

**LEGISLATIVE HEARING ON H.R. 2214, H.R. 1380,
H.R. 2706, H.R. 2691, H.R. 303, H.R. 1338, H.R.
1302, H.R. 2605 AND H.R. 1384**

HEARING

BEFORE THE

**SUBCOMMITTEE ON DISABILITY
ASSISTANCE AND MEMORIAL AFFAIRS**

OF THE

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

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

WEDNESDAY, JUNE 24, 2015

Serial No. 114-28

Printed for the use of the Committee on Veterans' Affairs



Available via the World Wide Web: <http://www.fdsys.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

98-645

WASHINGTON : 2016

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

COMMITTEE ON VETERANS' AFFAIRS

JEFF MILLER, Florida, *Chairman*

DOUG LAMBORN, Colorado	CORRINE BROWN, Florida, <i>Ranking</i>
GUS M. BILIRAKIS, Florida, <i>Vice-Chairman</i>	<i>Minority Member</i>
DAVID P. ROE, Tennessee	MARK TAKANO, California
DAN BENISHEK, Michigan	JULIA BROWNLEY, California
TIM HUELSKAMP, Kansas	DINA TITUS, Nevada
MIKE COFFMAN, Colorado	RAUL RUIZ, California
BRAD R. WENSTRUP, Ohio	ANN M. KUSTER, New Hampshire
JACKIE WALORSKI, Indiana	BETO O'ROURKE, Texas
RALPH ABRAHAM, Louisiana	KATHLEEN RICE, New York
LEE ZELDIN, New York	TIMOTHY J. WALZ, Minnesota
RYAN COSTELLO, Pennsylvania	JERRY MCNERNEY, California
AMATA COLEMAN RADEWAGEN, American Samoa	
MIKE BOST, Illinois	

JON TOWERS, *Staff Director*

DON PHILLIPS, *Democratic Staff Director*

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

RALPH ABRAHAM, Louisiana, *Chairman*

DOUG LAMBORN, Colorado	DINA TITUS, Nevada, <i>Ranking Member</i>
LEE ZELDIN, New York	JULIA BROWNLEY, California
RYAN COSTELLO, Pennsylvania	RAUL RUIZ, California
MIKE BOST, Illinois	

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

CONTENTS

Wednesday, June 24, 2015

	Page
Legislative Hearing on H.R. 2214, H.R. 1380, H.R. 2706, H.R. 2691, H.R. 303, H.R. 1338, H.R. 1302, H.R. 2605 and H.R. 1384	1
OPENING STATEMENTS	
Ralph Abraham, Chairman	1
Dina Titus, Ranking Member	2
Jeff Miller, Chairman, Committee of Veterans Affairs	3
WITNESSES	
Hon. Raul Ruiz	4
Hon. Bill Johnson, U.S. House of Representatives	8
Prepared Statement	28
Mr. David R. McLeachen, Acting Deputy Under Secretary for Disability Assistance, VBA U.S. Department of Veterans Affairs	10
Prepared Statement	30
Accompanied by:	
Mr. Matthew Sullivan, Acting Deputy Under Secretary for Finance and Planning and CFO, National Cemetery Administration, U.S. Department of Veterans Affairs	
And	
Mr. David Barrans, Assistant General Counsel, Office of General Counsel, U.S. Department of Veterans Affairs	
Mr. Zachary Hearn, Deputy Director for Claims, Veterans Affairs and Rehabilitation Division, The American Legion	17
Prepared Statement	57
Mr. Paul R. Varela, Assistant National Legislative Director, Disabled American Veterans	19
Prepared Statement	64
Mr. Aleks Morosky, Deputy Director, National Legislative Service, Veterans of Foreign Wars	20
Prepared Statement	73
Ms. Diane Zumatto, National Legislative Director, AMVETS	22
Prepared Statement	78
Mr. Chris Neiweem, Legislative Associate, Iraq and Afghanistan Veterans of America	23
Prepared Statement	83
FOR THE RECORD	
Statement of Jeffrey Swanson, PhD and Richard Bonnie, LLB	89
Statement of Lesley Witter, Senior Vice President, Advocacy for the National Funeral Directors Association	97
Statement of Brigadier General (RET) Stephen N. Xenakis, MD	100
Hon. Bob Lata, U.S. House of Representatives	103
Hon. Bill Shuster, U.S. House of Representatives	103
Mr. Blake C. Ortner, Deputy Government Relations, Director, Paralyzed Veterans of America	108
Hon. Gus M. Bilirakis, Subcommittee on Disability Assistance and Memorial Affairs	110

