that the VA officials at that time were talking about processes and how long it took to do various administrative processes to a paper packet and everybody else in the room was talking about what happens to an individual veteran who is going through that process and the impact that it has on him or her.

Until we get a common nomenclature, we are going to struggle. Among the things mandated by this statute was an Advisory Committee which seems to be starting to work well, mandated several other things, including putting on a checklist, and that is going in four offices. We have read the Center for Naval Analyses (CNA) as-



sisted evaluation of that. I am not sure that it is particularly helpful.

The key thing is, are the veterans clearer about it than they were before, and in many cases I suspect they are, although that didn't come out yet and it remains to be seen whether it actually speeds up claims.

The second half of that is in offices where they are supposed to be working on fully developed claims and that is an ongoing problem that we have had throughout the Nation.

The Little Rock, Arkansas, pilot is really almost back to the future. The New York Regional Office at 252 7th Avenue, back when I was still a young man, used to operate on that model of groups where they broke down into small groups and worked it as a team and then they got away from that over the years. But certainly after about 1979 or 1980, and that is essentially what they are going back to with the help of a facilitator and it's working well, so that is a plus.

The paperless office in Providence, I haven't been there, so I can't—nor have any of our folks—so I can't really comment, although I hear secondhand that both Providence and Baltimore seem to be moving along, but it is taking longer than one would think.

The Veterans Benefits Management System (VBMS) system we had a briefing on about 2 weeks ago and I am not sure that it makes sense to a lot of us that you are going to automate a system to track paper claims. It makes no sense to us. You ought to be automating the paper claims and that would make a great deal more sense.

There is, however, a new attitude in VBA that has started to evidence itself this spring, or excuse me, this winter since last spring when we had those discussions, and just last week there was a joint meeting between VBA and the VHA, the Veterans Benefits Administration and the Veterans Health Administration, Mental Health Specialists, to work on the ratings schedule for PTSD claims, and there also was Congressional staff there. There were advocates there and it was one of the most useful exchanges in coming to a common viewpoint that we have seen in a long time on these issues about how can you speed it up and how can you quickly come to an accurate diagnosis and what has to happen.

Many of the things that are detailed in this statute and that need to be done in order to, quote/unquote, "fix the Veterans' Benefit System" are really just common sense.

Number one is common training for VA, the veterans service organizations (VSOs), the State and local government employees in veterans claims law. Second is a common competency-based exam for all who touch a claim; three, organizing the claims files so that the documents in every single claimant's file are in the same order with the most salient documents up front; number four along that is a decision template at the beginning of every claim that has to be put together for every claimant that summarizes the key elements of the claim; and five, express lines for presumptive and other ready-to-rate claims; and last but not least, a systematic effort to put all the information into electronic form.

There is another that I would add is we would encourage this distinguished Subcommittee to work with the Armed Services Committee with a view towards digitizing the unit records and the individual records in St. Louis, in College Park, and elsewhere, which would greatly speed one of the things that really bogs down the claims now because it's all paper and then VA is not really in control of the process of getting those claims.

My time is up, and once again, let me thank you and your distinguished colleagues for having this hearing this afternoon and I would be happy to answer any questions. Thank you.

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

Mr. HALL. Thank you, Mr. Weidman.

Mr. Wilson, welcome. You are now recognized.

#### STATEMENT OF JOHN L. WILSON

Mr. WILSON. Thank you very much, Mr. Chairman.

Mr. Chairman, Members of the Committee, I am glad to be here today on behalf of the DAV to address implementation and status of the Veterans' Benefits Improvement Act of 2008.

Like my colleagues, I was hoping to come to today's hearing and comment upon the many studies and pilot programs related to improving the Benefits' Claims Process Approval System which the law required VA to complete last year. However, since this information was not available until we arrived at today's hearing, my testimony will focus on other aspects of the law.

I would ask, however, that the Committee allow additional comments that my colleagues and I may wish to make after having a chance to review VA's testimony as part of today's hearing.

Having said that, let me now comment upon a few provisions of the law that have already been implemented. First, Section 101 sought to make VA correspondence to veterans' ratings, substantiation of claims, more understandable, uniform and useful. A very good idea.

On December 11th, VA published a proposed regulation that we do not believe, however, meets the intent of Congress as expressed in Public Law 110-389. In the *Federal Register* of December 2009, VA states in part that they, "will not provide any specific notice in increased rating claims regarding the relevant rating criteria under diagnostic codes that are applicable to rating the current extent of the claimant's disability." We believe the intention of Congress was for VBA to be case specific.

When I read Public Law 110-389, that's what it says. We do not agree with VA's statements that providing case-specific information to veterans would, "divert resources from the development and adjudication of claims and generally would not make VA's notices more helpful to claimants."

It has been, and continues to be, DAV's view that well informed veterans are in the best position to make educated decisions regarding their claims. We do not support VA's efforts to only develop a generic letter.

Rather, we instead recommend that it make every effort to provide clarity of content and organization of information—that is key—in every letter on matters of notice to veterans.

Section 214 established the Advisory Committee on Disability Compensation which, among other matters, focused on updating the VASRD.

We agree with the importance of a systematic review and update of the VASRD, the source of all disability compensation ratings. This rating scheme addresses illnesses and conditions running into the hundreds and should reflect the most recent medical findings in every case. The Advisory Committee has made a number of strong recommendations to strengthen the VASRD with which we agree.

One, the Deputy Secretary of the VA should provide oversight of the VASRD process, with VHA and Office of the General Counsel fully integrated into this VBA process. Two, VHA should establish a permanent administrative staff of nine for this VASRD review. At least one permanent party medical expert must be on this team and have authority to liaise with VBA, assign VHA and medical staff to participate in VBA body-system reviews and to coordinate with other medical experts.

The expertise that VHA clinical professionals can bring to the discussion should prove invaluable and well worth the additional staffing provided.

For example, a recent VBA/VHA Mental Health Summit, which Mr. Weidman referenced, conducted here in Washington just last week, demonstrated over a 2-day period that VHA mental health professionals outside academics and veteran service organizations can serve as effective resources for VBA, that VBA reviews changes that are needed in the VBA rating schedule for mental health disabilities in particular.

That simplistic rating schedule on mental health disabilities built primarily on diagnosis and subject to interpretations by examiners has far too much discretion and has been criticized by the Institute of Medicine.

Also, as indicated in the *Independent Budget* for 2011, which was released today, two other outside reviews have found that veterans rated with service-connected psychiatric disabilities suffer greater lifetime earnings loss than do veterans with physical disabilities.

We strongly believe VA should update its mental health rating criteria to make them fairer, more reliable and ensure that those veterans with service-connected psychiatric disabilities are equitably and appropriately evaluated and compensated.

We also agree with the Committee's body system prioritization, beginning with mental health disorders. Under the current system, for example, one veteran service-connected for schizophrenia, and another veteran service-connected for an eating disorder are evaluated using the same general criteria.

It is essential that new criteria be formulated to evaluate mental health disorders. A number of possible new approaches can be found in the VBA/VHA Mental Health Summit results. We look forward to participating in their future development, as well as continue working with the Advisory Committee as they continue their vital work.

I thank you for the opportunity to speak to you today regarding this particular bill and I look forward to any questions that you may have.

[The prepared statement of Mr. Wilson appears on p. 35.]  
 Mr. HALL. Thank you, Mr. Wilson.  
 Mr. de Planque, you are now recognized.

#### STATEMENT OF IAN C. DE PLANQUE

Mr. DE PLANQUE. Good afternoon, Mr. Chairman, and Members of the Committee. On behalf of the American Legion, I would like to thank you for the opportunity to testify today.

VA has done several things to begin with the implementation, but we have several major concerns and I would like to state and emphasize two of those points—timeliness and implementation.

Timeliness can be exemplified by the speed with which the VA proposes and implements the new regulation. Public Law 110-389 provided a much needed alteration, for example, to the manner in which survivors are allowed to substitute as claimant in the case of veterans who pass away before final adjudication of their pending claims.

To the credit of VA, they did publish an initial Fast Letter in March in response to this requirement and some of the claims affected have been adjudicated under the informal guidance of the Fast Letter.

VA has already helped some families to receive the compensation they're entitled to, however, a Fast Letter is not a formal regulation change. The law established procedures to change regulations, which require the VA to publish a proposed regulation so the public may comment and raise questions or concerns. After such a proposed regulation has been proposed and the period for public comment has expired, final regulation can be considered.

Talking recently with the expectation of proposed regulations showing up for the three new presumptive Agent Orange conditions, we are looking at the absolute earliest is sometime this summer to see a final regulation, so this is a lengthy process and we haven't even begun the process of the proposed regulation for this provision 16 months after the passage of the law. It has been a year almost since the Fast Letter. That is too much time.

The implementation is the other concern that we have and one of the points that was brought up that this Public Law addressed was to look at the earning capacity and quality of life issues. That was stated again by Members of the Committee.

VA has focused largely on the earning capacity and they stubbornly cling to focusing on that, however, there have been some signs that some of these studies, the Econsys Study, the Advisory Committee on Disability Compensation, some of those that are raising concerns about quality of life and whether it is adequately represented are starting to come to the forefront.

I will reiterate that the very, very recent Mental Health Summit with the VA's attempt to reexamine the mental health rating criteria was an extremely great step forward on behalf of VA, that as a veterans service organization, we are excited to be participating in. When we think dialogue such as that is essential, is essential if we are going to see veterans properly compensated.

The aspects of traditionally looking at things in terms of earning capacity are very, very difficult to measure in cases, particularly with mental health issues. And so seeing this as a first priority of

getting fixed is a great step forward and we hope to have continued input on that.

Other than that, we want to summarize to pay attention to those two main points, that the VA must be held to timeliness standards for the implementations of laws and that if all these studies are going to point out information and nothing is going to be acted on, then there is no purpose in having the studies. You can have all the studies in the world, but without action, they don't serve the veterans of America.

We would like to thank you for giving us the opportunity to testify today and we will, of course, answer any question you or the Committee may have.

[The prepared statement of Mr. de Planque appears on p. 39.]

Mr. HALL. Thank you, Mr. de Planque.

Mr. Cohen, welcome, and you are recognized.

#### STATEMENT OF RICHARD PAUL COHEN

Mr. COHEN. Thank you, Mr. Chairman, and thank you to, the Committee, for allowing the National Organization of Veterans Advocates to testify here today.

We have read in great detail, not only the VBIA 2008, but the Booz Allen Cycle Study as well. Although the Cycle Study seems to have some good recommendations, we are concerned about two problems with the VA, which are not addressed in the Cycle Study. The first one is that the VA misunderstands its mission, and the second one is that the VA does not function as an effective business.

Looking at the mission first, NOVA agrees with Mr. Weidman and the VVA that the issue for the Veterans Benefits Administration, is that VBA's mission is veterans' lives and the sacrifices that were made by veterans. The mission is not about dealing with inventory. It is dealing with people's lives. The mission could be to determine how a claim should be granted, not to determine how to protect the public fisc.

The mission should be how to validate the claims of a combat veteran, not how to deny them. The fact that the VA has missed the point about its mission can be seen by the example referenced by Mr. Lamborn, Ranking Member Lamborn, the importance of the survivor's benefits. That has not been implemented as my colleague over here mentioned. Yet it is very important to have those regulations. That is something that is top priority, yet the VA has not acted on it.

Similarly as Mr. Wilson from the DAV mentioned, the proposed VCAA regs are inadequate and the VA has taken the opportunity, based on the *Vasquez* case, to propose to use a generic notice, rather than the case-specific notice. The fact pattern mentioned in the Federal Circuit's decision in *Vasquez* showed that both the claimants, *Vasquez* and *Schultz*, were given generic notices and did not know what they needed to introduce in order to get benefits for increased disabilities.

So the VA has decided to go to the least possible help they can give veterans rather than the most. In addition, I will point to the failure to issue permanent regs on the Agent Orange presumptions

for B-Cell leukemia, Parkinson's disease and ischemic heart disease.

People are dying of those conditions today, yet no regs have been issued. If veterans go for priority health care and they are not service-connected for any other condition, they are not going to get health care. This needs to be taken care of right away.

Our members know of instances where combat veterans are being denied PTSD benefits because they are told that they lack a stressor, and that their Purple Heart is insufficient. This shows a lack of understanding of the VA's mission.

The VA is also an inefficient business. As recognized by yourself, Chairman Hall, the amount of paper that the VA needs to track mandates that there be an electronic system. The VA seems to be unable to figure out how to do this, yet NOVA members every day scan their files with optical character recognition programs and manage their cases with case management programs that are available and are out there.

The VA does not have reliable data and doesn't know how to get it. The processing times are not adequately tracked. The backlogs, as recognized by Representative Halvorson, are important and they have not been tracked adequately. And accuracy is totally a myth in the VA. They refuse to do what they need to do, that is, track a claim from beginning to end and find out if they got it right. They should not say that a claim is right based on the Systemic Technical Accuracy Review (STAR) system because internally they think it is right.

That would help with training, too. If they would take these claims and give them to raters and say, "This is what you did, but this is what the court said you should have done." And I think that the tracking of accuracy would solve a number of their problems if they did it correctly.

I want to thank you for the opportunity to testify and I'm prepared to answer your questions.

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

Mr. HALL. Thank you, Mr. Cohen.

Mr. McCray, you are now recognized.

#### **STATEMENT OF JOHN MCCRAY**

Mr. MCCRAY. Chairman Hall and Members of the Subcommittee, thank you for the opportunity to testify today on behalf of AFGE and to share my experiences as a rating specialist with the Los Angeles Regional Office.

Since coming to the VA 9 years ago, I have worked in every aspect of the claims processing, public contact, claims development, adjudication, the rating board and as acting team supervisor. The one thing I am certain of is the respect and commitment my co-workers have for veterans. Everyone is extremely aware of the duty we owe to our clients and the responsibility we have to them and their families.

However, the individual obstacles, flaws and idiosyncrasies of our job often impede us from fulfilling that duty. That is why AFGE urges this Subcommittee to expedite implementation of Public Law 110-389. This critical law has the potential to significantly reduce barriers to accurate efficient claims processing if the VA imple-

ments urgently needed changes in training, supervisory skills certification and systems for measuring and managing case production.

The VA is one of the most data-saturated work environments I have ever encountered. To successfully perform your job, you must have a thorough knowledge of the *Code of Federal Regulations*, the *VA Manual of Operations*, Medical Terminology and Ideology, Board of Veterans' Appeals decisions, Department of Defense procedures, current events, military history and veterans legal rights.

At the same time you must have the agility of mind to immediately learn and adapt to a constantly changing set of laws, regulations, procedures, technology, duties and priorities, all while maintaining the professionalism and compassion that our clients deserve and expect.

Productive adjudicators and rating specialists do not happen overnight. You cannot simply hire more bodies, give them a computer and a disc and reduce the backlog.

It takes time and commitment from both the employee and management. Employees must apply themselves to learning the written materials and commit the time it takes to effectively learn the job.

From my experience, it takes 2 years of on-the-job training to begin making a significant contribution and production. I have seen people with master's degrees and law degrees, people who have succeeded in other careers, medical professionals and ex-military personnel who have thrown in the towel in frustration because they did not receive the proper training and mentoring to learn this complex job.

Again, management must commit the time it takes to develop a good employee. After new employee classroom training, which is effective because it is developed by VA's Central Office (VACO), employees fail to receive consistent, sufficient quality on-the-job training. Too often, our own management fails to provide adequate training time or clear coherent learning materials that convey the correct way of processing claims and making decisions.

Therefore, AFGC urges VA to make all VBA training programs standardized throughout the country and sustained throughout a person's career to keep everyone on track and eliminate variation among regional offices.

Employees must be allowed time to develop the VA's unique job skills without fear of demotion or dismissal for not making daily production standards. As for the standards, they must accurately reflect everything that we do in our jobs, not just the number of cases that are produced.

If people are rushing to make points at the VA, it is not for wanted promotion. It is for fear of losing their jobs. I feel we do a disservice to American veterans if we reduce their needs to a simple tally of numbers that are calculated at the end of the day.

By failing to credit all aspects of our job, we discourage employees from taking the time necessary to provide compassionate thorough service for our veterans. I cannot emphasize enough the anxiety employees feel by attempting to meet minimum production standards.

Unable to keep up with the current standards, employees with years of valuable VA experience are forced into lower responsibility

jobs, and in some cases, forced to retire. By allowing these seasoned employees to fail, VA risks losing years of accumulated knowledge and expertise that could best be used to mentor the thousands of new hires at VBA.

There is no silver bullet to claims processing. We try ways of tracking the files, arranging them on the shelves, color coding them and scanning them with the computer. Ultimately a human being still has to open the file, analyze the evidence and come to a decision and there are so many who are essential to the VBA claims process, from Clerks to veteran service representatives (VSRs), to rating specialists and Decision Review Officers. If any one of these people is poorly trained or so filled without anxiety about losing his or her job due to production standards that they cannot even perform their duties, the entire process is delayed indefinitely.

In short, we need less finger pointing and more training and mentoring by knowledgeable supervisors with proven teaching skills. We also need revised work credit and measurement systems that value judgment and action over fear and avoidance of errors. Only then will we truly be able to fulfill our duty to America's veterans. Thank you.

[The prepared statement of Mr. McCray appears on p. 49.]

Mr. HALL. Thank you, Mr. McCray.

I will start off the question and answer session by asking you, since you are working in an RO, if you could summarize any changes that you have seen in the approach or the attitude of the VA since the change at the top, the change in administration and the new Secretary?

Mr. MCCRAY. I believe that we have actually—there are a lot more cases that are being labeled as priority cases. For example, the seriously injured or the Operation Iraqi Freedom/Operation Enduring Freedom (OIF/OEF). However, without coming in and giving more resources to the cases that are not priorities, you are essentially just moving your manpower into a different field and changing which cases are rated first.

So I will say that there has been a response, different priorities, but yet, I feel like we need to refill the resources behind those priorities.

Mr. HALL. What would AFGE recommend changing so that there could be a culture change and a stigma change within the VBA?

Mr. MCCRAY. I honestly believe that everyone that works there is trying to do the best for veterans. But you know, we have been given this enormous convoluted system that has been kind of cobbled together over the last 90 years. And I kind of always describe the VA as being, it is like an old car that, you know, you have to turn on the blinker and then stick in the cigarette lighter and jiggle the steering wheel, and even still it only goes 10 miles an hour.

And you know, we get new people in and we try to teach them, well, you have to turn on the, you know, jiggle the steering wheel and stick in the cigarette lighter. And it is still, no matter what you do, there is only so much that you can get out of the machine the way it is now.

So I think to—ultimately you have to really train the people. You have to encourage the people. You have to encourage them to be proactive. You have to encourage your employees to make decisions



and to have confidence to make decisions because if people are afraid to make decisions or step out of the box or afraid to stick their heads up, you will never have anything accomplished at the VA.

Mr. HALL. And one last thing, Mr. McCray. You talk about the lack of national uniformity in training programs. Do you feel that if there was a national standard, perhaps a manual that was given to all of our directors in every region, that this would eliminate some of the deficiencies and lack of uniformity training?

Mr. MCCRAY. I think it would. A couple of weeks ago the Central Office did come up with a Fast Letter that indicated that they were going to start standardizing some of the continued training, which I think is a step in the right direction. I am still waiting to see how it is implemented before I can, you know, actually comment on it personally.