**LEGISLATIVE HEARING ON H.R. 2214, H.R.
1380, H.R. 2706, H.R. 2691, H.R. 303, H.R. 1338,
H.R. 1302, H.R. 2605 AND H.R. 1384**

Wednesday, June 24, 2015

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

The subcommittee met, pursuant to notice, at 2:30 p.m., in Room 334, Cannon House Office Building, Hon. Ralph Abraham [chairman of the subcommittee] presiding.

Present: Representatives Abraham, Titus, Lamborn, Brownley, Zeldin, Ruiz, Costello, Bost, Miller, Bilirakis, and Walz.

Dr. ABRAHAM. Good afternoon, everyone. Thank you for your patience. This subcommittee will come to order.

OPENING STATEMENT OF CHAIRMAN RALPH ABRAHAM

Before we begin, I would like to ask unanimous consent that our colleagues Representatives Bilirakis and Walz be allowed to sit at the dais, make opening statements and ask questions. I understand that Chairman Miller has been delayed, but when he arrives that he would also be allowed to sit at the dais, make an opening statement and ask questions.

Hearing no objection, so ordered.

Again, thank you for being here today. I appreciate you all waiting, we had votes, to discuss this legislation opinion before the subcommittee concerning disability examinations, honoring deceased veterans, fiduciary reform, concurrent receipt survivor claims, the appeals backlog, and other veterans issues.

This afternoon, we have nine important pieces of legislation before us. I will focus my remarks on H.R. 2214, the Disabled Veterans Access to Medical Exams Improvement Act of 2015, which I am proud to have introduced.

Many veterans undergo a VA medical examination in support of their application for disability benefits. The problem is that there are not enough VA examiners to perform these evaluations in a timely manner.

In 2003, Congress gave VA temporary authority to contract with outside physicians to perform disability examinations. This has helped reduce the backlog, but that authorization expires at the end of this year. Section 2(a) of H.R. 2214 would extend this temporary authorization through December 31st, 2017.

H.R. 2214 includes another provision which would make it easier and convenient for veterans to schedule these examinations. Veterans in rural areas like the 5th District of Louisiana, which I represent, often have to travel many miles to see a VA facility, in order to see a VA examiner or a disability examination. It is especially difficult to schedule these examinations if the veteran needs to see a specialist such as a cardiologist or an orthopedic surgeon.

My bill would make it easier for VA to arrange for the veteran to get a disability examination by permitting licensed physicians to conduct these examinations anywhere in the United States as long as they are a doctor under current VA contract.

Enabling contract specialists to conduct more examinations will also free up VA doctors to devote more time to treating veterans rather than conducting disability examinations.

Finally, the bill would expand a pilot program that authorizes the VA to use contract physicians in some regional offices. Section 2(c) would allow this pilot to continue in 15 regional offices. The bill would also establish a criteria VA should use when selecting which regional offices should participate in the pilot program.

As a doctor and a veteran, I know how important this bill is and I urge my colleagues to support this commonsense legislation.

With that said, I am eager to discuss each of the nine pieces of legislation before us here today and I am grateful to my colleagues who have introduced these bills and to our witnesses for being here to discuss them with us. I look forward to a productive and meaningful discussion.