But, you know, it is kind of like a judge across the country. We all have the same laws, but each judge will see, will interpret it subtly himself, and yet we ask every rating specialist or every VSR to have the same laws and then come up with exactly the same decision every time, and it is just impossible, I think.

So the clearer you can make it, as far as the procedures, the clearer you can make it as far as the criteria and trying to standardize it throughout, yeah, that would greatly help the job that we do.

Mr. HALL. Thank you.

Mr. de Planque, in your testimony you refer to flaws in the VA's work credit system. Could you elaborate on this point in terms of what you see as the major flaws and how you propose VA could improve upon the Work Credit System?

Mr. DE PLANQUE. Well, the Work Credit System, and I believe this was alluded to by my colleague over here, counts production solely based on numbers. It does not take into any account whether or not the work is done correctly or not.

And as you stated very clearly, there is a tremendous pressure that is felt by the workers. I go out as part of Regional Office reviews that the American Legion conducts on various ROs. I talk to employees within the system. These are people who believe they are going to work to help veterans. They want to help veterans. These are good employees that they have in there, but they feel tremendous pressure on the numbers that they have to turn out, and the ability to properly do their job within the time constraints allotted.

I had a rater from one of the offices who was a veteran himself from Afghanistan and we discussed Afghanistan for a while and he said, I have a case, it is this thick, I have 2 hours to get through that case, how do I give that veteran justice. And you know, to hear that, that is heartrending to hear from them. They want to be given the time to do the job right and so that if you look at a system that is only putting credit on the numbers and not whether or not they are done correctly, we are never going to make any progress that way.

So then you have to look at counting it in a different sort of fashion. The American Legion has a resolution that it supported for a long time, only counting a claim as done when it has been properly

and finally adjudicated. That obviously would be a major shock to the system and different in any way that it has been done before.

But there are other ideas. We don't necessarily endorse the ideas but we have heard ideas recently mentioned where you could look at it like a checkbook. When you do something right, you get a credit to the account of an RO or the account of something. And when you are dinged for doing things improperly, when they are remanded over things that could easily have been corrected, then a debit would go against it and you could look at whether an office was operating in the black or in the red on whether or they are properly doing the claims.

All of the sudden you look at it that way, then you are measuring your cases by how many you are getting done right and you are going to give people the time they need to get it done right. If it takes you 2 hours to do a claim wrong and you have to do it three times because it keeps getting remanded and 3 hours to do it right, that is 6 hours to do a case or 3 hours to do it right. Do it right the first time, and that is what we are advocating.

Mr. HALL. Thank you very much.

Mr. Lamborn, you are now recognized.

Mr. LAMBORN. Thank you, Mr. Chairman. And to some extent, the following question you all have been addressing this, that sort of to clarify for me and condense what you are saying, what would be your top recommendation for the VA? And I would like each one of you to take a stab at this, on how they could improve the quality of their decisions. And I know, you have just addressed that—but what would be, and this might vary a little bit—what would be your top recommendation? And we can start with you, Mr. Weidman and just go down the table.

Mr. WEIDMAN. No guts, no glory.

They can only do one thing. It is the organization of the C-file itself, Mr. Lamborn. You literally, I mean that was no exaggeration by Mr. McCray, they have them thicker than 12, 18, 20 inches thick. And to just find the salient documents can burn up a good part of that 2-hour time frame that we are talking about.

To have a template in a set order, which you put things into a C-file, so if you go to my C-file to Brian Lawrence's C-file, to John Wilson's C-file, you will find the same documents in the same location within the C file and you start there and then, as you automate it, if you don't set that business process, get that straightened out, even using OCR/ICR scanning techniques, you get people used to a doing business process in a set way. Then you can concentrate on what those documents say, as opposed to trying to find a document in the first place.

Mr. WILSON. It is a good question, Mr. Lamborn, and we are talking about that among ourselves as veterans service organizations. We had a meeting off of campus, if you will, to talk about how we could best advise VA to move more effectively towards a better way of providing a better product. And one of those tough points we believe is that VA take an approach of quality first in their work and all the other issues will fall into place and the timeliness and appeals issues will be resolved substantially.

VBA employees need a robust digital electronic system so they can develop claims. They need to be able to retrieve data electroni-

cally from the National Archives, the military services, et cetera. That is essential.

This development phase is the most time-consuming phase in the claims process. So efforts need to be made in the development area first to get your biggest bang for the buck.

So a quality initiative focusing on a digitized development process and a revised the Work Credit System is essential. To get all these development tools off the rater's desk, out of binders, books and archaic data bases with little interoperability and into their laptop computers would help immensely.

Ten years ago while on active duty, we used Lean Six Sigma. To improve the quality of certain programs. We found it very effective. We are heartened to see VA finds it to be a viable program to help them with their processes as well, as is being done down in Little Rock.

Mr. LAMBORN. Thank you.

Mr. WILSON. Yes, sir.

Mr. DE PLANQUE. One of the things that I think, in terms of looking for consistency, is to achieve consistency with the training and to centralize and standardize the training. You mentioned there is an increase in hours from 80 to 85 hours, but it has also got to be the right training. And to use another example from an RO visit, we went into a particular Regional Office that had been having a lot of trouble rating PTSD claims, and we brought this up to them and we said, we have seen this ahead of time.

And they said, well, we just delivered a training on this.

And we said, oh, do you have it?

And they brought the PowerPoint out that they received from Central Office and delivered to their employees. We went through it. There are three errors in the PowerPoint that were factually incorrect on how to interpret the regulations.

To Central Office's credit, we brought it up to them and they immediately changed it and distributed the information out to the Regional Offices. They corrected it very quickly when they were made aware it, but the point is that was bad training that was out there and so they need to be getting the right training. It needs to be across the board and they need to make sure that that is also a priority.

And we understand that they are under a lot of pressure to get cases done, too. The service organizations and Congress are breathing down VA's necks to take care of the backlog, but getting the people trained to do it right will help them do the claims faster and get them right.

Mr. LAMBORN. Thank you.

Mr. COHEN. I would likewise agree that the accuracy is crucial and that is dependent on the training. And I see the training as needing to be case specific so that someone who works on a claim should know how what they did affects the end product and whether they did the right thing, and they can only know that if they can track the claim through the BVA and through the Court and back down again and then, in addition to that, once they know the right thing to do, they need standardized materials. This was mentioned by the Booz Allen Cycle Study, that some people have some great checklists that they have put together and materials that

they use, but others don't. That needs to be standardized so everyone has a checklist that helps them deal with a particular type of claim.

Then, the final thing is, they need allotted time to be able to do it right because again, as was noted before, it saves time and cuts backlog to do it right the first time, but they can't do that if the time limits prohibit them from adequately developing or adequately reviewing the file.

Mr. LAMBORN. Thank you, and we have run out of time, but can you very quickly—

Mr. MCCRAY. Yeah, I would say, also, just consistent and ongoing, on-the-job training because, you know, this isn't like just moving boxes somewhere, like, we aren't saying, well, we have a million boxes that we have to move. I mean, each one of these cases is unique and individual in its own right. It is a person's life.

And as a rating specialist or as a VSR, you have to observe that. And you know, you get the training that kind of tells you how to deal with cases like that, but every case is unique, and so you need training and mentoring that goes on to kind of teach people who to think and how to judge cases rather than just process them.

Mr. LAMBORN. Okay. I thank each one of you.

Mr. HALL. Mr. Miller.

Mr. MILLER. Mr. Weidman, in your testimony, you suggested a common training platform for VA, VSOs, State, Federal or local government employees. Can you talk a little bit about how you would envision that being structured?

Mr. WEIDMAN. Literally, meet, call all the players together from the National Association of State Directors of Veterans Affairs to the county veterans service officers (CVSO) to the veterans service organizations with VA and come up with a set piece.

Training manuals are great, but today they should be done in webinars so that people can go back and back again until they get whatever section it is of the training. And you can standardize it across the country that way much more easily as well. With standardized exams based on competency that everyone has to pass, including attorneys by the way—just because somebody's an attorney doesn't mean they know Veterans' law at all.

So if you do that, I mean the astonishing thing is, we get so many complicated claims right as we do the first time through, given the lack of expertise, if you will, that impinges at so many points in that process.

So it would be, instead of doing it in the legalistic way, you sit down and negotiate, if you will, the VSOs, NOVA and with VA, and come up with a common training program and with tests that make sense.

Incidentally, on that training, somebody mentioned it here and I will say it more specifically. VA's training is all too often showing slides and exposing people to training as opposed to doing case studies. Case studies, people actually have to do and then they learn what it is, what the impact is of doing things right, the right way is on the end product, and a lot of that can be worked out.

I can't tell you how heartened many of us were by last week in that session and that it was a different attitude that we hadn't seen before. All that was missing from that was we should have

had Voc Rehab and claims specialists like Mr. McCray there, and next time I think they will get it, but the point is, the attitude that we can figure this out together. And once we have that attitude, we can, in fact, collegially get the darn thing done.

Mr. MILLER. Anybody else got anything they would like to add to that?

Mr. DE PLANQUE. In terms of the platform and getting everyone together on the same page, whether you are a service officer or whether you are rating a claim, you are doing the same thing. You are going through a case file start to finish, trying to put together a picture of the veteran's life and why they are entitled to the benefits.

Everybody's doing the same job and if we are all working together on the same page, it helps a lot. And I just also wanted to reiterate that when we do get together with VA, whether it is for a mental conference or when VA's compensation and pension holds quarterly meetings with the service organizations, great things do come out of those. A lot of improvements that have been made towards recognizing Brownwater Navy boats came out of the meetings with quarterlies and the VSOs working with VA and VA doing things of its own initiative by listening to the stakeholders in it.

So when we do work together, good things happen for veterans and that is an essential component that needs to go forward and they seem willing to do.

Mr. MILLER. Thank you. I yield back.

Mr. HALL. Thank you, Mr. Miller. I'll just recognize myself for a couple more questions before we excuse you.

First of all, Mr. Cohen, I just wanted to ask you—there has been mention of the *Vasquez-Flores v. Peake* case today, and I was wondering if you could speculate as to what effects that will have on the aims of the Veterans' Benefits Improvement Act of 2008. Are there any other rulings because of *Vasquez* that have analyzed other provisions of this law that you are aware of, and if so, what has been the impact of these rulings?

Mr. COHEN. Well, the *Vasquez* case is very detrimental to the whole idea of the Veterans' Claims Assistance Act providing notice to veterans because the decision of the Federal Circuit overturned a Veterans' Court decision requiring case-specific notice in a situation where a veteran applied for increased benefits.

And, as I said, in the fact pattern of the case, it was very clear that the veterans who complained about not getting adequate notice, in fact, did not get notice that would tell them what they needed to do to get increased ratings.

So if the VA proceeds with their proposed regulation saying that only generic notices would be given, they are going to be doing a great disservice to VBIA 2008 and to the veterans that legislation sought to help. These generic notices, rather than assist the veteran, just tie up the system because they consume time to get them out and get a reply back.

But since veterans can't understand them and aren't benefited from them, the question is why even submit a generic notice? That just consumes time.

Mr. HALL. Mr. Wilson, do you have a comment on that? Or perhaps what this Committee or Subcommittee might do or Congress might do to clear up the situation that is caused by *Vasquez*?

Mr. WILSON. It was interesting to read in the *Federal Register* what the VA's contention was. It would be useful, if Congress could articulate its wishes that, in fact, the VA must be specific, not generic, in its notices to veterans.

It was more than just a whim, on a particular sunny day that it would be a thing for the VA to do for veterans if they wish was Congressional intent. We believe it is absolutely essential that veterans be well informed and, therefore, request Congress mandate, in fact that VA carry out the wishes of Congress and make these notices specific, not generic.

Mr. HALL. Thank you. Back to Mr. Cohen. I just wanted to refer to your testimony that there has been no action by the VA on substitution by survivor's regulations as required by the Act. In fact, you assert that the VA is attempting to subvert the intention of this provision of the Act by trying to administer a regulation, 38 CFR 20.1302, which requires an appeal to be dismissed upon the death of the claimant.

The intention of the Act, as we all know, was to allow the survivor to step into the veteran's shoes and continue to the completion of the claim.

What do you believe are the legal consequence of this action by the VA and what steps you believe we should take here in Congress to address this action?

Mr. COHEN. Well, I think part of the oversight of Congress is to require the VA to explain why this particular regulation has not issued. This is not something that is complex, like putting into place, perhaps, a new presumption. This is relatively a straight forward procedural step that could be done and needs to be done immediately and issuing a Fast Letter is not a substitute for regulation.

There is no way of understanding the failure to issue this regulation, except to understand that this is not a priority with the VA and then wonder in view of the fact that Congress said it is a priority and service organizations said it is a priority and veterans say it is a priority, why doesn't the VA see it as a priority?

Mr. HALL. Thank you. I can only speculate that there are so many priorities that we all are working to resolve that perhaps it has fallen down the list further than it should have, but we hope to get some answers to that.

Thank you all for your questions. As usual, we will have 5 legislative days to extend or revise your remarks; Mr. de Planque, I believe you asked about that.

Thank you very much, again, for your work on behalf of our veterans. Thanks for being here today. This panel is excused.

We will ask our second panel to join us. Mr. Bradley G. Mayes, Director of Compensation and Pension Service, Veterans Benefits Administration of the U.S. Department of Veterans Affairs. Mr. Mayes is accompanied by Mr. James P. Hanley, Director of the Office of Survivors Assistance, Veterans Benefits Administration, and Mr. Richard J. Hipolit the Assistant General Counsel, Office of the General Counsel, U.S. Department of Veterans Affairs, and Mr.

Stephen W. Warren, Principal Deputy Assistant Secretary, Office of Information and Technology (OI&T) of the U.S. Department of Veterans Affairs.

Welcome to all of you, it is good to see you again. Mr. Mayes, Mr. Hipolit have been here many times, and it is much appreciated by this Subcommittee. You know the routine. Your written testimony is in the record. And Mr. Mayes, you are now recognized.

**STATEMENT OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY JAMES P. HANLEY, DIRECTOR, OFFICE OF SURVIVORS ASSISTANCE, U.S. DEPARTMENT OF VETERANS AFFAIRS; RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND STEPHEN W. WARREN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INFORMATION AND TECHNOLOGY, OFFICE OF INFORMATION AND TECHNOLOGY, U.S. DEPARTMENT OF VETERANS AFFAIRS**

Mr. MAYES. Thank you, Mr. Chairman. Chairman Hall, Mr. Miller, thank you for providing me with this opportunity to address the progress made by the Department of Veterans Affairs towards implementing the provisions of Public Law 110-389, the Veterans' Benefits Improvement Act of 2008.

As you noted, I am accompanied by Dick Hipolit from the Office of General Counsel, Steph Warren from the Office of Information and Technology, and Jim Hanley, the Director of VA's newly created Office of Survivors Assistance.

Both VA and the Congress are acutely aware of the enormous challenges we face on improving and expediting our claims process. We are grateful for your input and for the opportunity to evaluate pilot programs to see if they help us meet our end goal of serving the veterans who have served us.

Given the breath and complexity of issues covered by this legislation and the amount of time allotted for my oral remarks, I will simply summarize the progress we have made in implementing the provisions of this legislation. I will also limit my remarks to progress related to those sections of the legislation affecting VA's Disability Compensation and Pension Program. A more detailed description of our progress is included in my written statement for the record.

Sections 101, 106, and 212 of the Act directed VA to define the contents of the up-front claim notice to add osteoporosis as a presumptive disease for former prisoners of war and to provide for substitution upon the death of a claimant in that order. All of these provisions of the law do require VA to promulgate new regulations.

I am pleased to report that VA promulgated a final rule adding osteoporosis as a new presumptive disease in August 2009 and a proposed rule addressing VA's notice requirements was published in December 2009.

While we have not yet published a rule regarding substitution as the previous panel noted, interim processing guidance was provided to VA claims processors in a compensation and pension service fast letter in March 2009.

We are nearing completion of a proposed regulation implementing in greater detail this section of the law which will then be published in the *Federal Register* for notice and comment. The delay in publishing a substitution rule is due for the complexity of the issues surrounding execution of this mandate.

Sections 104, 213, 224, 226, and 228 all required the Secretary to conduct studies and/or report to Congress on issues related to variance and compensation payments, a previous study completed by Economic Systems, Inc. regarding earnings loss, quality of life, and transition, VA's quality assurance program, performance measures and improving access to medical advice for VA claims processing personnel.

In order to comply with these requirements, VA initiated a total of seven studies, with three of those studies related to Section 104 of the legislation alone. VA contracted with the Institute for Defense Analyses (IDA) and the Center for Naval Analyses to assist with four of the seven studies.

The contracts associated with Sections 104, 224, and 226 total \$3.6 million. Either final or interim reports have been submitted to Congress on three of the seven studies. I regret, sir, that two of the studies related to Section 104 and one study related to Section 226 are past due; however, they have been completed, and they are in the concurrence process.

The report related to Section 224 is not yet due; however, the Institute for Defense Analyses is well under way with their review of VBA's National Quality Assurance Program and on track to complete their review in 2011.

I am pleased to report that we are in compliance with Section 214 of the law with the creation of the Federal Advisory Committee on Disability Compensation chaired by retired General Terry Scott. My staff is providing support for this Committee, which is conducting monthly meetings on important issues related to the disability compensation program.

Section 221 required VA to implement two pilot programs to test the effectiveness of providing a claim checklist to veterans at the start of the claims process and of allowing veterans or their accredited representatives to certify that their claim is fully developed. Both of these pilot programs were stood up in December 2008 with contract support provided for the Center for Naval Analyses. The two supporting contracts total \$1.5 million.

Preliminary findings suggest that there may be some improvement in timeliness as a result of the submission of a fully developed claim. An interim report on both of these pilot programs has been provided to Congress.

As required by Section 222, the Office of Survivors Assistance was created in December 2008 and fully staffed by February 2009. Mr. Hanley is here with me today to answer any questions you may have regarding the progress his office has made in advancing survivor issues.

Section 225 required VA to implement skill certification testing for all employees and managers responsible for processing claims for compensation and pension benefits. VA has deployed skill certification tests for the supervisory veteran service representative position and is in the process of completing the development of a



test for our decision review officers. We already have tests in place for the other decision makers.

And finally, Steph Warren is accompanying me here today to answer any questions you may have regarding the review of information technology in the Veterans Benefits Administration as required by Section 227.

Mr. Chairman, this concludes my oral remarks, and I would be glad to answer any questions you may have regarding implementation of this quite comprehensive piece of legislation.

[The prepared statement of Mr. Mayes appears on p. 52.]

Mr. HALL. Thank you, Mr. Mayes, I appreciate your work, and on behalf of our veterans, and your testimony.

I will just, if it is okay to—since they came here to be able to answer questions—ask Mr. Hanley and Mr. Warren maybe to give us a brief update as to how they see their offices progressing.

Mr. Hanley, how would you assess the progress so far of the Survivors Assistance Office?

Mr. HANLEY. Good afternoon, Mr. Hall. I would say we have made quite a bit of progress. The office stood up in February. We are about 80 percent manned. We have five authorizations, we have four people on board. I came in late June. The office has been very successful in really becoming the advisor to the Secretary. We work for the Office of the Secretary, so we are at weekly meetings with the Secretary.

The biggest issue that I see is really awareness for survivors. We get out, we do a lot with the veteran service organizations such as the Gold Star Wives, Tragedy Assistance Program and the Military Officers Association of America.

The biggest issue outside of Survivor Benefits Plan/Dependency and Indemnity Compensation (SBP/DIC) offset is just awareness. A lot of them have a—whether real or imagined perception that they are an afterthought to the VA as far as survivors go. So my job, and the job of my office, really is to put the umbrella across both VBA and VHA and the National Cemetery Administration (NCA) to try and get the attention that the survivors are as important as any veteran out there.

So I think we have made some progress. We have done some things. We have a Web site up. We deal a lot with survivors individually now, actual survivors where we get e-mails and calls. We don't get a lot of the real hard claim stuff, we get a lot of people out there that are really concerned about my dad passed away, he was a World War II veteran, he is a Vietnam vet, what is in it for my mom? She has problems. That is the kind of thing that we do that we refer them on. We have a lot of those calls in the last 2 months since we have been up on the Web site.

Mr. HALL. Thank you. And Mr. Warren, where do we stand now on the path to electronic rating, on the path to digitizing as much of our veterans' community's records as possible with all these monstrous, humongous tasks in front of you?

Mr. WARREN. If I could break the response into two sections, sir.

The first one was to section 227 which requires a review and a report. That review is due in the April/May time frame. That is in draft and starting the concurrence process. So our expectation is that we will make it up as required, sir.

To your broader question, where are we now? And I am drawn to the hearing we had 2 years ago about 3 days where we talked about the use of artificial intelligence (AI) in the benefits process, and I think we have come a long way in those 2 years.

One of the things that Secretary Shinseki has laid out for us is his vision of the virtual lifetime electronic record (VLER), that broader view of how do we reach the point where we reach out to the veteran, our client, and say what you are eligible for. That broad vision. How do we get there? The efforts under way are to move us towards that.

In the testimony there was a discussion about the Veteran Relationship Management (VRM). How do we come up with a single door through which the veteran comes to us? The pilot program is under way right now. Expect some good movement in fiscal year 2010 and 2011 to start reducing down the number of portals. The e-benefits portal joint with U.S. Department of Defense (DoD) is up and running and there are services provided through that both on the DoD side and the VA side so the veteran can come to one place. Also collapsing down call centers, call numbers, and the ability to pull up information when the veteran is on the phone. Who they are, where things are in process.

In terms of pulling all the information in, the idea of coming up with that single virtual lifetime electronic record. A lot of progress on the medical side. We announced the successful pilot with Kaiser Permanente in San Diego where we exchanged information with a third-party provider. There was a lot of information for veterans care that was sitting outside VA and DoD. So we are using the Nationwide Health Information Network (NHIN) connector as a way of bringing that information in so it is available to us.

The next pilot announced is at Hampton, where we are not only connecting with VA/DoD, but a medical provider network. How do we bring all of that information in as well? So grab that third-party information in terms of care.

Business process changes. It was referred to by the previous panel as well in the testimony. Several pilots under way looking at how do we change the processes we have so we don't pave the cow paths, if you will, that we talked about? Business process change before automation.

The virtual regional office standing up in Baltimore. How do we take that professional who does the rating and align them with the business process redesign folks and the IT folks and have them go through the process and learn why we did it that way, how can we change it, how can we apply the technologies to it?

And then VBMS, the Veterans Benefits Management System, how do we then take what we learn in the pilots, the business process pilots, the technology pilots, and then start automating the tools that we have so we can take that unique case and do it quicker and meet some of the goals that we have met?

So again, very comprehensive summary coverage. Glad to go into any other depths for further questions, sir.

Mr. HALL. Thank you, Mr. Warren. And I have heard from Secretary Shinseki about the virtual VA pilot, the IT pilot in Providence, I believe it is, and the other pilots that are working to reduce the foot high pile of paper to an essential inch or half inch

deep pile of paper so that the most highly qualified, most experienced claims processors or raters are able to work on the distilled essential stuff. And I understand the rationale separating those pilots out, because as our computer folks have also said, garbage in, garbage out, you don't want to have an IT program that you develop and then you feed this whole foot high stack of documents into it when maybe a lot of them are not relevant to the question at hand.

But I am over my time at this point, and ask Mr. Miller if he has any questions.

Mr. MILLER. Thank you, Mr. Chairman. Let us talk a little bit about the ability for survivors to substitute themselves for a veteran, the claims process when they die. Could you describe the status of implementing the provision and what challenges have prevented VBA from implementing this sooner?

Mr. MAYES. Yes, sir, Mr. Miller. First of all, let me say that in the guidance that we put out to our field claims processing personnel notifying them of the provisions of Public Law 110-389, we highlighted that section and informed those personnel that they needed to allow survivors to substitute in for the claimant as though the claimant was continuing to prosecute the claim. So we did put them on notice to do that, and I am aware that they have been doing that, because we have received some questions in the Compensation and Pension Service regarding the execution of that.

It seems pretty simple on its face, but there are a lot of complexities, and I am going to turn that over to Dick Hipolit from our Office of General Counsel (OGC). I would just say that we have met with both OGC, our Office of General Counsel, and the Board of Veterans' Appeals on a number of occasions trying to work our way through these issues that we are trying to solve.

Mr. HIPOLIT. Yeah, I would just like to say that first of all that we haven't set this aside, we have been actively working this for some time. It has proved to be a fairly frustrating process for myself and my attorneys who are involved and for the program officials as well that the bill was fairly general in nature and there wasn't a lot of legislative history on it. When we started to dig into it for the purpose of doing regulations we found a number of very difficult legal and policy issues that were raised by the legislation, and we want to try to come out with something that is consistent with the law and with Congress' intention and that is fair to claimants.

A few of the issues that I might mention. One of the perplexing ones is that the way the legislation is set up to rely on the accrued benefits classes of persons who could be substituted. There could be more than one person within a class who is eligible to be substituted. For example, if you were looking at the veteran's children as possible substitution parties there might be more than one that would be substituted; however, how would we pick between the two? They may have actually adverse ideas about how the claim should be prosecuted, and we have to have a process that would be fair to everyone who is interested.

There is a question what if the first priority substitution claimant decided not to prosecute the claim or wanted to—or waive their right to prosecute the claim, could a lower priority person then

come in and be substituted? Would additional evidence be allowed to be submitted? There are a couple of references in the law to the accrued benefit status. Does that suggest that we would only look at evidence that was on file at the date of the veteran's death or could new evidence be brought in? How would somebody go about requesting to be substituted? Would we have to give VCA notice at the time? What if a case was at the Board of Veterans' Appeals when the veteran died and it was pending at the board? The substitution wouldn't be automatic, we would have to make a determination whether that person requesting substitution was eligible and was a correct party.

So in that question could that decision be made at the board or would it have to be remanded to the agency of original jurisdiction so then the person could have appeal rights if they didn't agree with our decision?

So there are a number of other issues as well. There are a number of really tricky issues that we came across when we did this in advance, and it is taking a long time to get these issues resolved and we are frustrated, we want to keep it moving. I think we are close now to being able to move forward with this.

Mr. HALL. Thank you, Mr. Miller. And Mr. Hipolit, I am just curious. I am not an attorney, but Section 5121 enumerates in what appears to a layman's eye any way in a fairly clear fashion—who the benefits due and unpaid shall accrue upon the death of such individual starting with the veteran's spouse, the veteran's children in equal shares, the veteran's dependent parents in equal shares upon death of a surviving spouse or remarried surviving spouse to the children of the deceased veteran, et cetera, and it goes on to say no part of any accrued benefit shall be used to reimburse any political subdivision of the United States per expenses, and applications for accrued benefits must be filed within 1 year after the date of death.

Excuse me for not understanding the difficulty or the length of time that it would take to draw up regulation from this. Maybe you would illuminate for me why.

Mr. HIPOLIT. Okay, if I could just—

Mr. HALL. Sure.

Mr. HIPOLIT [continuing]. Speaking of those classes that you mentioned, I would like to reiterate that within those classes there are multiple—some of those classes have multiple people, like the dependent parents, for example, or the children, there may be more than one child who could potentially be substituted. So we would have to have a way of knowing which of those individuals could be the one to be substituted. Would it be the one that gets to us first or would—if they both came in and wanted to be substituted how would we revolve that? They may not have the same opinion as to how the claim should be prosecuted. So even though those classes are fairly simple there are other aspects to it.

Also the fact if say there is a surviving spouse and children, if the surviving spouse just didn't want to prosecute the claim or maybe he or she wasn't able to do it, could that person waive their right and defer to a person of a lower class to take in and be substituted?

So even within those classes there are some fairly difficult questions I think to be resolved. And also adverse interest, which could lead to, you know, contest.

Mr. HALL. Well, I trust we will see a draft soon, and looking forward to that.

Mr. Mayes, I wanted to ask you about the Monday morning workload report, which recently was changed into a different format. Could you explain to us now how you are calculating your total C&P inventory, what is the figure currently, and how does it differ from the previous workload report?

Mr. MAYES. Mr. Chairman, I can. We are continuing to report the so-called rating bundle as we always have. It is on the new version of the Monday morning workload report. If you look at the very top, there is a category called "Compensation and Pension Entitlement." That is a grouping of claim types that is new, but right underneath that is the grouping, "compensation and pension rating bundle," and that is the traditional count that we have included on our Monday morning workload report now for years. That current number, the latest one I have, is 465,707.

I had a lot to do with this. We wanted to improve the report for our stakeholders, and we also wanted to align the Monday morning workload report much more closely with our budget submission. We think that veterans and stakeholders think of our benefits in terms of just that. Benefits, whether it is disability compensation, disability pension, death benefits such as burial benefits. So what we did was we lumped all of the compensation under one grouping and then we broke that into entitlement. So that is a veteran coming to us and asking us for an entitlement determination, whether that be an original claim, a reopened claim, a claim for increase, or adjustments, which aren't necessarily veterans. In some cases, veterans come to us, for example, adding a dependent, program reviews, and other issues. We did the same thing for pension, and we broke out burial.

The new category, compensation and pension entitlement, is simply a compilation of each of the benefit types that includes entitlement requests. It is a little bit higher because we actually included some things in there, for example, spina bifida claims. We previously did not include those in the rating bundle, and that is why that number is a little bit higher. It was merely to try and clarify, and I hope I have done that.

Mr. HALL. Thank you, Mr. Mayes. You mentioned in your oral testimony and in your written testimony some of the reports that P.L. 110-389 called for have been done and some not. I wanted to ask in particular about the \$1.7 million contract that was awarded by the VA to the IDA for the report on causes for variance and compensation payments report that was due in 2009, and actually IDA has not been sanctioned for its failure as I understand it to meet this deadline. But instead they have been awarded another contract for \$1.3 million. Ironically this second contract requires IDA to assess the VA's program established to increase efficiency and customer service. It seems ironic that the same company that is already late with one report would be retained to do another one, especially on such a topic.

So what is your feeling about that, and how many contracts do you have or has VA had with IDA, and are they usually late or are they usually on time?

Mr. MAYES. Well let me start by saying I am not aware that they were sanctioned, so that is the first I have heard of that.

The Institute for Defense Analyses has been retained to do three studies related to Public Law 110-389, two of which are related to Section 104. One of those is the report that you just mentioned, and it is completed. I just completed it. We have it.

The second one is related to 104(b)(3), which were differences in current patterns of claims submitted for disability compensation, and that one has been submitted to Congress.

And the third study and report that IDA is doing for us is related to the independent review of our quality assurance program, and that is not due, I believe, until October 2011.

As far as our work with IDA, they have been outstanding. They do a very thorough and, I think, comprehensive review when we have asked them to do those reviews.

I don't know if I answered your question. I wasn't aware of the sanctions.

Mr. HALL. My question sought to learn the reason why the report was late and whether we have mechanisms to hold contractors accountable. They are late, right?

Mr. MAYES. Well, I know we are late, and I hope I am not—

Mr. HALL. But I am glad that you have the report, I am looking forward to our seeing it.

Mr. MAYES. We are very close, Mr. Chairman, and I think you will be pleased with the work they have done.

Mr. HALL. I am glad to hear that, sir.

Also regarding the Providence pilot, which as I understand it involved calling veterans on the telephone after the VCAA notices were sent. The notice that is included with the notice was reported that this effort is met with almost 100 percent success and employees are very excited about interfacing with veterans in this way, and that it seemed to speed up the development process. The telephone development unit pilot as described to us on the Committee also reflects a more veterans centered approach to claims processing, which of course is what we have all been trying to capture.

Mr. MAYES. Yes.

Mr. HALL. Could you elaborate on this new approach and is it effectiveness? Is there a plan to expand it separate to the other 56 ROs, and if so, how would that be rolled out? Since I know many veterans who are filing claims would love the benefit of that kind of contact.

Mr. MAYES. Right. It is being evaluated in Providence. We are also going to be looking at expanding this in a pilot in Pittsburgh. Certainly there is no question that when we receive a claim from a claimant, a veteran, and we send out the notice—and currently I would agree with some of the earlier panel members, the notice is rather legalistic and complex, which is why we have promulgated a regulation to simplify that at the request of Public Law 110-389. If we follow that notice letter up with a call and a very focused effort at explaining that and helping the claimant understand the notice letter, then I think that it would help the process.

Then we have a requirement to gather all of the evidence that is referenced by the claimant. If they then certify that we have everything, we can move the claim on to the next point in the process, the point where we actually make the decision and notify the claimant.

My only caution here is that Providence is a relatively small station that is really on top of their workload. You have some really large offices where they are struggling to keep up with the maturing diaries and the cases as they are ready to move along to the next point in the process.

So I believe what we have to do is evaluate whether this is ultimately an effective use of the resources for us to address our national workload and the increase. So that is the reason that we are doing this in Providence and going to be taking a look at it in Pittsburgh, and we will continue to evaluate it to see if this is something we need to export nationwide.

Mr. HALL. Well that is an encouraging process. I think we are all aware of the fact that you are chasing a moving target, you know, you yourselves, the VA are a moving target, we in Congress are a moving target, and the technology as it evolves is itself a moving target.

Mr. MAYES. Feels that way some days.

Mr. HALL. All we have to know is that our Blackberry is obsolete every 6 months to know that, you know, the systems that become available or the tools that become available to you every year, every 6 months are probably a quantum leap ahead, and so on top of this we have the increased number of claims that are coming forward, especially with the three new Agent Orange connected diseases that have been now made to be service-connected so—with hundreds of thousands of new claims just for that alone. Obviously some offices are going to be more overwhelmed than others.

I just wanted to ask you to also elaborate on the Veterans' Benefits Management System which is supposed to converge your business process information efforts with your 21st century paperless claims processing system efforts. The U.S. Government Accountability Office (GAO) recently reported that the usefulness of these pilots is in question to them because VA is not properly evaluating the value of these initiatives to determine whether they should be implemented on a VBA-wide basis. Accordingly, it describes your ability to process claims in an electronic environment as "elusive," quote, unquote.

Could you tell us, tell the Committee the strategic time line that VBA is employing to process claims by 2012 in an electronic environment using a transformed claims processing model? Will the new VBMS system interface with the virtual lifetime electronic record effort? And will it interface with VHA's CAPRI/VistA systems as well?

Mr. MAYES. I will ask Mr. Warren to address that.

Mr. HALL. Mr. Warren.

Mr. WARREN. Sure. To your question about VBMS and will it actually result in anything, I believe is the summary of your question, Mr. Chairman. The key tenants, if you will, that VBMS is applying to paperless to streamline processing first, let's look at the business processes in terms of how we do claims. The pilot in Little

Rock is focused on how do we change things? It was referred to in the previous panel about how do you do it as teams, how do we change the way we do process, how do we move things? And also the written testimony I believe refers to it as well. So those are focused on business process changes themselves. There are also other pilots under way concurrent with that in different parts of the benefits complex.

The business transformation lab in Providence is asking the question with the technology infrastructure we have today can we do the things we do today better or different? So it is not a wholesale rip and replace, it is; can we tune, can we optimize what we have? So an effort to look at the processes, a second effort to look at the technologies we are using, and can we upgrade those specific technologies without impacting the process itself?

What we are trying to do is, we are trying to manage the complexity and the variables. So again, focus on changing business processes, multiple pilots and multiple locations, focus on how do we look at specific technologies versus changing everything all at once and then trying to implement it across the complex. You make it so complex you never can get there. So how do we bring those two things together?

The next key component is this virtual regional office, which is now let us take what we have heard, what we have experimented with, what looks good and actually lay the professionals around them. The business re-engineering folks, the IT folks, and have a rating professional go through what do you do, why do you do it, what if you do this, what if this tool is available for you, what if this technology is available for you and change it? So go through and change it. So it is not a great idea you spend a lot of money on deploying and finding reality makes it not work. How do we take it into a laboratory setting and figure out what works?

Those then result in pilots. Pilots that are being laid out this fiscal year and next fiscal year of taking the things that are shown to work in that test bed and start laying them across the complex. The discussion about how we change the way we do development. In other words, moving to smaller increments. The P-mass process that we have talked about, that Secretary Baker has spoken to. How do we take long projects, which spend a lot of money over a long period of time with no outcome, and pull it back into 6 month or less increments?

So again, in a virtual environment try out the concepts that appear to make sense, see if they make sense, and then start dropping those in incrementally across the different regional offices and the different locations. That is scheduled, those pilots start this fiscal year, the end of this fiscal year, roll into the next fiscal year to actually start laying those pieces in an incremental manner such then in fiscal year 2012 we have changed the way we do the comp and pen process that the technologies and the tools are available for the rating specialist to move that forward.

Mr. HALL. So are you optimistic about meeting the 2012 goal?

Mr. WARREN. At this time I am very optimistic, Mr. Chairman.

Mr. HALL. Great, maybe you could tell us a little bit about the employee training inputs that would be necessary to have everybody be able to use these new processing tools.



Mr. WARREN. I am going to hand that question to Mr. Mayes, if you will, it is a team work.

Mr. HALL. Right.

Mr. WARREN. And so we have gone back—we throw this back and forth, if you will, in terms of where is the technology going? And as the technology is coming forward, part of those integrated teams, as we need to train we hand it back into our colleagues, and they, if you will, pivot to the front and move the training forward. So Mr. Mayes.

Mr. MAYES. Mr. Chairman, we are involved in the deployment of new technology even today, and the way we have done it through the VetsNet platform is that we have developed training mechanisms here in headquarters, and then we utilize a group of super users at our regional offices around the country. And actually with VetsNet when we started deploying that, we limited the deployment to pilot sites, and so we would make conversions of records, make sure it didn't break the system, and then we would incrementally expand around the country as we deployed the new technology, all the while leveraging the super users that we had trained centrally, but then deployed out in the regional offices.

So I would envision as new technology gets deployed, whether it be VBMS or VLER, that we could utilize a deployment strategy like that.

Mr. HALL. Mr. Mayes, in your testimony you discussed the employment of commercial off-the-shelf (COTS) technologies which you describe as featuring a stable, scalable infrastructure that fully supports the business vision. How will this align with the existing VA technology architecture? Maybe this is a question for Mr. Warren too. Virtual VA in particular. And what is the strategy of the VA in terms of implementing these COTS technologies with improving claims processing?