And I would like to take a minute and share that, while I intended to be present for the entire hearing, a last-minute scheduling has come up and I will have to leave a little early, so you will have to excuse me. And I want to emphasize that I appreciate the witnesses that took the time to come here today and share their views. I will carefully read the transcript and review everyone's testimony as the subcommittee continues to consider these bills.

I will now yield to my colleague Ranking Member Titus for any opening statements she may have.

OPENING STATEMENT OF RANKING MEMBER DINA TITUS

Ms. TITUS. Thank you, Mr. Chairman. If you have to step out early, does that mean I get to be in charge?

Dr. ABRAHAM. I am afraid not.

Ms. TITUS. Oh, okay. Well, thank you for holding the hearing today and for your work on these bills.

As the Chairman said, we are examining nine bills that are all important to our nation's heroes, and so I would like to commend the sponsors for their hard work in support of our veterans.

First, I would like to highlight H.R. 2691, the Veterans Survivors Claims Processing Automation Act. The bill would provide VA with the authority to initiate and pay a survivor's claim without receipt of a formal application if they have enough evidence available to process that claim. This makes common sense and lessens the burden on families during the time of their distress.

H.R. 1384, the Honor Americas Guard Reserve Retirees Act, which was introduced by Representative Walz of Minnesota, who is

a member of the full committee and with us here today, is a bill that would grant honorary veterans status to retired members of the Guard and Reserve who have completed 20 years of service. It is time that we gave them this recognition.

Lastly, I want to discuss my legislation, H.R. 2706. This is the Veterans National Remembrance Act. This bill would bring an end to an inequity for more than 1.8 million veterans and their families spread across 11 states, located mostly in the West where distances are long and population centers are small. These states represent places that do not have a true national cemetery. The state with the largest veterans population that is not served by a national cemetery is my home state of Nevada, which is home to over 230,000 veterans, 155,000 of whom reside in Las Vegas.

Southern Nevada has a very nice maintained state cemetery, but our nation's veterans fought for our nation, not for a state, and they deserve the opportunity to be buried in a national cemetery without requiring their families to have to drive long distances to visit their grave sites.

My legislation would require every third national cemetery to be built in those states with large unserved veteran populations. I believe this gets us on track to eventually serve these veterans who have been overlooked, despite the fact that the NCA has 131 national cemeteries with plans to build several more.

I would like to note, however, unfortunately and to my great disappointment, the absence of one bill that I requested twice to appear on the committee's agenda and that is H.R. 1598, the Veterans Spouses Equal Treatment Act, our work today is focused on improving the benefits process for our nation's heros, but while we are doing that we are ignoring the fact that there are veterans who are being prevented from accessing the benefits they have already earned. It is not right and I believe our committee is missing a chance to correct this inequity.

Last year, under the leadership of Chairman Runyan, we included the bill in a legislative hearing and we got only positive comments back from the VSO community and the VA.

As this group of bills, though, that we are considering moves forward, I intend to work with all the members. I think it is thoughtful legislation. And I thank the witnesses who are here today for your assistance in making them better. So I look forward to hearing your testimony and I yield back.

Dr. ABRAHAM. Thank you, Ms. Titus.

Chairman Miller, thank you for being here today. You are now recognized to discuss your bill.

OPENING STATEMENT OF HON. JEFF MILLER

Mr. MILLER. Thank you very much, Mr. Chairman. I appreciate you holding this hearing and I want to talk about H.R. 1380. It expands the eligibility for a medallion provided by the VA which signifies the veterans status of a deceased individual. These medallions are inscribed with the word, "Veteran," across the top and the branch of service at the bottom.

Now, under current law, this medallion may be affixed to a privately purchased headstone or marker and is furnished upon request for eligible veterans who died on or after November 1st of

1990. H.R. 1380 would amend the law to authorize VA to provide this medallion for any veteran regardless of the veteran's date of death.

For nearly 40 years, VA has administered various programs to provide headstones or marker options for veterans. These programs have changed over time, which has caused some confusion for veterans and for their families. Sometimes VA has provided allowances for private headstones, but at other times these allowances were not provided.