Mr. MAYES. I will have to defer that question to Mr. Warren.

Mr. WARREN. To your question of commercial off-the-shelf software or COTS software. One of the things that we are very aware of based upon site visits we have made to USAA is an example as well as other insurance providers is, there are tools and technologies in use today out in the marketplace, and in fact we have had a roundtable with yourself on that as well as several hearings.

So what are those tools and technologies? We talk about them in the testimony in terms of work flow management, in terms of flexible user interface. And a lot of those tools, if you will, we have been using to build that long-term solution for the Post-9/11 new GI Bill. So those tools and technologies we are proving them when we roll the first increment out in April to show that these technologies in the marketplace can be used to where we need to go.

So the idea of a virtual case file, the fact that it is indexed, pulling that information from our partners at DoD, putting the information to the NHIN connector in terms of third-party medical information, scanning, using scanning tools and technologies. Providence will be one place where we will be testing those things that are already available in the marketplace.

So work flow engines, that graphical user interface, the idea of breaking it into service components and using a service-oriented

architecture, which has been proven out in the commercial work space.

So hopefully that answered your question, sir.

Mr. HALL. Yes, thank you. I thank you all for the work you are doing and for your forthcoming answers here.

I want to salute the VA first of all for fully complying with Section 106 of the Act, which mandated that osteoporosis be added to the presumptive list of disabilities for those prisoners of war who are also diagnosed with PTSD.

That said I was curious if you could wrap up by telling us where we stand on post-traumatic stress and traumatic brain injury fronts to ensure that the veterans suffering from these conditions are getting the disability benefits they deserve, and in particular, what is the status of finalizing the pending PTSD rule making?

Mr. MAYES. Yes, Mr. Chairman, I am really proud of the work that was accomplished in changing the rating schedule evaluation criteria for traumatic brain injury. We published a final rule, I believe it was in October of 2008, and that now provides a vehicle for us to compensate veterans for cognitive impairment. There are ten facets of cognitive impairment now in the schedule, and previously there was a limitation to only compensate veterans at the ten percent evaluation level for subjective complaints. This new rule allows our rating specialists like Mr. McCray to assign up to a 40 percent evaluation for subjective complaints. So that was the one signature injury that we are seeing from the servicemembers coming back. We feel like we have done a good job in crafting a new rule.

Now we are addressing mental health disorders, primarily PTSD. The first component of that is what you referred to, reducing the evidentiary burden for proving the stressor. We have received comments, I believe it was 127 comments from the public, which we have addressed and have a final rule drafted. It is also working its way through concurrence and will be published in the *Federal Register* soon. I think we are very close on that, and I give this Committee much credit for working with us on that.

And the next piece is what the panelists previously talked about, it is not just the evidentiary standard for proving the stressor, but we need to revise the evaluation criteria in the schedule for all mental health disorders. You saw a start of that last week, and you had staff there. I was pleased to see that staff were represented, but the next step will be to revise the schedule.

So we are moving forward. I know it is probably not as fast as everyone would like, including myself, but we are taking steps.

Mr. HALL. Well thank you very much, Mr. Mayes, Mr. Hipolit, Mr. Warren, Mr. Hanley. We have very good timing here in that I have run out of questions exactly when they called the next votes, but thank you so much for the work that you are doing on behalf of our veterans. I know that we all are aware of the distance we have yet to go, but together I believe we can bring a more timely and transparent process to bear on the backlog, and hopefully while we are still on solid food will see those numbers come down.

So all Members of the Subcommittee and of both panels of witnesses have 5 legislative days to revise and extend their remarks.

Thank you everyone for being here today to offer your insights and opinions, and this hearing stands adjourned.  
[Whereupon, at 3:47 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 Afternoon.

Would everyone please rise for the Pledge of Allegiance?

Flags are located at the front and back of the room.

Ladies and gentlemen we are here today to receive an update on the status and implementation of the Veterans' Benefits Improvement Act of 2008, P.L. 110-389.

At the time of its enactment P.L. 110-389 was embraced by many stakeholders as a way forward for VA to revamp and modernize its claims processing system to bring relief to those veterans, their families and survivors who were languishing in an antiquated system in dire need of reform. I was proud to lead that effort for the Committee.

Under this law we created the Office of Survivors Assistance and made it possible for survivors to step into the shoes of the deceased claimants. We also put critical pilots in place to expedite ready to rate claims and to provide a checklist with the VCAA notices so that Veterans are less confused about what they actually need to substantiate their claims. In addition, we created the Disability Advisory Commission to provide ongoing expert input on the claims processing system, particularly with updating the VASRD, and we created additional checks and balances with required studies of VA's work credit system and its Work Management system, currently known as CPI.

On a separate note, while I wish we could have included Section 101 of H.R. 5892 in P.L. 110-389 to help the many combat veterans who are still forced to prove stressor exposure as part of this effort (which is now my bill, H.R. 952) I am heartened by VA's rulemaking efforts on this front and look forward to issuance of the final rule soon.

I am pleased that P.L. 110-389 also laid the foundation for a number of initiatives that VA is currently undertaking, particularly its Veterans Benefits Management System and Veteran Relationship Management Initiatives, as well as, the Business Transformation Lab in Providence, RI, the Claims Processing Pilot in Little Rock, AR, and the Virtual Regional Office in Baltimore. You clearly have listened to the clarion call from this Committee and many veteran stakeholders that the current system is broken and in need of a major overhaul. These efforts hopefully will result in a system that reflects improved accountability, accuracy, quality assurance and timeliness of claims processing for our Veterans, their families and survivors.

I applaud VA's more deliberative approach on these fronts and welcome the opportunity to support you in the upcoming budget cycles in your efforts to transform the VBA claims processing model.

I look forward to hearing about how all of these pilots and laboratory initiatives will put VA on track to processing its compensation and pension claims in a virtual environment using a twenty-first century processing platform. I also look forward to hearing how it plans to move to an electronic rules-based processing environment by 2012.

While electronic claims processing is not the panacea for eliminating the backlog, it will transform the claims processing system into a 21st Century set-up that will improve accuracy, consistency and quality. Let's get it right the first time. We owe our Veterans nothing less.

I now recognize Ranking Member Lamborn for his opening statement.

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

Thank you Mr. Chairman,

And welcome everyone, to this first hearing of the second session.

I look forward to continuing the progress we've made thus far in the 111th Congress.

We're at the midpoint, and there are a lot of good provisions that we've passed—perhaps most notably among them are the measures we've worked on to help VA gain control over the claims process.

The backlog is a major concern for everyone who is a stakeholder in veterans' issues, and I believe that through a bipartisan, collaborative effort we will begin to resolve the issues that have hampered VA for so many years.

Of course along with following through on pending legislation, we must take a close look at the implementation of earlier provisions that became public law.

That is the purpose of our hearing this afternoon, and I am eager to discuss the progress that has been made regarding the implementation of the Veterans' Benefits Improvement Act of 2008.

I hope to find that the many good provisions we passed are fulfilling their intended purpose—which is to enhance and improve veterans' benefits and the system that administers them.

Such provisions include measures to increase the accuracy and timeliness of benefits claims decisions and to enhance VA's use of information technology.

It is imperative that this subcommittee continue to exercise its oversight responsibilities to ensure that this time the IT program works and is on time.

I am also very interested to learn what VA has discovered in its assessment of disability compensation and effort to ensure due consideration is afforded to veterans for their loss of earnings and quality of life.

I am interested as well in if the authority to allow substitution upon death of a claimant for purposes of acquiring accrued benefits has had a noticeable impact.

It is my hope that this will relieve survivors of the arduous and time consuming process of starting the entire claims process over from square one. I expect the VA to discuss the implementation of this provision.

Mr. Chairman, it is a pleasure to be seated with you here once again, and I look forward to working with you and all of our veterans' advocates in the months ahead. Thank you, I yield back.

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**Prepared Statement of Hon. Jeff Miller, a Representative in Congress  
from the State of Florida**

Thank you, Mr. Chairman.

Public Law 110-389, the Veterans' Benefits Improvement Act, was a wide-sweeping move toward improving what is often a frustrating process for our nation's veterans in receiving well-deserved benefits from VA. Many members are still here on the committee and share a common interest in seeing that Congress's intent, as voted upon and signed into law by the President, is carried out.

While VA may not intentionally try to make the claims process difficult, every member of this committee has constituents who have experienced trouble receiving their benefits. Among the concerns of this committee was the nationwide perception that veterans in different parts of the country were receiving different compensation for the same disability. The fact that this concern could even arise should warrant immediate action by VA, and shouldn't rely on Congress to step in.

Another concern was how to expedite fully-processed claims. I think we can all agree that the entire scope of this bill has an impact for veterans across the country, and the implementation is important to us all, not just because it was passed by this committee, the full Congress, and signed into law, but also because it is important to the veterans themselves.

Unfortunately, not all of the deadlines established have been met, and I hope that we can learn the full reasons for this today as well as what is being done to address those shortfalls. I am pleased to see that certain sections that were implemented, such as the Office of Survivors Assistance. The support of servicemembers' families is vitally important, and we must never forget to include them in our efforts.

I look forward to today's testimony on the implementation of Public Law 110-389, and yield back my time.

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**Prepared Statement of Richard F. Weidman, Executive Director  
for Policy and Government Affairs, Vietnam Veterans of America**

Good afternoon, Mr. Chairman, Ranking Member Lamborn, and distinguished Members of the Subcommittee. Thank you for giving Vietnam Veterans of America (VVA) the opportunity to offer our comments on the progress with the pilot programs authorized under Public Law 110-389.

Before commenting on the situation to date, VVA notes that almost everything that is mandated to be tried in the pilot programs is just plain common sense, and most of the elements of the pilot probably could have been done by the Veterans Benefits Administration (VBA) under already existing authorities, if they had the motivation and the drive to do so. The statute was written after extensive hearings in the Spring of 2008 in response to frustration legitimately expressed by veterans and their advocates about the inordinate delays in the processing of even relatively straightforward claims before the Compensation & Pension system. Further, the delays were compounded by a lack of information as to the status of the claim, whether additional information was needed to make an accurate decision, and if so what information in what form from what source would move the process forward. Many veterans, and their advocates, often felt that submitting a claim was like entering into a maze of a process that would rival anything that Franz Kafka might have dreamed up in one of his stories.

A number of "roundtable" discussions resulted in frustration for all concerned, largely because all of the Members and the advocates participating in the discussions kept talking about individual veterans and what was happening to that individual citizen who believed they had been injured by virtue of military service to country, whereas the VBA officials kept talking about processes and mean average of time taken in activities performed on claims. Not to put too fine a point on it, the VA folks appeared to think in terms of system processes and everyone else in terms of what happens to the individual, and how he or she experiences what is and is not happening to them.

The effort to implement the Veterans Claims Assistance Act (VCAA) had become so legalistic and seemingly complicated that many claimants could no longer understand the letters of notification that VA sent to them after initially filing a claim. The General Accounting Office (GAO) took VA to task for not doing more to simplify the process so the claimant could more effectively respond to what was required, and for sending out poorly written and/or unnecessarily densely worded letters to veterans. What the Pilot program required is a test in a limited number of offices whereby half of the claimants would be sent out a straightforward "check list" that clearly noted "by the numbers" exactly what was needed from the veteran in order to move to a decision on his or her claim, and the other half would NOT get the check list, but would get the aforementioned letter.

The VA contracted with the Center for Naval Analysis (CNA) to assist with the evaluation of the data from the first six months of the pilot, or December of 2008 to June of 2009. The focus of the analysis is to determine whether the use of the check list with the letter actually sped up the adjudication process. Because so many claims were still in the process of waiting to be adjudicated at the end of the six month period, the CNA and the VBA noted that any such conclusions one way or the other could not be ascertained.

The question of whether the individual veterans and/or their advocates felt better about the process, or better understood what was still needed, and how to get it, was not covered in the data that we have seen.

From what we have been given to understand, there is a separate report/analysis of the aspect of the pilot that focuses on fully developed claims, but we have been unable to secure any information on this separate project. One would assume that there is a separate CNA aided report to the Congress, but we have yet to see it.

VVA has said for some years that most of what is wrong with the C&P system can be fixed under existing statutory authority. We have further advocated that essentially a week with the major stakeholders locked in a room would produce the models and agreements needed to move us toward a system that works for the individual veteran who has been lessened by virtue of his or her military service to country in the military. These steps would include, but not be limited to: (1) common training for VA, VSOs, state and local government employees, and others; (2) a common competency based exam for all who touch a claim; and, (3) organizing the claims file so that documents are in a set order in every claimant's file, with the most salient documents at the front of the file; and, (4) a decision template for every claimant that summarizes the key elements of the claim; and, (5) "express lines" for presumptive and other "ready to rate" claims; and, (6) systematic efforts to put all info in electronic form by means of Optical Character Recognition (OCR) or even

ICR so that one can do a key word search of files; and, (7) work with the Armed Services Committee to begin the process of digitizing all unit and individual records.

The two day meeting regarding the rating schedule for Post Traumatic Stress Disorder (PTSD) of VSO/MSO advocates with representatives of the Veterans Benefits Administration, representatives of the Veterans Health Administration, representatives of the Department of Defense, and at least some Congressional staff gave us more hope that reasonable solutions can be achieved by sitting and reasoning together than we have had in very long time. Maybe it is the right time to move forward together, and to do what can be done by agreement, and then lock it into statute after we get it to work.

Again, thank you for allowing us to present information here today, Mr. Chairman. I will be pleased to answer any questions.

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**Prepared Statement of John L. Wilson, Assistant National  
Legislative Director, Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV) to address the "Implementation and Status Update on the Veterans' Benefits Improvement Act (P.L. 110-389)." In accordance with our congressional charter, the DAV's mission is to "advance the interests, and work for the betterment, of all wounded, injured, and disabled American veterans." We are therefore pleased to support various measures insofar as they fall within that scope.

DAV was pleased with Section 101 which sought to make correspondence more understandable and useful. We understand that VA has been drafting regulations with a focus on various legal complexities. They are also concerned with any potential impact on their ability to reduce their pending claims inventory or backlog. We are also concerned, however, that a September 2009 decision by the United States Court of Appeals for the Federal Circuit may have an impact on this effort.

The September 2009 Federal Circuit decision overturned the notification requirements in Vasquez-Flores. The Court ruled that VA is not required to provide veteran-specific notification in order to comply with 38 U.S.C. 5103(a).

The Court's conclusion was:

As in *Wilson*, the arguments made by the veterans in this case "overlook[] the many statutory and regulatory provisions that do apply to VA's actions after an initial RO decision." 506 F.3d at 1061. These provisions ensure that the veteran will receive "notice as to why his claim was rejected and an opportunity to submit additional relevant evidence. Indeed, the existence of other statutes . . . requiring specific notice at other points during the claim adjudication process strongly suggests that section 5103(a) was not intended to sweep as broadly as appellant contends." *Id.* We conclude that the notice described in 38 U.S.C. §5103(a) need not be veteran specific under *Wilson* and *Paralyzed Veterans*.

We are hopeful that VA will continue its work as specified in this section of P.L. 110-389 on clarifying the content of notices and not use this as a basis to continue with generic pre-determination notifications.

Section 104 required VA to submit a report to Congress describing the progress of the Secretary in addressing the causes of variances in compensation payments for veterans with service-connected disabilities. The contract was awarded to the Institute for Defense Analysis and a workgroup was established to ensure a proper analysis was conducted. DAV is very interested in the results of the report, which were due to Congress by October 2009.

Section 106 added osteoporosis to disabilities presumed to be service connected in former prisoners of war (FPOWs) with post-traumatic stress disorder. DAV was pleased with the final rule incorporating a determination by the Secretary that a presumption of service connection for osteoporosis in FPOWs will be established irrespective of the presence of PTSD as indicated in the testimony given by Mr. Walcoff, VA Deputy Under Secretary for Benefits, before this Committee on June 18, 2009.

Section 212 added a new section 5121A entitled "Substitution in case of death of claimant," to title 38, providing that if a claimant dies while his or her claim or appeal for any benefit is pending, a person who is eligible to receive accrued benefits can request to be substituted as the claimant to continue the claim. The DAV supports the provisions of section 212 that pertain to the management of claims for accrued benefits upon the death of a claimant.

Section 214 established the Advisory Committee on Disability Compensation. This eleven-member committee has met each month since its first meeting in November 2008. The Advisory Committee on Disability Compensation focused on the necessity and methodology of updating the VA's Schedule of Rating Disabilities or VASRD; transition compensation adequacy and sequencing for servicemembers moving to veterans' status; and quality of life compensation.

The importance of a systematic review and update of the VASRD, in our view, is a priority, as it is the source of all disability compensation ratings. It is a rating scheme that addresses illnesses and conditions that run into the hundreds, and as such, should reflect the most recent medical findings in each and every case. DAV agrees with the Advisory Committee's assessment that a systematic process is lacking and that one is a necessity. The Committee offered the following recommendations, with all of which we agree:

1. The Deputy Secretary of the VA should be tasked with providing oversight of the VASRD process, and of ensuring that the Veterans Health Administration (VHA) and Office of the General Counsel (OGC) are fully integrated in the Veterans Benefits Administration's (VBA's) process;
2. Immediately increase staff at the VBA to nine full-time employees (FTE) for the purpose of continuously reviewing and updating the VASRD. The staff should include a coordinating administrative person and two sub-teams comprised of one medical expert, two legal specialists, and one administrative support staff each. This staff should be assigned to the Compensation and Pension Service (C&P) for administrative purposes; and
3. As part of its new role as full partner in the VASRD review process, VHA must establish a permanent administrative staff to participate in VASRD review. The VHA administrative staff should include at least one permanent party medical expert. This staff member should have the authority to liaise with VBA, assign medical staff from VHA to participate in VBA body system reviews, and to coordinate with other medical experts as appropriate.

Staffing within the VHA and VBA must be allocated towards this task. It is a positive step to include the medical expertise from the VHA into this process. Although previous sources of expertise such as the Institute of Medicine contributed to this body of work, the experiential expertise that VHA professionals will bring to the discussion, with a decades-long role in providing medical care to veterans, should prove invaluable to this endeavor and well worth the additional staffing.

The various stakeholders must also have a voice in this process. Such a collaborative effort by all parties helps to dispel any misperceptions and missteps.

Additionally, VA's leadership must ensure oversight and successful implementation of this important recommendation. It was anticipated that VA's commitment to the systematic updating of the VASRD would have carried forward and been reflected in its strategic plan. Is not the VASRD the key source of all disability ratings? However, a search of VA's fiscal year (FY) 2006–2011 Strategic Plan finds no mention of the VASRD. The need for an update of the VASRD is instead referenced in the FY 2008 Performance and Accountability Report, as a result of a U.S. Government Accountability Office (GAO) update to its High-Risk Series (GAO–07–310), GAO High-Risk Area #1: Modernizing Federal Disability Program. The VA would be well served to add the very language of this section of the Advisory Committee's report to its Strategic Plan as its map for the systematic updating of the VASRD.