In 2009, VA began providing a medallion as a retroactive benefit for veterans who died after the 31st of October in the year 1990. This date was chosen because from November 1st, 1990 through September 11th, 2001 VA did not pay a benefit for the purchase of a private headstone or marker for veterans who were qualified for interment at a national or state veterans' cemetery.

The medallion has proved to be very much appreciated by the veterans and by their families. And this bill would provide this benefit to every veteran regardless of the date of his or her death. These medallions will ensure that future generations are able to identify the final resting place of our nation's warriors and to continue to remember and honor the sacrifice and service of these heroes.

I want to ask each of you to support H.R. 1380. And, Mr. Chairman, thank you again, Ms. Titus, for holding this hearing, and I yield back.

Dr. ABRAHAM. Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. RAUL RUIZ

Dr. Ruiz, would you like to speak about your bill?

Dr. RUIZ. Yes, absolutely.

Thank you, Mr. Chairman and Ms. Ranking Member, for holding this hearing and including my bill, the Veterans Survivors Claims Processing Automation Act.

This simple, commonsense legislation will provide VA the statutory authority to expedite payment of certain survivor benefits to eligible family members upon the death of a veteran.

When a beloved family member passes away, it is time for family, for reflection and for grieving survivors to have the time and privacy to mourn however they choose, it is not a time for paperwork or bureaucracy. Mourning family members have enough to deal with upon the death of cherished veterans and we should no longer make navigating the VA bureaucracy part of that coping process. The law should not force veterans' loved ones to take time away from their family, file a formal claim, and wait months on end anxiously to access needed survivor benefits the veteran has already earned.

My bill would authorize the VA to initiate and pay survivor benefits without requiring a formal claim as long as sufficient evidence exists on record to process survivor benefits. This additional authority will allow the VA to proactively disburse survivor benefits if they have the information they need without forcing bereaved families to file a formal claim and wait for the VA claims process to unfold.

Eligible benefits include funeral and burial expenses, survivor pension paid to low-income surviving spouses or unmarried children, and dependency benefits for survivors of veterans who died from service-connected ailments.

When a veteran dies, survivors often rely on these benefits to stay afloat during an already difficult time. This legislation will give survivors their benefits quicker and reduce the risk of financial harm to grieving family. This bill is a simple, practical solution that will make a difference for veterans' families, which is why it has the support of veterans in my district and VSOs represented here today.

The VA has explicitly requested this authority in their fiscal year 2016 budget request and concluded that it would not increase mandatory costs.

I look forward to working with veterans, VSOs and the VA to advance this legislation and engage on recommendations that all of you may have. And I urge my fellow subcommittee members to stand up for veteran families and cosponsor this cost-neutral bill, advancing it to the floor, and show veterans' survivors the support that they really have.

Thank you. I yield back my time.

Dr. ABRAHAM. Dr. Ruiz, thank you.

Mr. Bilirakis, would you like to discuss your bill?

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it. I want to thank you and the ranking member, and members of the Disability Assistance and Memorial Affairs Committee, and thank you for tendering this great bill. Thank you for holding this very important hearing and for the opportunity to discuss my bill, H.R. 303, the Retired Pay Restoration Act.

Prior to 2004, existing laws and regulations dictated that a military retiree could not receive both payments from the DoD and the VA. Through the enactment of the Concurrent Retirement and Disability Payments Programs authorized within fiscal year 2004, the NDAA, those who are 100-percent disabled were able to receive both earned benefits for the first time ever. And I will add that my father worked on this bill for many, many years. He was vice chairman of the Veterans Affairs Committee.

Since then, the law has expanded the eligibility, allowing more retirees to receive both benefits, both payments, like those with the 20 or more years of service and a 50-percent or higher disability rating through the VA. The program established a system which gradually phased in these payments through 2014, which is when these retirees would be receiving both payments in full.