As noted earlier, while we agree that a rewrite of sections of the VASRD is appropriate, DAV would oppose an approach that required a complete revamping of the 1945 rating schedule. Generally, the VASRD has served America's disabled veterans quite adequately. It incorporates a policy of "average impairment," and that policy has treated all veterans with like disabilities equally and fairly, in spite of age, education or work experience. It also encourages disabled veterans to seek vocational rehabilitation training in order to become a more productive wage earner without penalty for doing so. Understandably, the VASRD has been modified and upgraded many times when advances in medical science dictate a change in a particular disability rating might be necessary, or additions to the Schedule have been incorporated to cover injuries, infirmities and illnesses unique to some theatre of operations. We agree with the Advisory Committee that the VASRD be updated in a systematic fashion, based on sound medical principles, provided there are no wholesale changes and, when change is necessary, it is based on the above principles.

We also agree with the body system prioritization the Committee offers, beginning with mental health disorders. It is essential that different criteria be formulated to evaluate the various mental disorders under the appropriate psychiatric disorder. Criteria for evaluating mental disorder under title 38, Code of Federal Regulations, Section 4.130, are very ambiguous. For example, schizophrenia and other psychotic



disorders, delirium, dementia, and amnestic and other cognitive disorders, anxiety disorders, dissociative disorders, somatoform disorders, mood disorders, and chronic adjustment disorders, are all evaluated using the same general rating formula for mental disorders. The Diagnostic and Statistical Manual for Mental Disorders (DSM IV) specifically lists different symptoms for posttraumatic stress disorder, schizophrenia, and other psychiatric disorders. One veteran service connected for schizophrenia and another veteran service connected for another psychiatric disorder should not be evaluated using the same general formula. Therefore, the DAV supports amendment of title 38, Code of Federal Regulations, section 4.130, to formulate different criteria to evaluate the various mental disorders under the appropriate psychiatric disorder and is pleased to see the Advisory Committee place mental disorders as the first to be considered in this systematic review.

Section 221 required VA to carry out two pilot programs. The first is a one-year pilot program to assess the feasibility and advisability of providing expeditious treatment of fully developed compensation and pension claims no later than 90 days after the date the claim is submitted. VBA sent an all-station letter implementing the pilot on December 11, 2008, which identified the ten regional offices participating in the pilot. The letter directed that the claimant and/or representative must submit, along with the claim, an indication that the claimant does not intend to submit any additional information or evidence in support of the claim, and does not require additional assistance with it. The claim must be accompanied by a fully developed claim (FDC) certification signed and dated by the claimant and/or representative. Additional development will not be needed, other than scheduling a VA examination or obtaining records in the constructive custody of the federal government. A contract was awarded to the Center for Naval Analyses (CNA) to review and report on results of the pilot. DAV is interested in the results of this pilot, the report of which was due to Congress on December 9, 2009.

The second pilot was to assess the feasibility and advisability of providing a claimant and/or representative with a checklist containing information or evidence required for the claimant to submit to substantiate the claim will result in more frequent and timelier submissions of evidence. An all-station letter implementing the pilot was issued on December 11, 2008, which identified the four regional offices participating in the pilot. The Center for Naval Analyses was awarded the contract for preparing an analysis and report upon the completion of this project. DAV is interested in the results of these pilots, reports of which were due to Congress by December 9, 2009.

Section 223 directed the Comptroller General to report to Congress VA's Dependency and Indemnity Compensation (DIC), addressing the current system for paying DIC to survivors, the current rates; an assessment of the adequacy of DIC payments in replacing the deceased veteran's income; and recommendations to improve or enhance the effects of the DIC payments in replacing the deceased veteran's income. We look forward to reviewing the findings and recommendations.

Section 224 directed the Secretary of VA to enter into a contract with an independent third-party entity to conduct an assessment of VBA's quality assurance program and issue a report no later than October 2011. The contract was awarded to the Institute for Defense Analysis (IDA). While VA leadership may stress quality, and agree that it is "absolutely a requirement for successful performance," what employees are compensated for is quantity based on a work credit system.

In March 2009, the VA's Inspector General discovered that the VA was making more mistakes than it reported. The internal investigation found that nearly one out of four files had errors. That is 200,000 claims that "may be incorrect."

Although quality may be emphasized and measured in limited ways, as it currently stands, almost everything in the VBA is production driven. Employees naturally will work towards those things that enhance compensation and currently that is production. Performance awards are based on production alone. They should also be based on demonstrated quality. However, in order for this to occur, the VBA must implement stronger accountability quality assurance measures.

What does VBA do to assess the quality of the product it delivers? The quality assurance tool used by the VA for compensation and pension claims is the Systematic Technical Accuracy Review (STAR) program. Under the STAR program, VA reviews a sampling of decisions from regional offices and bases its national accuracy measures on the percentage with errors that affect entitlement, benefit amount, and effective date. However, samples as small as 20 cases per month per office are inadequate to determine individual quality.

With STAR samples far too small to allow any conclusions concerning individual quality, rating team coaches who are charged with reviewing a sample of ratings for each RVSR each month. This review, if conducted properly, should identify those employees with the greatest success as well as those with problems. In practice,

however, most rating team coaches have insufficient time to review what could be 100 or more cases each month. As a result, individual quality is often under evaluated and employees performing successfully may not receive the recognition they deserve and those employees in need of extra training and individualized mentoring may not get the attention they need to become more effective.

The results of visits by the VA's Office of Inspector General (VA OIG) to six VAROs in 2009/2010 certainly underscore the need for a comprehensive quality reporting mechanism. The VA OIG is well placed to conduct such operational assessments. It is evident to DAV that the STAR program uses too small a sampling size to provide any significant trend analysis. Rating team coaches, burdened with a cumbersome claims management system and massive claims inventory, are hard pressed to review sample ratings monthly. Were this the norm, what mechanisms exist to capture this data at a national level? The results of these visits point to the need for a Quality Assurance staff at each VARO that reports its efforts to the VBA.

<b>VA OIG Reasonable Assurance of Compliance for Calendar Year 2009–2010</b>						
<b>VA Regional Offices</b>	<b>Nashville</b>	<b>Wilmington</b>	<b>Roanoke</b>	<b>Anchorage</b>	<b>San Juan</b>	<b>Baltimore</b>
<b>Claims Processing</b>						
Haas	No	No	No	No	Yes	No
PTSD	No	No	Yes	No	No	No
TBI	No	Yes	No	No	No	No
Diabetes	Yes	No	No	No	No	No
<b>Data Integrity</b>						
Date of Claim	No	No	Yes	No	Yes	No
COVERS	Yes	No	Yes	No	Yes	No
<b>Management Controls</b>						
SAO	Yes	Yes	Yes	No	No	No
STAR	No	Yes	Yes	No	No	No
Date Stamp Accountability	Yes	Yes	Yes	No	No	No
CPI	No	Yes	Yes	Yes	Yes	Yes
<b>Information Security</b>						
Mail Handling Procedures	No	Yes	No	No	No	No
Destruction of Documents	No	No	No	No	No	No
<b>Public Contact</b>						
IRIS	No	Yes	No	No	No	No
Congressional Inquiries	Yes	No	Yes	No	Yes	No
Fiduciary	No	No	n/a	No	No	No

DAV looks forward to the IDA report on VBA's quality assurance program, due October 2011.

Section 225 required VA to develop skills certification examination criteria for VBA employees and managers responsible for processing compensation and pension claims. VBA's decision review officers (DROs) and coaches (Supervisory VSRs) were designated to participate in testing. A contract was awarded to the Human Resources Research Organization (HumRRO). We have long advocated for better training in VBA. The DAV has maintained the preeminent training program throughout the VSO community for many years, which many other organizations have adopted. Training is tied directly to quality—the DAV would welcome the opportunity to assist the VA in developing such a program.

Section 226 tasked VA with conducting a study on the effectiveness of the current employee work credit system and management system within VBA, which is used to measure and manage the work production of employees who handle compensation and pension claims. The study will also evaluate more effective means of improving performance. The contract was awarded to the Center for Naval Analyses in March 2009. DAV has long advocated for a more stringent system of accountability. Any improvements in the work credit system, aimed at increasing accuracy and accountability, will be less than effective if equal or coinciding changes are not made in

VA's quality assurance practices in conjunction with those of the work credit system.

Section 227 required VA to conduct a review of information technology (IT) in VBA concerning compensation and pension benefits, and to develop a comprehensive plan for the use of IT technology in processing claims for the purpose of reducing subjectivity, avoidable remands, and regional office variances in disability ratings for specific disabilities. A full report is due to Congress by April 2010.

Contrary to some beliefs, the majority of time spent by VA on disability claims is actually spent in development of the case for a rating decision. This includes receiving the claims by VA, establishing the claim in VA's current computer systems, and developing the evidence to support the claim. Evidence development, whether in the form of gathering military records from the Service department or the Records Processing Center, private health records, VA health records, VA or private medical opinions, and stressor verification through the U.S. Army and Joint Services Records Research Center consumes the vast majority of the claims-processing time. Therefore, any viable electronic claims-processing system implemented with real expectations of shortening the claims process must focus on digitizing all archived data locations and automating all VA development functions leading up to the rating decision.

We are hopeful that the report will put forth a broad and over-arching plan with reasonable milestones outlining the technology identified and the manner in which such technology would be utilized. Once complete, the groundwork would be laid for VA to coordinate with various entities, *i.e.*, Congress, Veterans Service Organizations, Department of Defense, etc., to turn the plan into reality. The DAV would welcome the opportunity to work with the Agency, to include any contractors, in order to assist in the development of this system.

This concludes my testimony regarding Implementation and Status Update on the Veterans' Benefits Improvement Act (P.L. 110-389). I look forward to any questions the Committee may have.

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**Prepared Statement of Ian C. de Planque, Assistant Director,  
Veterans Affairs and Rehabilitation Commission, American Legion**

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to express the views of the 2.4 million members of The American Legion on the ongoing implementation of PL 110-389, the Veterans' Benefits Improvement Act of 2008. When this legislation was passed in 2008, it offered a broad spectrum of benefits to the veterans of America. However, since the enactment of this legislation, the speed with which the Department of Veterans Affairs (VA) has complied with many of its numerous provisions has been disappointing. The efforts of Congress and the citizens of America to improve the situation of veterans seeking their earned benefits from the VA are of little consequence if the VA cannot move swiftly to implement them. This law was enacted on October 10, 2008 and we sit nearly 16 months later with little concrete result. The implementation of this law cannot be considered successful at this time.

This is broad reaching legislation. We were asked to focus on the issues surrounding VA's disability claims processing system as they apply to the Veterans' Benefits Improvement Act of 2008, the effectiveness of compensation and pension benefits-related provisions of that act. My testimony will be limited to those areas under the disability claims processing umbrella we feel in most need of attention. Should the subcommittee feel that further information is needed about any portion of the legislation not considered in this testimony, The American Legion would be happy to provide further response in those areas.

In Fast Letter (FL) 09-15, distributed March 3, 2009, VA laid out their plan for implementing the provisions of this law. Some of the points required little or no action on behalf of VA, such as the extension of provisions already in effect for the authority of performance of medical disability exams by contract physicians, or aspects relating to the Court of Appeals for Veterans Claims, which falls outside of VA purview. Others required studies to be performed, and in many of those cases, we are still waiting to determine the results of those studies.

Important studies take many months or years to bear fruit. This underlines the importance of an early beginning for such studies, in the interest of providing answers to the questions.

Section 213 called for a report on the progress of the Secretary of Veterans Affairs in addressing the findings of a Study of Compensation Payments for Service Connected Disabilities. This report was compiled by Economic Systems, Inc. (Econsys),

and provided a variety of policy options to address appropriate levels of disability compensation to be paid to veterans. Compensation for loss of earnings capacity and for loss of quality of life, as well as the feasibility and appropriate level of long term transition payments for veterans undergoing vocational rehabilitation as a result of their service-connected disabilities were researched. VA provided a special forum for comment by Veterans' Service Organizations (VSOs) on January 14, 2009 on this study, published in September 2008.

One of the factors which became apparent in the earnings loss section of this report was that different disabilities rated at the same percentage rate, for example two distinct conditions each assigned a 30 percent rating by the ratings schedule, have differing impacts on level of earnings loss. There is no "one size fits all" for rating disability. This was most apparent in mental disorders, as veterans suffering from a mental disorder often have a greater earnings loss than for a physical disability rated at the same tier percentage. Econsys found that this may require improved accuracy in the ratings schedule to adequately reflect earnings loss for the individual disabilities, but noted the potential problems inherent in such a revision, such as the possible reduction of some rates of disability to make the overall scale more equitable and the concerns among service connected veterans such reductions would bring about.

One of the key areas of interest brought about by the study was the first attempt to devise a system to incorporate quality of life considerations into the ratings schedule. The study provided three possible options. One option simply would implement a Quality of Life (QOL) Benefit with a statutory rate for each combined level of disability. While this is completely objective and would require comparatively little additional effort, it is quite unlikely that all veterans receiving this compensation would be compensated to match their individual degree of QOL. Some veterans would receive overpayment, some would be underpaid. However, the actual QOL loss of all veterans at a set degree of disability, such as a combined 60 percent rating, would not be equal, and QOL being often subjective to individual cases would not be equitably applied. The American Legion does not consider this a desirable solution.

The second proposed remedy is to individually assess each veteran's claim for individual loss of QOL. While this certainly is targeted to accurately matching loss of QOL to an individual subjective case, this would represent a considerable amount of time and manpower to process this additional component of the claim. The American Legion believes this would be a less than optimal solution.

A third proposed remedy was to provide for the creation of a separate ratings scale geared to QOL loss. The proposal called for this process to have some level of computer automation to enhance timeliness, and would incur additional costs creating a QOL schedule, although it would be more objective and subject to less processing time. The objective nature of such a schedule may also fall short of addressing the individual picture of impairment for specific veterans. However, it could be more tailored than the first proposal to accurately reflect the impact of the facets of QOL loss. The American Legion believes the work involved in setting up such an additional schedule would be great at the outset.

No one system presented was without flaws; however, all of the options in this study, as in similar studies such as the Veterans Benefits Disability Committee (VDBC) and the Advisory Committee on Disability Compensation, underline the inadequacy of the present VA ratings schedule to address issues related to the impact of a disability on the quality of life. VA has made some strides, most notably a recent Mental Health Forum that stated that the reformation of the difficult schedule of ratings for mental health was their priority and represents an important step forward. While aspects of impact on quality of life are not exclusive to mental health, this has been an area often overlooked in the past.

Reports and studies are of little value if we cannot implement the lessons learned from them. It is becoming clear from many of these studies that VA's compensation system is falling short in addressing these aspects of impairment. When considering ratings schedule for mental disorders, VA is directed to consider social and occupational impairment, yet this is currently an area of deficiency and a target for improvement. These studies should increase our awareness of mental disorders and to seek to rectify present deficiencies in that area.

Section 221 called for two pilot programs to be implemented to improve the speed of the claims process. One pilot called for an expedited process for "fully developed claims," the other called for a pilot to assess the feasibility and advisability of providing claimants with a checklist including information and evidence required to substantiate a claim. Both programs represent possible ways of speeding up the claims process, improving clarity of information to veterans and potentially reducing the backlog of claims. Both programs have been initiated, yet no update on the sta-

tus of these projects has been provided as of this time. In a March 3, 2009 “Fast Letter” (FL), VA stated that the initial report would be due to Congress no later than September 10, 2009, with a second interim report no later than September 10, 2012. As of this writing, we are nearly five months past the first deadline.

Section 101 of this law provides much needed updates for the letters mandated by the Veterans’ Claims Assistance Act (VCAA). The VCAA letters have been a point of contention for quite some time. Originally intended to provide veterans with an assessment of the information required to substantiate their claims, the letters are complicated, containing confusing legal language that many veterans have a hard time understanding properly. Section 101 calls for these letters to be made more specific to the types of claims, whether original or reopened, or a claim for an increase in benefits. Furthermore, Section 101 directs these letters to be more appropriate to the type of information specific to those types of claims.

On December 11, 2009, VA published a proposed rule change to implement the revisions. A period of public comment expires on February 9, 2010. The new letter templates are broken down into four distinct subtypes based on the type of claim, as mandated in PL 100–389, and the language has been updated to be clearer and provide examples of the manner in which VA processes claims and the type of information that they require. In this they also include compliance with the recent court decisions of *Dingess/Hartman* and *Vasquez-Flores*. The overall effect shows a continuation of efforts to provide clarity in these letters. Increasing the clarity of direction to veterans in the claims process will help the entire claims process by increasing veteran understanding of the issues involved and reducing unnecessary paperwork with excessive information over and above what is required to substantiate a claim.

Section 106 directed VA to add the condition of osteoporosis to the presumptive list of disabilities for those Prisoners of War (POWs) who are also diagnosed with posttraumatic stress disorder (PTSD). Not only has VA complied with this provision, in a final rule published August 28, 2009, they further extended the presumption of osteoporosis for POWs to any POW who was detained or interred for a period of 30 days or more, regardless of whether or not that POW is diagnosed with PTSD or any other condition. The American Legion is opposed to the 30-day period required for many presumptive disabilities associated with POW status, and continues to call for VA to rescind such 30-day periods. However, we also recognize that VA has reached beyond the initial scope of this presumption as written in the law, and commend them for this extension of benefits above and beyond that which they were directed to do.

Section 211 calls for the addition of temporary ratings for immediately transitioning servicemembers to bridge the gap during the transition time and provide some measure of relief until a more detailed and permanent rating is issued. This would represent an important step in what has been identified recently as one of the most difficult periods in the current wartime climate, the transition process. FL 09–15 stated that 38 C.F.R. §§ 4.28 and 4.129 would be revised to reflect the new statutory language. However, we have yet to see any meaningful movement towards implementing this measure. Perhaps one of the easiest steps which could be taken is the granting of obvious issues in multiple claim cases, with issues that could not be immediately adjudicated deferred to a later time.

VA can then adjudicate claims for which they have the information up front and partially set those veterans on the road to their full eligibility. This would allow VA to take the necessary time towards adjudicating the more complicated issues without penalizing the veteran. Adjudicating one or two applicable issues, while deferring others, would get the veteran a measure of monetary compensation for their disabilities and also increase access to the affordable health care for those disabilities that can immediately be service-connected. Too often the practice currently is to hold all decisions on claims until every issue can be adjudicated. With multiple issue claims, which are more common with transitioning servicemembers, delays can become quite lengthy. This results in a more frustrating process in the difficult time of transition when aid is needed most.

There has been focus lately on the lengthy claims process. In the veterans’ community, there is a perception by some that VA policy is to “delay, and delay until the veteran dies.” While this is an unfair perception, the reality exists that many VA claims take so long to process that veterans who suffer from terminal conditions, often do pass away before their claims can be finally adjudicated. In the claims process, this has meant that these claims cease to be processed with the death of the veteran and must be reinitiated by an eligible survivor, thus beginning the whole, lengthy process anew.

Section 212 of this legislation was meant to provide some measure of relief to the families of the veterans in those situations. This section provided for the continu-

ation of the claims by the families of the veterans, in short, the living family member who would have been entitled to the accrued benefits assumes the position of claimant and maintains the claim until it has been finally adjudicated. Many veterans state that among their final wishes is the belief that their families receive the benefits to which they are entitled, and this is precisely what this measure was intended to ensure.