While our efforts have made great strides towards resolving this issue, much more needs to be done. Statistics reveal that there are still nearly 550,000 military retirees who may be eligible to receive both military retire pay and a VA disability compensation, but are unable to do so under the current guidelines of this program.

In short, this means that there are 550,000 veterans, Mr. Chairman, who are currently being denied the benefits they are entitled. Given their unwavering sacrifice to this great nation, I firmly believe we must provide the benefits they have earned. This is unacceptable and this is why I continue to advocate for the Retired Pay Restoration Act, which, again, my father sponsored during his time

in Congress and worked on so many years and was successful, but we have got to do more now. We have to include everyone.

H.R. 303 would serve to ensure that our nation's veterans are not negatively affected by having their military retirement pay deducted by the amount of their disability, their VA disability compensation. Many have rightly argued that this represents an injustice for veterans having one earned benefit pay for the other, I think it is very unfair.

Every Congress I am encouraged by the immense bipartisan support for my bill, the Retired Pay Restoration Act. Last Congress, H.R. 303 received a total of 107 bipartisan cosponsors. This is a clear testament that both sides of the aisle recognize that this is an issue that needs to be rectified. We have the support from the veterans and the organizations that work closely with them.

I greatly appreciate the support from our witnesses today, especially from the VSOs that came to testify before this committee. It is clear that there is a need to do more and what we need as a nation to do in repaying the brave men and women for their sacrifice.

Military retirement pay and service-connected disability compensation are two completely different benefits, one does not diminish the merits of the other. It is our responsibility to give our veterans what has been earned through service to God and country. The question now is, what are we going to do about it? H.R. 303 is the clear answer.

I urge all my colleagues to show your support for our nation's heroes by cosponsoring and supporting this bill. Let's get this done for our veterans, our true heroes.

And I yield back, Mr. Chairman. Thanks for actually including this in the hearing today.

Dr. ABRAHAM. Thank you, Mr. Bilirakis.

Mr. BILIRAKIS. It is very important, one of my top priorities. Thank you.

Dr. ABRAHAM. Mr. Walz, would you like to discuss your bill?

Mr. WALZ. Well, thank you, Mr. Chairman. And to you and the ranking member, thank you for holding this hearing and bringing up important legislation, and also thank you for the role-modeling you do of working together to further the cause of our veterans in a bipartisan manner, it means a lot.

I am going to speak on the Honor Americas Guard and Reserve Retirees Act. For some of you in here this is like the movie Groundhog's Day, it is over and over and over. I thank those members in here, many of you have voted for this bill on numerous occasions.

A unique thing has happened since 2010, the House has voted in favor of this with no opposition every single time. We have included it in the NDAA and, unfortunately, it dies in the Senate. We have done everything we can to work on this. We have seen this happen before with the Clay Hunt Suicide Act where one senator can derail it. And so I have appealed to their sense of duty, I have appealed to their sense of honor and now I may turn to shaming them if they don't do this one this time, because this is very frustrating.

For the new members, what this bill does is it takes our Guard and Reserve forces, those women and men who have served honorably, flying helicopters, shooting artillery, infantry soldiers, service

and support. In many cases, they are the trainers. These are the senior NCOs who spent 20 years as E-6, E-7, trained troops and deployed in support of floods, in support of tornados, in hurricanes. They have done their state service and in many cases they have done federal service in less than 179 days and not in Title 10.

I have been with many of them when we did three-month-long stints north of the Arctic Circle in Norway, training military winter operations. So they have done that.

These are the folks that are held to the exact same standards on Army physical fitness, on weapons qualification, on schooling. They do their 20 years, they retire, and you know what we do? We give them benefits that they have earned. We give them medical benefits, we give them educational benefits, we do all of those things. The one thing we do not do is we do not allow them to call themselves veterans.

This piece of legislation does not add one financial benefit, it does not change what they get, what it changes is their ability to call themselves a veteran, because these folks now technically have to refer to themselves as military retirees. Technically, they cannot use the medallion you heard the chairman talk about putting on there.

And for those who say, well, what is the big deal? The big deal is this is about honor. We work hard to say we respect your service. These are folks that simply want to have the ability to put a veterans' license plate on their car, maybe wear a hat that says Army veteran, something, and understand that they gave that service and the recognition is for them. They don't want to have to mince and talk about it and say, well, yeah, I did 20 years and, yeah, I was the First Sergeant of the Guard Unit and, yeah, most of these 7s I trained went to Iraq and fought nobly and all of that, and we don't do it.

The push back, if you look, and I want to thank all the veterans service organizations who have supported this, the only opposition comes from the VA, and the VA's point is that we are redefining veteran. I would say to them is we are clarifying it because of your misinterpretation of what that term meant.

It has been looked at from every angle, it has been hashed over by CBO. Everyone agrees it is not going to add a cost, it rectifies a wrong, it is supported by our veterans' groups.

And this is a group of folks, we understand very clearly, when someone is wearing a combat infantry badge or something, there is a status given amongst veterans to this. If someone does 20 years or they have reached a certain rank, there is a sense of status that goes along with this. We are putting 280,000 of your constituents in the situation of served this nation for 20 years or more, did everything right, did everything that was asked of them, met all the standards, and now we can't call them veterans.

I have to tell you, when I first introduced this, I thought this was a slam dunk, we would rectify it and fix it, and it has gone to die an ugly, dishonorable death of no one standing up over there and putting their name on it of who is holding it up and who is stopping it. If you have got a problem with it, and I know it is not going to come from here, I am preaching from the choir, but I want us to sing loudly together.

Let's just finish this one. It doesn't cost us anything, it does the right thing. It will make a lot of people appreciate it. And I got to tell you, at a time our veterans need to know that we hold faith with them, they need to know that the country holds faith with them and there are certain things we can do. And there is a whole list of really good things here and I think we should do them all, but let's hammer this one through.

And I would encourage all of you, go back home, if you can, and talk a little bit, you will find these folks on the streets. And the biggest thing about this is, the biggest surprise is, most people had no idea this was the rule. And I have a whole bunch of people who accidentally didn't know and now they feel like they did something wrong because they have been calling themselves veterans for this time. That is just wrong. This can be fixed, it is easy. It is in the NDAA.

But, Chairman, I thank you and the ranking member. Send a strong message to bring back again and, against all odds, maybe they will hear us.

So with that, I thank you for this, encourage your support, and I yield back.

Dr. ABRAHAM. Thank you, Mr. Walz, well said.

It is an honor today to be joined by our colleague Mr. Johnson of Ohio at the witness table and I appreciate you being here, Mr. Johnson. You used to serve as the chairman of the Subcommittee on Oversight and Investigation, so I am sure it is a little bit different from the view down there.

Mr. Johnson, you are now recognized, sir.

STATEMENT OF THE HON. BILL JOHNSON

Mr. JOHNSON. Thank you, Chairman Abraham and Ranking Member Titus and members of the subcommittee. I really appreciate the opportunity to testify before you today on H.R. 2605. That is important legislation that I introduced to reform the Department of Veterans Affairs fiduciary program.

As many of you know, as the chairman just mentioned, I served as the Oversight and Investigations Subcommittee chairman on the House Veterans Affairs Committee for the 112th Congress. An investigation into the VA's fiduciary program by my subcommittee at that time revealed shocking behavior on the part of the VA's hired fiduciaries and gross malfeasance on the part of the VA to address those issues.

Some fiduciaries entrusted to manage the finances of our nation's heroes who were unable to do so themselves were caught abusing this system by withholding funds, embezzling veterans' money, and other egregious actions.

Furthermore, I chaired an Oversight and Investigations Subcommittee hearing on February 9th, 2012 that exposed many of the VA's fiduciary program policies do not correspond with actual practices.

For instance, the VA claims to have a policy stating preference for family members and friends to serve as a veteran's fiduciary. However, the investigation into the fiduciary program revealed instances where this is not the case. In one instance, the VA arbi-

trarily removed a veteran's wife who had served as her husband's fiduciary for ten years and replaced her with a paid fiduciary.