Guidance to the regional offices on how to process these claims prior to the publication of an implementing regulation was issued in FL 09-15, but VA has yet to publish a proposed regulation. The process of publishing a proposed regulation, receiving public comment, and assimilating it into a final regulation is already a lengthy process, yet it has not even begun. Although VA provided internal interim instructions on how to process these claims, the regulation process provides public review and comment to ensure transparency and external involvement in VA's implementation of the statute. Sixteen months without VA publishing a proposed regulation is unacceptable.

Perhaps one of the greatest areas of concern for The American Legion is the implementation of the provisions of Section 226. The American Legion has long argued that the current work credit system in use by the VA contributes substantially to the ongoing backlog of VA claims. In short, the present system gives equal credit to claims properly and improperly adjudicated. The American Legion has maintained that this system places undue weight on quantity over quality. The resulting deficiencies in quality thus lead to an increased number of appeals clogging the system. If a job is done correctly the first time, then the inherent delays in redundant work are eliminated.

Section 226 called for a study of the work credit system to consider better measures to improve accountability, quality of work, and accuracy in processing compensation and pension claims. To date, we have received no updates on the results of any study, or even whether or not such a study is in process. VA's own "Fast Letter" stated that a report would be submitted no later than October 31, 2009.

The American Legion continues to call for the establishment of a work credit system in which credit would only be assigned when a claim has been finally adjudicated. In such a system, the impetus would be to properly adjudicate a claim the first time. By making the decision airtight, credit could be claimed more swiftly for the final claim. VA could point to accurate figures of claims that had been done to the standard of accuracy and with proper legal rights maintained throughout the claim. Though we feel that such a system would be the most beneficial, the main point is that VA's current work measurement has serious flaws and is in desperate need of a major overhaul.

Although not officially endorsed by The American Legion, a recent proposal informally circulated among VSOs called for a "checking account" type system. In such a system, VA would get credit for work when it was completed, at the time it was completed. However, if work is found to be done improperly or inaccurately, then debits would be assigned against that credit. It could be a better rubric that provides more accurate information to interested parties. Where does VA stand on the claims process? Are they "in the red" or "in the black?" There would be easy answers to those questions, plain numbers in black and white. The culture could move away from shuffling papers and counting widgets to quality work. With adherence to strict standards, VA employees could take pride in their ability to keep their offices operating squarely in a positive credit status. VA itself could easily discern where the resources available to improve quality were needed most. Veterans and the groups that advocate on their behalf could see at a glance where the efforts were working most effectively and where more attention would be needed.

Any system different from the current process would require a transition period and would require adjustments. Asking the entire veterans' community to change how it measures the claims process, but change can be a good thing. In this case, change to a more transparent and easy to interpret rubric for the measurement of progress and achievement. The sooner change begins, the sooner a system in which the veterans' community can efficiently participate.

Such a watershed change should not be considered separate from changes already being studied. VA is currently developing many pilot programs with the potential to improve the operating environment to the benefit of veterans involved. In Little Rock, Arkansas, VA is still implementing a pilot program in conjunction with Booz, Allen, and Hamilton to apply "Lean Six Sigma" business practices to the claims process. Representatives of The American Legion and other major VSOs have visited Little Rock at the invitation of VA to examine this pilot program during its initial operation, and the early feedback is positive. In Providence, Rhode Island, VA is piloting a program to operate in an entirely electronic environment. While VSOs have not yet had "eyes on" experience of this program, again early feedback is positive.

VA is of course extensively examining the impact and implementation of electronic “paperless” processing of claims.

All of these examinations of aspects of VA operations should not operate in a vacuum. What is essential is that VA must develop an integrated management approach, a holistic composite of all lessons learned from these examinations. There are many great things that VA has done and can continue to do. However, there are also many stumbling blocks from reliance on the old ways of doing things that must be transformed if a truly integrated operating approach is to be implemented. The American Legion wants to help VA to become the most responsive and beneficial system possible. There are many challenges to such a system, but they are not insurmountable.

VA transformation must go forward. It is not enough for Congress to propose changes and to pass laws which provide for such changes; we must ensure that these changes are followed up on and implemented in a manner that forges VA into the operating entity it is capable of becoming. Congress has worked very hard with the VSOs and America’s veterans to investigate this system and determine the most essential areas for reform. VA strives to provide many excellent services and benefits to veterans, but they must not be hampered by a reliance on outdated and inefficient means to deliver these benefits and services. As willing partners in the process, Congress, the veterans’ community, and VA must all work together to ensure that this system continues to be what Abraham Lincoln long ago envisioned, an organization endowed by this country “to care for him who shall have borne the battle, and for his widow and his orphan.”

The American Legion stands ready to answer any questions of this Subcommittee and thanks you again for this opportunity to provide testimony on behalf of our members.

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

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the National Organization of Veterans’ Advocates, Inc (“NOVA”) concerning the implementation and effectiveness of the Veterans’ Benefits Improvement Act of 2008, P.L. 110–389.

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

NOVA has written many amicus briefs on behalf of claimants before the CAVC and the Federal Circuit. The CAVC recognized NOVA’s work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated in this testimony have been approved by NOVA’s Board of Directors and represent the shared experiences of NOVA’s members as well as my own seventeen-year experience representing claimants at all stages of the veteran’s benefits system from the VA Regional Offices to the Board of Veterans Appeals to the CAVC as well as before the Federal Circuit.

P.L. 110–389

In October 2008 Congress passed S. 3023, enacted as P.L. 110–389, and titled the “Veterans’ Benefits Improvement Act of 2008” (“the VBIA 2008” or “Act”).

The Department of Veterans Affairs (“the VA”) was directed by the Act to issue regulations prescribing the content of notices to be provided to claimants in conformity with the Veterans Claims Assistance Act of 2000 (“VCAA”), 38 U.S.C. § 5103(a), Act, section 101, and to issue regulations regarding substitution in case of death of the claimant, Act section 212.

Among the reports which the Act required the VA to submit to Congress, before the end of 2009, are the following six reports:

1. The VA’s progress in addressing variances in compensation payments by improving coordination between the Veterans Benefits Administration and the Veterans Health Administration regarding examinations of veterans. Act, section 104;
2. The assessment of personnel requirements of the VBA. Act, section 104;

3. On descriptions of patterns of claims submitted to the VA and the effort undertaken to reduce such differences. Act, section 104;
4. On the appropriate levels of disability compensation to compensate for loss of earning capacity and quality of life and on the feasibility and appropriate level of long term transition payments during rehabilitation for veterans separated from the Armed Forces due to disability. Act, section 213;
5. On a one year pilot program, at ten regional offices, to assess the feasibility and advisability of expeditiously deciding “fully developed” claims. Act, section 221; and
6. On a study conducted on the effectiveness of the current VBA employee work credit and work management systems. Act, section 226.

The following four studies, by the VA, were required by the Act:

1. Assessment of the quality assurance program, including retaining, monitoring, and storing designated data on each claim. Act, section 224;
2. Development of an updated certification examination for appropriate employees and managers. Act, section 225;
3. Review of VBA’s use of information technology to process claims and develop a plan for the use of such technology. Act, section 227; and
4. Assessment of the feasibility and advisability of mechanisms to provide VBA employees with medical advice from the VHA, when needed. Act, section 228.

Additionally, the VBIA 2008 required the United States Court of Appeals for Veterans Claims to submit to Congress an annual report containing detailed information summarizing the Court’s workload during the preceding year.

#### VA COMPLIANCE

##### *Proposed VCAA Regulations*

The VA’s notice of proposed regulations regarding VCAA notices to be provided to claimants was published, on December 11, 2009, in 74 FR 65702, as RIN 2900-AN 46, Notice of Information and Evidence Necessary To Substantiate Claim.

NOVA has commented on the proposed regulations, observing that the VA has not implemented regulations which would assist claimants by providing specific and helpful information and guidance and by explaining what is necessary to support the claim at issue. Rather, the VA has opted to provide claimants with the minimum possible information and explanation, that is, generic “general information and evidence to substantiate entitlement for the type of claim filed and benefit sought.”

##### *There has been no action on a substitution regulation*

The VA has not issued any regulations, nor published any intent to do so, regarding substitution in the case of death of the claimant. Accordingly, the VA is obstinately trying to administer a regulation, 38 C.F.R. 20.1302, which requires an appeal to be dismissed upon the death of the claimant in violation of 38 U.S.C. § 5121A which allows the appeal to continue with the substitution of an eligible person.

#### VA Reports

##### *Submitted Reports*

According to a presentation by VBA, in November 2009, the following reports, which NOVA has not seen, have been submitted to Congress:

1. A July 2009 report on EconSys;
2. An interim report in October 2009 on the pilot study on expediting fully developed claims;
3. An interim report in October 2009 on the pilot study on providing checklists to claimants; and,
4. An April 2009 report on improving medical advice to rating specialists.

##### *Booz Allen Cycle Study*

The June 5, 2009, report prepared by Booz Allen Hamilton (“Booz Allen”) and entitled “Compensation and Pension Claims Development Cycle Study” (“the report”) offers recommendations to improve the cycle time of the claim development and rating process.



### *Findings*

According to the report, the present Claims Processing Improvement (“CPI”) model divides claims processing into six functional teams, (triage, pre-determination, rating, post-determination, appeals and public contact) in each of the 57 Regional Offices. This has resulted in an average claim rating processing time, a/k/a average days to complete (“ADTC”), of 163 days with some Regional Offices having an ADTC of 238 days, or close thereto.

In site visits to eight of the 57 ROs, Booz Allen observed great variability, from 99–193 days, in the average time it takes for a claim to go through the development process, but very little variability, from 5 to 6 hours, in the average time a claim is worked on during the entire development process.

Because of the division of labor resulting from use of the CPI model, claim folders spend time waiting in queues between process operations. Segregation of work “creates overlapping, redundant, and sometimes unnecessary work activities”, and work typically backs up at each step. To make matters worse, work is, typically, unevenly assigned to VSRs according to the last two digits of the veteran’s claim number which causes further backups and delays.

Booz Allen found that policy documents provided by VBACO are difficult to access during the processing of a claim, which causes Veterans Service Representatives (“VSRs”), who are responsible for all activities in the pre-determination and post-determination functioning of claims processing, to use self-generated and non-standardized tools. In addition to tools which are hard to access, fast letters communicating policy changes “do not specify the required procedural changes in a step-by-step format that would allow VSRs to rapidly enact the changes.” As a result of lack of guidance, the policies for scheduling compensation and pension exams vary considerably across VAROs “resulting in the inconsistent collection of evidence, re-work, and increased cycle times.”

Separation of the physical locations of the functional teams in the VAROs leads to “functional stovepipes” characterized by frontline employees, such as file clerks and claims assistants, being “unaware of what happens to a claim once they have finished their steps in the process, or how their work contributes to the quality of the final product.”

Not only are employees unaware of their contribution, but the employee performance data base, ASPEN, is misaligned with the goal of increasing the number of claims ready to rate. Instead of tracking production goals and progress toward the goals, ASPEN tracks self-reported work activities without regard to the overall production goals. Quality control is similarly inadequate, lacking timely feedback. It can take as long as 6 weeks between the time that five of a VSR’s claim folders are pulled for the monthly review and the time that feedback is provided by the “Super Senior VSR”.

Also detracting from production and accuracy goals is the mandatory training which is inappropriately focused on functional position regardless of the knowledge or skill level of the VSRs. Because all employees must attend the same training sessions, some employees are bored by the training while other are confused.

### *Recommendations*

Primarily, Booz Allen recommends initiating a pilot project based upon a “pod team structure” with changes in physical layout and responsibilities that create self contained teams. Each team would perform triage, pre-determination, rating and post determination functions as a team, thus reducing cycle times by facilitating claims flow and reducing inventories. It is anticipated that the team members would “have a greater appreciation for how their work quality impacts downstream processes” thus eliminating the functional stovepipe effect and increasing work quality.

To further gauge claim progress and to supervise performance, Booz Allen suggests visual management displays with charts of daily production goals and progress toward those goals. Linking processing activities to “Veteran customer demand” by “Takt Time” calculations, management would generate information on the required pace for production to allow the RO to better balance workload and assess the ability to meet demand on a daily basis. To control quality it is suggested, rather than increasing the number or frequency of inspections, that quality be embedded into the claims resolution process by encouraging the uncovering of errors thus allowing for quality to be controlled by root cause analysis.

To solve the problem of inconsistent procedures utilized by the VSRs, Booz Allen recommends development of standardized claims development processes and the use of Job Instruction Sheets containing action steps and times to completion. Addition-

ally, faster resolution of claims could be realized by improved clarity and consistency of communications with Veterans.

Booz Allen recommends streamlining file and records retrieval through collaboration and electronic records sharing among the VBA and the Records Management Center, the National Personnel Records Center, the Federal Archives and Records Center and the Department of Defense. An additional recommendation is development of manual procedures to minimize the delay caused by unavailability of claim folders because of pending appeals.

#### *NOVA's Observations*

Booz Allen's Cycle Study highlights systemic problems of delays, inefficiencies and inaccuracies present in and created by the VBA's claims adjudication process which are well known to those who practice in this field and are consistent with findings contained in reports of other recent investigations by the VA Office of Inspector General.<sup>1</sup>

NOVA supports the recommendation to explore the pod team approach. We had advocated employing a similar team approach in a letter sent to the Senate Veterans Affairs Committee in March 2009, as part of a comprehensive plan to remake the VBA. See attached letter. NOVA is pleased to learn that a pilot project utilizing the pod team approach is already in place in the North Little Rock Arkansas RO, and we await the upcoming progress reports.

Although the use of an electronic file is only mentioned in passing in the Booz Allen report, as part of the recommendation to streamline file and records retrieval, section 227 of the Act requires the use of information technology to be utilized by the VBA to, among other things, access information which has been submitted; to permit veterans to view applications for benefits submitted online; and through a secure portal, to allow a claimant to check the status of any claim submitted by that claimant. NOVA views the VA's use of a secure, readily searchable, and adequately indexed, electronic file as essential to Congress's goal of correcting the delays in the VBA claims adjudication process. Moreover, having such an electronic file which is accessible by claimants and their representatives, online, will eliminate the need for many of those VA employees in the public contact team, who are tasked with answering inquiries regarding the status and contents of claims folders. It will also solve the problem, identified by Booz Allen, which was created by trying to develop one claim submitted by a veteran while the claim file containing a different claim also submitted by the veteran is at a different location for review by an appellate adjudication team. To eliminate confusion and mis-mailed submissions by claimants, NOVA recommends modifying the RO structure suggested by Booz Allen which utilizes a VARO based mail intake facility. Instead, NOVA suggests utilizing one address for all correspondence and documents sent to the VA housed in a central processing facility and tasked with scanning documents into the file. This central scanning and filing system should automatically send an electronic notice to the submitter of the document acknowledging receipt, which is what happens with the CAVC's E-Filing system, and it should also send notice to the appropriate RO, to the BVA, to the appropriate VAMC, or to the General Counsel, as necessary.

Two crucial matters not addressed by the Cycle Study are continued unreliability of statistics published by the VA and the continued anti-veteran institutional bias in the VA. Both of these problems negatively impact the VA's ability to monitor performance and to provide accurate decisions. NOVA has previously called this committee's attention to the fact that both the VBA and the BVA claim decision accuracy rates of 90 percent although the rates of appeals and the rates of affirmances by the CAVC reveal an accuracy rate of below 20 percent. More recently the VBA has altered the Monday Morning Workload Reports so as to under report backlog and to make comparisons with reports published in 2009 and preceding years impossible.

As discussed above, the VA has also inexplicably issued regulations proposing to provide to claimants generic and meaningless statutorily required notices, called Veterans Claims Assistance Act notices. Such general notices are of no value to claimants, waste precious VA resources and are contrary to the recommendations in the Cycle Study to "improve the clarity and consistency of communications with

<sup>1</sup>09-01995-63, 20100114, VARO Roanoke; 09-00213-125, 20090512, VARO Pittsburgh; 09-01996-41, 20091204, VARO San Juan; 09-00189-81, 20090227 VARO C&P Benefit Claim Receipt Dates; 08-02073-96, 20090312, VBA Compensation Rating Accuracy and Consistency Reviews; 09-01993-29, 20091119, VARO Baltimore; 09-01193-228, 20090928, VBA's Control of Veterans' Claims Folders; 08-01759-234, 20090930, VARO Claim-Related Mail Processing; 08-03156-227, 20090923 VARO Rating Claims Processing Exceeding 365 Days.

Veterans.” Another indication of the VA’s indifference to veterans is shown by the reaction of the C&P Service after being told by NOVA that erroneous notices had been sent to claimants informing them, contrary to section 101 of P.L. 109–461, that claimants are not permitted to hire a representative, for a fee, until after the BVA decides their appeal. Ignoring the assertion of NOVA that due process rights of claimants who received erroneous letters require that corrected letters be sent, the C&P Service, in the December 2009 Bulletin, declined to correct the erroneous notices and opted instead to attempt to send correct notices some time in the future.

NOVA continues to learn of VSRs who refuse to apply statutorily mandated presumptions, incorrectly apply the benefit of the doubt and refuse to acknowledge diagnoses of PTSD in combat veterans as service connected. Obviously, the VA requires more than a structural overhaul to achieve the stated goal of being “strongly and uniquely pro-claimant.”

An additional matter covered by the VBIA 2008 is reporting by the CAVC. The Court’s FY 2009 annual report lacks the information required by VBIA 2008, Section 604, items 4 through 15 which includes information such as the number of dispositions by the Court, by the clerk, by a single judge, by a panel and by the full Court; the time from filing the brief to disposition; and an assessment of the workload of each judge. All of this required information is necessary to determine the Court’s need for increased resources.

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National Organization of Veterans’ Advocates, Inc. (Nova)  
Washington, DC.  
March 16, 2009

*By Email and U.S. Mail*

Senator Daniel Akaka, Chairman  
Senate Veterans’ Affairs Committee  
141 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Akaka:

Attached are NOVA’s answers to your additional questions following the hearing on February 11, 2009.

Sincerely,

Richard Paul Cohen  
Executive Director

RPC/smp  
Attachment

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#### RECOMMENDATIONS FOR REMAKING THE VBA

##### *Summary*

NOVA’s recommendations include utilizing secure, electronic files; decentralizing rating and appellate functions; and implementing a user-friendly, simplified system which puts the veteran first.

##### *Specific recommendations*

NOVA’s plan to remake the Veterans’ Benefits Administration contemplates an organization dedicated to being user-friendly, considerate of the needs and limitations of veterans when adjudicating claims, and believing that veterans generally file meritorious claims for VA benefits. Fundamental to creating a system which truly does put veterans first is ensuring that veterans and their families receive actual assistance in the development of their claims and that fully-developed claims are properly paid regardless of whether the veteran is represented or proceeding *pro se*.

First and foremost, there must be a system which allows disabled veterans and their families to file simplified claim forms, participate in hearings and review claim files without having to travel four or more hours to participate in the adjudication of their claims. Under the present system, 57 Regional Offices (RO) handle all of these functions, forcing many veterans to travel long distances to their “local” RO. A veteran-friendly system would disperse most of the functions of the present ROs closer to VA Hospitals, VA outpatient clinics, and/or Vet Centers. This way, the

processes of meeting the veteran, completing forms, developing evidence, and attending hearings would take place closer to the claimant's home, while centralized state offices would house the rating boards. With computerized files, the file could be accessed in all locations. A system like this has been utilized by the Social Security Administration, which has multiple local offices dispersed throughout each state for these precise processes.

Such a system would begin to process the simplified application by requesting specific documentation from the claimant, such as a necessary DD214 or current medical records. Then, rather than continuing with the obsolete system of separating work functions at the ROs into six teams, there should be one decision unit which handles everything from reviewing the application for completeness in pre-determination through gathering the evidence and producing rating decisions. This reworked adjudication unit would be charged with the responsibility of partnering with the claimant and the claimant's representative, if the claimant is represented, to fully understand and develop the claim. It would then issue an understandable and case specific VCAA notice, prior to any rating decision, assist with any additional development, and then, after case-development was completed, issue the rating decision.

Because the present rating system is obviously difficult for veterans to understand and for rating boards to apply, it often results in erroneous decisions. What is needed is an overhaul of the entire Schedule for Rating Disabilities contained in 38 C.F.R. Part 4 to simplify and update the schedules.

There should be increased use of presumptions to eliminate the need for development of evidence regarding the incidents of military service for all those who were deployed to a war zone regardless of their military occupational specialty or place of assignment within the war zone. For example, any veteran who was deployed to a war zone, whether during WWII, Korea, Vietnam, the Gulf War or the GWOT and who is subsequently diagnosed with PTSD, the sole inquiry during the rating stage of their claim should concentrate on the severity of their symptoms without requiring development of the nature of their in-service stressor(s) or the connection between their stressor(s) and their present diagnosis of PTSD. Any veteran who is diagnosed with a medical condition while on active duty and who is presently being treated for that same condition should not need to prove a medical nexus between the in-service condition and the current condition. Also veterans who are receiving Social Security Disability or Supplemental Security Income benefits based on medical conditions and/or disabilities which are related to service should be presumed to be unemployable.

PTSD, TBI, and their underlying symptoms and residuals are leaving increasing numbers of veterans' lives in shambles. It is only right, therefore, that any rewrite of the Schedule for Rating Disabilities include consideration and compensation for a veteran's loss of quality of life as well as for his/her loss of earning capacity as related to these medical conditions.

Obviously, NOVA's recommendation to decentralize the VA will not work without a 21st century VA claims system, i.e., one that is paperless and secure. Also, the VA will never secure the confidence of our country and our veterans until there are secure claims files.

Together with a modern claims file system, veterans must be granted the same rights granted to all other classes of citizens—the right to choose to hire a lawyer for assistance, if desired, from the very beginning of the claim adjudication process. Presently, veterans are the only class of citizens who do not have the right to hire an attorney to assist with a claim from the claim's inception. For example, veterans who are notified of the possibility that their rating will be reduced are not permitted to hire an attorney for a fee to represent them even after objecting to the notice of reduction. They must wait until after their rating has been reduced to hire a lawyer. Moreover, once a lawyer or other representative is hired, neither the first-line decision makers, the appellate teams nor the BVA should view the veteran's representative as having interests opposed to the VA's central mission of providing proper benefits to veterans and their families. It follows that the VA should partner with the claimant's representative and use informal conferences to speed claim-development and narrow the issues to be decided.

Following an unfavorable rating decision, the claimant should only need to file one request for an appeal instead of the present requirement to file both a notice of disagreement and a substantive appeal to the BVA. Thereafter, the claimant and his representative should have the right to submit further evidence and/or argument, have a *de novo* review on the record, and/or a personal hearing before a Board Member (in person at the "local" RO, via video-conference, or in person in Washington, DC).

Fundamental to remaking the VBA is adequate training, supervision and accountability. This will require a revamping of the VA's organizational chart so as to provide reporting and direct accountability from the Regional Offices to the Secretary. Presently, there are an excessive number of layers of executives in the system which impedes the flow of knowledge and communication to the Secretary, thereby impeding accountability. With direct accountability comes less likelihood of lost, shredded or compromised evidence and/or claims files. Direct accountability also brings about better-trained staff who are properly motivated to perform functions essential to the mission. Finally, in a system with adequate training and accountability, VLJs are less likely to write decisions which are affirmed only 20 percent of the time when appealed to the Veterans Court.

To ensure efficient, convenient, timely and proper appellate review at the administrative level, the Board of Veterans Appeals should be made independent of the VBA and should be decentralized and dispersed within reasonable distances from the many Regional Offices. Not only should the BVA Veterans Law Judges be moved out of their fortress in Washington, D.C., but the BVA's VLJs should be reconfigured into a corps of truly independent and well-trained Federal Administrative Law Judges.

It is fundamental that the pressures placed on raters and VLJs to turn out decisions must be replaced with a system which expects the right decision to be made at all levels of the process. Veterans require a system which does not provide a decision until the claim is fully developed, which involves a true partnership between the claimant and the VA, and which rewards prompt and correct decision-making. NOVA's experience confirms the findings in the 2005 report of the Office of Inspector General that the present work credit system is providing a disincentive to properly deciding claims. It should be replaced. To complement new expectations of increased accuracy and accountability, it is essential that VA employees be repeatedly and adequately trained and supervised. Additionally, the high rate of VLJ decisions which are returned to the BVA because of inadequate reasons and bases is unacceptable and contributes to the backlog and to the reputation of "hamster wheel" adjudications.

Appeal from a VLJ's decision should go to the CAVC and then to the Federal Circuit. Two changes to the operation of the court would make a big change. First, the CAVC should be granted class action jurisdiction to remedy situations which affect a broad class of veterans. Second, the CAVC should be required to resolve all issues reasonably raised, except for constitutional claims, if the appeals can be resolved without reaching the constitutional claim.

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**Prepared Statement of John McCray, Rating Specialist, Los Angeles, CA,  
Regional Office, Veterans Benefits Administration, U.S. Department  
of Veterans Affairs, on behalf of the American Federation of Government  
Employees, AFL-CIO**

Dear Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify today on behalf of the American Federation of Government Employees, AFL-CIO (AFGE), the exclusive representative of employees in the Veterans Benefits Administration (VBA). I currently serve as a Rating Specialist (RVSr) at VBA's Los Angeles Regional Office (RO), and have been employed with VBA for nine years.

P.L. 110-389 provides many valuable tools that will significantly reduce an inventory of one million claims or any other size by getting each claim processed correctly *the first time*. The urgency of putting these tools into practice grows greater with each new claim in the queue. AFGE's comments today focus on Sections 224 (Quality Assurance), 225 (Certification and Training), and 226 (Study of Performance Measures).

*VBA Continues to Exclude the Perspective of Front Line Employees*

AFGE greatly appreciated Chairman Hall's request for our views during the drafting of the Disability Claims Modernization Act (P.L.110-389) and our views on implementation of the law at this hearing. In contrast, VBA continues to exclude AFGE from its efforts to implement this critical new law even though our members are the ones who know first hand which management policies and practices speed up production and accuracy, and which ones worsen the backlog and lead to a counterproductive "assembly line" work environment.

Therefore, AFGE recommends that the Subcommittee increase its site visits to the ROs, and in order to ensure unfiltered discussions with employees and their representatives, these meetings should take place outside of the presence of management. We also encourage regular roundtables where VSOs and frontline AFGE members can exchange recommendations for improving the claims process.

Sadly, there appears to be little chance of a culture change at VBA anytime soon. The work environment at most ROs is more hostile now than under the prior Administration. Terminations of both experienced employees and newly trained employees are a routine occurrence. The constant threat of termination places additional stress on a workforce that is working mandatory overtime every weekend and still struggling to comply with arbitrary increases in production requirements.

It is equally discouraging that VBA is not fully complying with the December 9, 2009 White House Executive Order creating labor management forums. More specifically, at the last Partnership meeting, VBA expressed its unwillingness to establish interim level partnerships at the Area Offices.

#### *Quality Assurance (Section 224)*

In the short term, the input of front line employees and their representatives will be an essential component of any third part assessment of VBA's quality assurance program. RO management facing intense production pressures have resorted to a number of techniques for hiding the size of the backlog and the number of aging claims. Our members on the front lines see how these techniques are employed on a daily basis.

In the long term, managers without sufficient expertise are unable to carry out quality assurance duties, leading to greater errors, which in turn lead to more appeals, remands and other delays. Therefore, it is critical that these managers pass the same certification tests as managers supervising claims processors. Training quality and management's compliance with training requirements should be included as quality assurance criteria.

#### *Skills Certification (Section 225(a))*

The requirement in the new law to require both employees and managers to pass skills certification tests will yield multiple benefits for VBA's efforts to address the backlog. Our members regularly report that they are supervised by managers who have little or no experience performing the complex functions involved in processing disability claims, rendering their roles as mentors and trainers ineffective.

In addition, workplace morale suffers when front line employees work under intense pressure to adjudicate complex claims while supervised by managers who have not done and do not understand their jobs. As one Rating Specialist put it, "There is not a doubt in my mind that most managers would fail the VSR and RVSR certification tests if they had to take them today."

AFGE is troubled by recent reports that VBA is considering excluding higher levels of management from the supervisor skills certification requirement—the very officials who have significant fiduciary duties.

Despite enormous expenditures to the contractor HumRRO for the development and administration of the certification tests, they continue to malfunction. Every time the test has been given, a critical component of the testing process, such as the website, has shut down.

AFGE learned that VBA field tested the supervisor certification exam a few weeks before this hearing. Unfortunately, VBA is not complying with the requirement in the law that VBA consult with all stakeholders, including employee representatives, in order to improve the certification.

#### *Training (Section 225(b))*

The provision in P.L. 110–389 for an independent evaluation of VBA's employee training programs is a crucial component of any claims process overhaul. The link between poor training and claims processing errors has been well established.

AFGE members report a wide range of deficiencies in the training provided at ROs, including:

- Failure to adequately advise employees of the impact of changes in the law;
- Failure to adequately prepare employees for the skills certification test;
- Lack of national uniformity in training programs provided at the ROs; and
- Lack of centralized formal "train the trainer" programs, resulting in trainers with poor teaching skills and insufficient subject matter expertise.

*The most detrimental training policy of all is lack of training time, including demands by pressured managers to shortcut training. As soon as new employees complete their initial centralized training and arrive at their work sites, production pressures begin to compete, and win, against training needs. New employees are not rotated to all stations and are put on the “assembly line” before fully trained. Older employees are regularly deprived of their full 80 hours of annual mandatory training.*

VBA also engages in intentional deception regarding the 80 hour mandatory training requirement. AFGE has received a number of VA central office memos instructing employees to briefly review training materials sent by email, and then managers get credit for 1.5 hours of mandatory training that should be provided in a classroom setting. More generally, VBA leaves it up to each RO director to decide how training is provided. One can easily guess how well this approach works, considering that management bonuses are based on production and not on training.

It is laudable that VBA has issued a new training Fast Letter (10-05) a few weeks before this hearing to increase the mandatory training requirement to 85 hours per year and standardize more of the curriculum. However, if VBA continues to force managers and processors to choose production over training and accuracy, this initiative will be of little benefit.

The competency of trainers, both in terms of subject matter expertise and teaching ability, continues to be poor. Employees who are assigned to training duties are given minimal instruction on how to competently convey the material. AFGE again recommends that VBA use a cadre of formally trained instructors from VA Central Office to conduct RO training.

#### *Work Credit and Work Management Systems (Section 226)*

Despite its assertions over the years, VBA has never produced evidence of a comprehensive reliable time and motion study that would enable it to properly assign work credits for different tasks in the claims process. As a result, employees are pressured to short cut those tasks that are undervalued, such as additional case development.

In turn, an accurate work credit system will lay the foundation for an effective work management system. VBA has not adjusted individual employee production standards to reflect the increasing complexity and difficulty of the claims process. Employee workload requirements must be ascertained by reference to valid empirical data. VBA must, with no preconceptions, identify how much an employee can reasonably be expected to do with an acceptable level of accuracy, and use that data to project the number of employees it needs to process its inventory.

As long as employees are subjected to arbitrary and unreasonable production standards, the claims development process will be flawed by inefficiency and incomplete claims development. The ultimate harm falls upon the veterans, who are deprived of a full, fair, and timely consideration of their claims, and a growing backlog.

#### *Other Workplace Issues Contributing to the Backlog*

**Telework Production Standards:** AFGE is disappointed that Secretary Shinseki was unwilling to grant a recent request to eliminate unfair work-at-home policies for RO claims processors made by Congressman Frank Wolf (R-VA), the author of 1990 flexiplace legislation. Even though the VA currently lags behind other federal agencies in the use of flexiplace, Secretary Shinseki also informed Congressman Wolf that he was unwilling to reverse RO policies denying the flexiplace option to many employees.

In contrast, two years ago, former Secretary Peake granted a similar request by Congressman Wolf to reverse policies that imposed higher production standards on Board of Veterans Appeals attorneys working from home. We urge the VA to reconsider its position, which is hurting the VA’s ability to retain experienced employees.

**Unfair Terminations:** Senior employees with invaluable experience are being terminated for failure to meet rising production standards. At the same time, VBA continues to assure Congress that thousands of new hires are helping to reduce the backlog. However, the agency refuses to answer questions about the large number of probationary employees (including many OIF/OEF veterans) who are being terminated during their probationary periods for low production, before they receive adequate training to master basic proficiency.

**Use of State Employees at ROs:** Last year, Texas Governor Perry launched an initiative to fund two new claims processing assistance teams through the Texas Veterans Commission (TVC) to “work closely with the VA in all areas of the claims

process to reduce the backlog” in the Houston and Waco ROs. While the Governor’s goal of expediting VBA claims processing is laudable, he proceeded in a manner that could lead to greater errors and delays, and unfair treatment of some veterans. More specifically, these projects were initiated without any input from veterans’ groups or front line employees or their representatives. Neither TVC nor VBA has shared copies of the interagency agreements that define the scope of this project. AFGE shares the concerns of veterans’ groups that inadequately trained state employees, who may be operating under a conflict of interest, are unduly interfering with the outcome of the claims process and case priority setting.

In closing, AFGE thanks the Subcommittee for the opportunity to share its views on implementation of P.L. 110–389, and hopes that VBA will return to an era of greater labor-management cooperation that can improve the timeliness and accuracy of claims processing. Thank you.

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

Chairman Hall and Subcommittee Members, thank you for providing me with this opportunity to address the progress made by the Department of Veterans Affairs (VA) towards implementing the provisions of Public Law 110–389, the Veterans’ Benefits Improvement Act of 2008. Both VA and the Congress are acutely aware of the enormous challenges we face in improving and expediting our claims process. We are grateful for your input and for the opportunity to evaluate pilot programs to see if they help us meet our end goal, of serving the Veterans who have served us.

I regret that some of the reports required by Public Law 110–389 are overdue, and I would like to share the reasons for these delays. Because of the importance of these issues, we are proceeding deliberately on these often-complex matters. In some cases the need to obtain outside expertise, and to duly consider the advice obtained, has had to come at the expense of speed. Let me discuss each relevant section and explain how we have addressed it.

*Sec. 101—Regulation on Contents of Notice to be Provided Claimants Regarding Substantiation of Claim*

Under this section, Congress required the Secretary to prescribe in regulations the contents of the notice to be provided to claimants for VA benefits pursuant to 38 U.S.C. 5103. The amended regulation must: (1) specify the different content for notices based on whether the claim is original, a claim to reopen a prior decision, or a claim for increased benefits; (2) provide that the content of such notices be appropriate to the type of benefit or service sought under the claim; and (3) specify for each type of claim the general information and evidence required to substantiate the basic elements of the claim type.

In order to comply with this requirement, VA developed appropriate regulation language and published it as a proposed rulemaking in the Federal Register on December 11, 2009. The period for public comment ends on February 9, 2010. At the close of the comment period, we will review the comments and consider whether any revisions to the proposed regulation are warranted. Following that, a final regulation will be published in the Federal Register.

*Sec. 104—Report on Causes for Variance in Compensation Payments*

Under this section, Congress required the Secretary to report on efforts to address perceived patterns of nationwide variance in disability compensation payments provided to Veterans. The report’s content was to include three elements: (1) a description of efforts jointly undertaken by the Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA), including contract clinicians, to improve the quality of medical examinations provided to Veterans seeking disability compensation; (2) an assessment of current VBA personnel adequacy and requirements for claims adjudication; and (3) a description of any differences in disability claims adjudication outcomes for various populations of Veterans. Separate reports for each of the three elements have been completed and are undergoing final administrative review prior to submission. I sincerely apologize for the delay in complying with the requirements of this section of the law.

Addressing the first element involved an internal review of actions taken to improve the Compensation and Pension Examination Program (CPEP). Addressing the



second and third elements involved contracting with the Institute for Defense Analyses (IDA) for relevant studies. The cost for these studies amounted to \$1.7 million. I look forward to sharing the full contents of these reports with you soon.

*Sec. 213—Report on Compensation for Veterans’ Earning Capacity Loss and Quality of Life Loss and on Long Term Transition Payments for Disability Rehabilitation*

Under this section, Congress required the Secretary to provide a report on his findings as a result of studies of: (1) the appropriate levels of disability compensation for loss in earning capacity and loss of quality of life as a result of service-connected disability; and (2) the feasibility of providing and appropriate levels of long-term transitional benefits for Veterans separated from the Armed Forces due to disability while they undergo rehabilitation. This report has been provided to Congress. The report is based on the findings of Economic Systems, Inc. (EconSys), which was contracted by VA to study these areas of Congressional concern. VA previously provided testimony on the EconSys study during a DAMA Subcommittee hearing on July 23, 2009. Those views are contained in VA’s prepared statement and testimony presented at that time.

*Sec. 221—Pilot Programs on Expedited Claims and Checklists*

Under this section, Congress required the Secretary to conduct pilot programs to evaluate expedited treatment of fully developed claims (FDC) and the value of providing checklists to Veterans submitting claims. The FDC pilot is designed to reduce claims processing to 90 days when the Veteran claimant has provided a signed certification form stating that “no additional information or evidence is available or needs to be submitted in order for the claim to be adjudicated.” The checklist project is designed to encourage more complete and timelier submission of evidence from Veteran claimants as an additional means to reduce claims processing time. VA contracted with the Center for Naval Analyses (CNA) to review and evaluate the effectiveness of both pilot programs at a cost of \$1.5 million.

For the FDC pilot, VA developed methods for implementation, which include providing Veterans with a certification form and tracking the progress of the FDC claims involved. Regional offices at Boise, Boston, Chicago, Columbia, Denver, Manchester, Milwaukee, Montgomery, Portland, and Providence were selected to conduct the pilot. In addition, VA notified all regional offices of the pilot through a Fast Letter released in December 2008, which explained the implementation procedures. The CNA study of the pilot involved field visits and will focus on claims filed between December 2008 and December 2009. The study will analyze whether the 90-day claims processing time is feasible and, if not, will identify those specific barriers to swift adjudication that are most difficult to overcome. In August 2009, CNA produced its *Interim Evaluation of Fully Developed Claims Pilot Program*, which has been provided to Congress. CNA noted that, although preliminary in nature, the study thus far indicates that expediting the processing of FDC claims results in faster processing time for such claims and does not negatively impact the processing of non-FDC claims. A final CNA evaluation report will be provided to Congress at the conclusion of the pilot program. The report is due on June 7, 2010, and the data analysis is on schedule.

The checklist pilot is designed to alleviate potential confusion that Veterans may experience with the detailed notification letters that VA is obligated by law to provide when a disability claim is received. The checklist is intended to summarize the information and evidence required to substantiate the claim in an easy-to-read format. The pilot consists of two phases. Phase I involves original claims filed between December 2008 and December 2009, and Phase II involves reopened claims and claims for increased disability filed between December 2008 and December 2011. Regional offices at Boise, Cleveland, Louisville, and Waco were chosen to conduct the pilot. In December 2008 VA notified all regional offices of the pilot through a Fast Letter, which explained the implementation procedures. The CNA study is applying quantitative and qualitative analytical methods and will compare processing timeliness of claims using the checklists to claims without it. In August 2009, CNA produced its *First Interim Evaluation of Individual Claimant Checklist Pilot Program*, which has been provided to Congress. CNA noted that its preliminary evaluation was incomplete due to receiving data only on closed claims, but not pending claims, and cautioned against drawing any conclusions on the effectiveness of the pilot at this time. A second interim CNA report is due on September 10, 2011, and is on schedule. The due date for the final CNA evaluation report to be provided to Congress is June 6, 2012.

*Sec. 222—Office of Survivors Assistance*

This section requires the Secretary to establish an Office of Survivors Assistance to serve as a resource regarding all benefits and services related to survivors and dependents of deceased Veterans and deceased servicemembers.

The Office was established in December 2008, was provided the necessary resources to carry out its responsibilities, and by February 2009 was fully staffed and operational. As part of the Secretary's Executive Leadership Board and the VA Strategic Communications Group, the Office has been able to begin fulfilling its role as a primary advisor to the Secretary on all matters related to the policies, programs, legislative issues, and other initiatives affecting survivors.

In the past year the Office has been directly involved in advocating survivor issues to shareholders both internal and external to VA. The Office was a key driver in the addition of the term "survivors" to the title of the informational 2009 Federal Benefits for Veterans, Dependents and Survivors book. Along with this change the Office also spearheaded updates to the benefits book by clarifying the language regarding bereavement counseling for survivors; this change will ultimately make counseling more accessible for all survivors. The Office also established multiple partnerships with DoD agencies and Veteran Service Organizations to explore ways to ease the transition of survivors into the VA system. The Office also created and maintains a website to help survivors navigate through the survivor resources that may be available to them. The Office will continue to monitor policy and legislative issues as well as pursue outreach to survivors to ensure that survivor issues are fully understood and addressed at the appropriate level.

*Sec. 224—Independent Assessment of Quality Assurance Program*

This section amends 38 U.S.C. 7731, which requires the Secretary to carry out a quality assurance program within VBA that meets "generally applicable governmental standards for independence and internal controls for the performance of quality reviews of Government performance and results." As amended, this statute now requires VA to "enter into a contract with an independent third-party entity to conduct, during the three-year period beginning on the date of the enactment of the Veterans' Benefits Improvement Act of 2008, an assessment of the quality assurance program." This assessment is required to evaluate the following: (1) the quality and accuracy of the work of VBA employees, using a statistically valid sample of such employees and a statistically valid sample of such work; (2) the performance of each VBA regional office; (3) the accuracy of disability ratings assigned under the Rating Schedule; (4) the consistency of disability ratings among VBA regional offices based on a sample of specific disabilities; and (5) the performance of VBA employees and managers.

VA is also required to "retain, monitor, and store," under a demographic baseline, the following data for each disability claim submitted to VA: (1) the state in which the claimant resided when the claim was submitted, and where such claimant currently resides; (2) the decision with respect to the claim and each issue claimed; and (3) the regional office and individual VA employee responsible for rating the claim.

By October 2011, VBA is required to submit a report to Congress that contains the results and findings of the three-year independent assessment. This assessment is currently on track. VA awarded a \$1.3 million contract to IDA to review: (1) the performance of each regional office; (2) accuracy of disability ratings assigned; (3) consistency of disability ratings among regional offices; and (4) implications of quantitative assessment of the performance of VBA employees and managers. VA received a progress briefing from IDA in December 2009. The briefing confirmed that the final evaluation provided by IDA will address accuracy of VBA employee work and will include a sampling methodology that will produce statistically valid results.

IDA established certain benchmarks in their progress briefing. These include outlining certain objectives, comparables, and preliminary findings. IDA's objectives are to survey quality assurance programs used by other organizations with similar tasks, while looking for possible technology transfers appropriate for VA. The comparables currently under consideration are: (1) Social Security Disability Benefit Program; (2) Supplemental Nutrition Assistance Food Stamp Program; (3) United Kingdom Service Personnel and Veterans Administration; (4) U.S. Patent and Trademark Office; and (5) CMO (a health care administration firm). IDA's preliminary findings are that there is no "gold standard" quality assurance program in other agencies and that "general" quality assurance "best practices" may be the most valuable.

According to IDA's first progress briefing, its planned path forward will focus in part on certain research questions. Those questions will seek insight into: (1) how

best to utilize VBA's current accuracy reviews and how to handle inconsistencies in such reviews; (2) whether expanded rating reliability studies can evaluate the accuracy of certain disability ratings; and (3) what measures of consistency across regional offices reveal about accuracy.

VBA expects, according to IDA's initial progress briefing, to receive initial findings and recommendations in the summer of FY 2010. VBA looks forward to receiving the final report required under section 224 and reporting such findings to Congress. We stand ready to objectively consider all recommendations of the final report and are ready to collaborate with stakeholders in order to improve VBA programs where possible.

*Sec. 225—Certification and Training of VBA Employees Responsible for Claims Processing*

This section added 38 U.S.C. 7732A, which requires VA employee certification. Under this section, Congress required the Secretary to develop and administer a certification examination for appropriate employees and managers who are responsible for processing disability claims. In response, VA contracted with the Human Resources Research Organization (HumRRO) to assist with development and testing of a certification examination for supervisory VSRs (SVSRs) and DROs that would establish them as proficient in their work assignments. Contract costs were \$313,380 for development of the SVSR examination and \$268,291 for the DRO examination.

For the SVSR certification examination, HumRRO utilized information from VA subject matter experts and generated a detailed task analysis of the position. This included elements of the knowledge, skills, and abilities required for successful job performance. A test instrument database was then developed and a content validity study conducted. A pilot test followed in November 2009, which involved 114 VA regional office employees from around the country and led to completion of an online secure test instrument. HumRRO then conducted an operational field test on January 13, 2010, involving 102 regional office employees, which, when scoring is completed, will provide test takers with individualized report cards. This will serve as a model for administration of future SVSR certification examinations.

Development of the DRO certification examination instrument was delayed due to changes in the scope of the test that required contract modifications. Development continues with deployment anticipated during June 2010.

*Sec. 226—Study of Performance Measures for Claims Adjudicators*

Under this section, Congress required the Secretary to initiate a study of the effectiveness of the employee work credit system and work management system to evaluate more effective means of improving disability claims processing performance. VA contracted with CNA to perform this study at a cost of \$600,000. The study was conducted and produced *Qualitative Analysis of VBA Employee Work Credit and Work Management Systems* in November 2009, which will soon be transmitted to Congress. Again, I sincerely apologize for the delay in compliance with the requirements of the law.

CNA noted that the study results were based on qualitative data obtained from interviews of claims adjudicating personnel at six VA regional offices. CNA also looked at the current VA work management system, referred to as the Claims Process Improvement (CPI) model, which emphasizes employee task specialization.

The CNA study perspective has value, but VA is already engaged in multiple initiatives closely aligned with the CNA recommendations. Among them is a revision of current VSR performance standards to place less emphasis on tasks for individual production and more emphasis on tasks that move a claim through its life cycle to final resolution and promulgation. This revision also proposes to increase expected individual employee output quality to the overall national quality target level for a journeyman VSR. Additionally, system modifications are being pursued that will allow for the automatic capture of work credits as a claim moves through the processing stages. VA has also engaged Booz, Allen, and Hamilton to assist with evaluating the current claims process utilizing lean six sigma analysis techniques. These techniques are being applied as part of a pilot project conducted at our Little Rock VA Regional Office. I am pleased that some of your staff members have taken the time to visit the pilot site and view first-hand what is taking place.

*Sec. 227—Review and Enhancement of Use of Information Technology in VBA*

Under this section, Congress required VA to conduct a review of VBA's use of information technology in disability claims processing and develop a comprehensive plan for the use of such technology in processing claims so as to reduce subjectivity,

avoidable remands, and regional office variances in disability ratings for specific disabilities.

In 2009, VA performed a review of VBA's use of Information Technology in C&P claims processing. The findings from the review were made a part of a comprehensive System Architecture Plan (SAP). The SAP included an analysis of VBA's Paperless Delivery of Veterans Benefits Initiative (Paperless Initiative), which was VA's first attempt at creating a paperless claims processing system. The SAP findings were consistent with VBA's own internal findings: despite the progress made under the Paperless Initiative, VBA's benefits claim processing continued to rely on an ineffective and costly paper-based system that was preventing VA from fully meeting its strategic goal of timely delivery of benefits to Veterans.

VA concluded it needed to focus on C&P claims processing, moving away from a broader approach incorporating all VBA services, and to develop an effective, stable, and scalable technology infrastructure to support optimized business processes.

This approach is the Veteran's Benefits Management System (VBMS) Initiative, a cornerstone of VA's long-term, comprehensive plan to achieve timely provision of benefits to Veterans. It is a holistic approach, integrating business transformation and a 21st century paperless claims processing system. This approach is supported by a Business Transformation Lab which serves to converge process re-engineering and technology innovation, ensuring optimized best practices are developed and tested before being deployed throughout VA.

As part of the business transformation, VA initiated a Compensation Claims Processing Pilot designed to restructure and streamline the current paper-based process through applying lean six sigma tools. This pilot will focus on reducing cycle time and improving the quality of overall end-to-end disability claims processing by driving cultural transformation and beneficial change in business processes.

As part of the technology innovation, VA will use commercial-off-the-shelf (COTS) technologies featuring a stable, scalable infrastructure that fully supports the business vision and will help ensure our best business value. The COTS technologies in large part are an extension of the state-of-the-art system being deployed as part of the long-term solution for the delivery of the New GI Bill benefits. The specific technologies include: a rules engine, a managed process flow tool, web-based data entry, report generation tools, data validation and calculation tools, and attribute-based security access tools. These will be implemented using an incremental development model based on a service-oriented architecture.

Furthermore, the VBMS Initiative is aligned with ongoing VA programs/efforts, such as Veteran's Relationship Management (VRM), enhancements in rules-based processing, and other external initiatives. Particularly, VRM will help provide on-demand access to comprehensive VA services and benefits in a consistent, user-centric manner through a multi-channel customer relationship management (CRM) approach. VRM is designed to improve the speed, accuracy, and efficiency in which information is exchanged between Veterans and VA, regardless of the communications method (phone, web, email, or social media). Its focus will include modernizing voice telephony, unifying public contact representative desktops, implementing Identity and Access Management (IAM), developing cross-VA knowledge management systems, implementing CRM systems, and integrating self-service capabilities with multiple communication channels. A primary feature of VRM will be on-line access to services for Veterans that will promote self-service and provide access to personalized claims information.

The VBMS Initiative meaningfully addresses the objectives of section 227 of the Act by:

- Reducing the average days to complete (ADC) for C&P claims—ADC shall ultimately be reduced to the strategic target of 125 days (from 161 days at the end of 2009).
- Tracking progress on established milestones/deliverables on the VBMS Initiative Project Schedule.
- Increasing Veterans' access to VBA services and claims status through additional and improved web-based information processing.
- Improving workflow management in areas such as claims sorting, fast-tracked binning, and dynamic load balancing with geographic flexibility.
- Reducing avoidable remands caused by delayed association of paper evidence to the claim under consideration by the decision maker.

Improving reliability and security over the acquisition and movement of Veterans' data throughout the claims process. The Virtual Lifetime Electronic Record (VLER) will streamline the process of disability determinations by making the information more accessible. The ultimate goal of VLER is to include the essential administrative data needed for benefits determinations. The first phase of VLER development

between VA and DoD will be to create interoperability and exchange important electronic health information between our systems and the private sector through the protocols and standards of the Nationwide Health Information Network (NHIN). This network will exchange secure and authorized information that can ultimately produce a comprehensive record for adjudicators. This capability will enable the electronic compilation of relevant health information from multiple sources, thereby reducing the information-gathering phase and relieving the burden on Veterans, servicemembers and their families to provide this information. The VLER program is commencing with the first pilot nearing successful completion during the second quarter of FY 2010. The Department looks forward to returning with periodic updates on the phased implementation of this important program.

*Sec. 228—Study and Report on Improving Access to Medical Advice*

Under this section, Congress required the Secretary to evaluate the feasibility and advisability of adding methods to improve communications between VHA and VBA as a means to provide regional office rating personnel with greater access to medical information and opinions. VA provided a report to Congress on this issue in April 2009 that was generated internally without additional cost. The report reviewed previous studies conducted on medical aspects of the disability claims process and outlined the resulting improvements initiated by VA. Such improvements include the CPEP collaboration between VBA and VHA and establishment of a VHA liaison in each regional office. The report also included an assessment of current methods and resources utilized by rating personnel to obtain competent medical information and opinions for claims adjudication purposes and concluded that existing procedures meet the needs of our rating personnel.

As explained in the report, the disability claims adjudication process currently makes effective use of VHA and contract examiners to provide medical diagnoses and an evaluation of the Veteran's current level of disability. The other useful function of examiners is to provide opinions related to the various medical disability scenarios faced by rating personnel. These include: (1) reconciling different diagnoses; (2) clarifying the relationship between two conditions; (3) describing the extent of functional impairment; (4) providing etiology and nexus opinions; (5) determining whether a service-connected condition has aggravated a non-service-connected condition; (6) evaluating the value and credibility of submitted medical evidence; and (7) describing the extent to which service-connected disabilities affect the Veteran's ability to perform physical and non-physical tasks in order for rating personnel to determine the impact on earnings potential.

The VHA medical services described above are generally sufficient to provide VBA rating personnel with ample information to evaluate and rate disability claims. However, if specialized medical advice is required to resolve a claim, procedures are in place to procure it from VHA or private medical specialists. VA has therefore concluded that additional medical assistance for rating personnel, such as placing medical doctors in regional offices, is unnecessary and will not improve the timeliness of claims processing.

This concludes my testimony. I would be happy to address any questions or comments from Chairman Hall or the Subcommittee Members.

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**Prepared Statement of Thomas Bandzul, Associate  
Counsel, Veterans for Common Sense**

Chairman Hall, Ranking Member Lamborn and members of the Subcommittee, I thank you for inviting Veterans for Common Sense (VCS) to express our concerns relating to the implementation of the Veterans' Benefits Improvement Act of 2008, Public Law 110-389.

Our comments provide the Subcommittee with a broad review of portions of this law as well as a list of suggestions to improve the delivery of services and benefits for our veterans.

VCS remains concerned that the Department of Veterans Affairs (VA) fails to be the strong advocate for their needs, especially on the subject of disability compensation claims.

When there is a failure to implement new laws, then it becomes a true travesty with a high level of frustration among veterans and their families. A serious problem not generally noticed by the public or press.

The Veterans' Benefits Improvement Act of 2008 addressed six specific areas of concern relating to the needs of veterans not previously addressed by VA or by existing laws. The six areas include: Compensation and Pension Matters, Moderniza-

tion of VA Disability Compensation System, Labor and Education Matters, Insurance Matters, Housing Matters, and Court Matters.

The focus of our comments is limited to the sections dealing with Modernization of VA's Disability Compensation System. VCS offers our review and specific suggestions for improvement.

The section of Modernization of VA Disability Compensation System under Benefit Matters requires VA to develop and implement a temporary disability rating system for veterans' claims. This change in VA's authority was prompted by the advocacy from veteran service organizations and veterans. We wanted, as a priority, to address VA's well-documented claims process we find to be lengthy, complex, cumbersome, and adversarial.

The number of new disability compensation benefit requests has predictably grown to more than one million per year. VA's error rate is between 20 percent and 40 percent. And VA's process takes, on average, between five and six months to produce an initial decision.

The goal behind assigning a temporary rating to specific, pre-screened claims is to reduce the amount of time to process a claim and alleviate the enormous pressure on VA's overwhelmed adjudication system.

Sadly, after more than one year, VA has failed to enact a temporary rating system. As an adverse consequence caused by VA, the time to process a claim is now 161 days, and VA expects the amount of time to increase to 190 or longer during 2010.

Some VA regional offices are reporting increased error rates, according to VA's Office of the Inspector General (OIG) investigations.

VCS remains deeply troubled VA is not responding to the concerns of VSOs, veterans, and Congress to remedy a serious problem even after Congress ordered changes. In our view, VA appears to have a strong and seemingly deliberate resolve to ignore the crisis and the Congressional mandate. VA's actions reveal a disturbing culture of ambivalence, adversity, and hostility toward veterans and the law.

The new 2008 law also requires reports with specific timelines. VA's failure to comply with these sections of a law is impudent and totally unacceptable. When asked about the lack of compliance with this, and other laws, VA leaders appearing before Congress appeared arrogant in their collective response. Their actions reveal their belief the rule of law only applies to those laws VA is willing to address, and the other laws can be ignored at their sole and unlimited discretion, without any sanction from Congress or the courts.

VA leaders and staff must be held individually and collectively accountable as would any citizen or agency for their actions and/or inaction in the face of Congressional mandates. In this instance, and as has been the case for decades, there has been no action taken to hold any person or agency responsible for the problems veterans and families face.

The use of a temporary disability rating for a claim could be a very real solution for the veterans seeking help. Our former servicemembers with medical conditions severe enough to warrant a discharge from military service should not have to wait months, and some cases years, to be awarded their earned benefits.

As of June 2009, VA medical professionals have diagnosed more than 134,000 Iraq and Afghanistan war veterans with Post Traumatic Stress Disorder (PTSD). However, VA has only approved half of the veterans' disability compensation claims – an outrageous outcome in demand of immediate action by Congress and VA.

This law was specifically designed to address this group, as well as other similarly affected cases or classes of people, whom have a service connected illness or injury with a pending request for benefits. The application of a temporary system to the benefit adjudication process is not intended to circumvent the existing system of verification used in determining qualification for the programs within the VA. It was anticipated this change would allow a set of circumstances of obvious qualification to be used as a urgently needed substantive substitute for the current lengthy, detailed, step-by-step, task oriented, paper-centric, adversarial, and overly burdensome phases of evidentiary development for veterans' PTSD claims.

VCS strongly encourages Congress to increase oversight of this law. We ask Congress to consider possible sanctions for VA leaders who fail to comply with the law.

The changes mandated by the enactment of a bill, such as this one, must have closer scrutiny until such time as the VA can be trusted to act on its own in timely and forthright manner.

Given VA's past and present history of excessive delays and poor benefits management, we believe there must be an ongoing and vigilant posture by Congress until such time as the claims process is restructured or the number of claims are reduced and processed in a expeditious and accurate manner.

Again, VCS thanks to Chairman Hall and Ranking Member Lamborn for your continued leadership on this issue and your strong dedication to our veterans and their families.