There are also many honest and hardworking fiduciaries that experience difficulty performing their duties due to the bureaucratic nature of the VA's fiduciary program. We owe it to America's heroes to provide them with a fiduciary program that is more responsive to the needs of the veterans it is supposed to serve.

I also had the opportunity to participate in this subcommittee's follow-up hearing on the fiduciary program earlier this month. It was disheartening to hear that some of the same issues from 2012 are ongoing today.

Additionally, while the VA issued a proposed rule to modernize the fiduciary program in January, 2014, the VA has yet to issue the final rule.

For these reasons, I am proud to sponsor H.R. 2605, the Veterans Fiduciary Reform Act.

This important legislation initially introduced in 2012 was drafted based on problems uncovered from O&I's hearing and investigation, as well as valuable input from veterans' service organizations and individuals who have experienced difficulties with the program firsthand. It is designed to transform the VA's fiduciary program to better serve the needs of our most vulnerable veterans and their hardworking fiduciaries. And, most importantly, it will protect veterans in the program from falling victim to deceitful and criminal fiduciaries.

Specifically, the Veterans Fiduciary Reform Act would require a credit and criminal background check each time a fiduciary is appointed, and allow veterans to petition to have their fiduciary removed if problems arise. It would also decrease the potential maximum fee a fiduciary can receive to the lesser of three percent or \$35 per month, similar to Social Security's fiduciary program. This will help discourage those who enroll as VA fiduciaries with only a profit motive in mind.

Importantly, H.R. 2605 would enable veterans to appeal their incompetent status at any time. Additionally, it would allow veterans to name a preferred fiduciary such as a family member.

This legislation also addresses the requirement of fiduciaries to obtain a bond. While proper in some settings, it is inappropriate when it causes unnecessary hardship such as a mother caring for her veteran son. This legislation would require the VA to consider whether a bond is necessary and if it will adversely affect the fiduciary and the veterans he or she serves.

H.R. 2605 would also direct the VA's Under Secretaries for Health and Benefits to coordinate their efforts to ensure that fiduciaries caring for their loved ones are not overly burdened by redundant requirements.

Lastly, this bill aims to simplify annual reporting requirements. Currently, the VA does not have to review a fiduciary's annual accounting and, when it does, it places an onerous burden on those fiduciaries who are serving out of love, not for monetary gain. This bill will implement a straightforward annual accounting requirement and give VA the opportunity to audit fiduciaries whose accounting is suspect.

These significant changes would strengthen the VA's standard for administering the fiduciary program and increase protection for vulnerable veterans. Requiring background checks and lowering the fee a fiduciary can charge would also increase scrutiny of potential fiduciaries and help root out potential predators.

This legislation also adds a layer of protection for veterans with fiduciaries by incorporating the ability for veterans to petition to have their fiduciary removed and replaced.

I am proud that this legislation has passed the House of Representatives twice now, both in 2012 and in 2013 as part of larger legislation. Unfortunately, this important legislation has not been considered by the Senate and, therefore, the VA's fiduciary program is still in urgent need of reform.

Chairman Abraham, Ranking Member Titus, thank you again for the opportunity to speak on this important legislation and these issues. I am hopeful that this legislation will again be favorably considered by the Veterans' Affairs Committee and this time become law. Our veterans were willing to sacrifice everything to serve our nation and they deserve to receive the care, the benefits and the respect that they have earned.

And with that, I yield back. Thank you.

[THE PREPARED STATEMENT OF BILL JOHNSON APPEARS IN THE APPENDIX]

Dr. ABRAHAM. Thank you, Mr. Johnson. We appreciate it. Thank you for bringing forth this bill and speaking at today's subcommittee hearing.

We will forgo any questioning at this time and any question that anyone may have for our colleagues may be submitted for the record.

I now invite our second panel to the table. Mr. David McLenachen, the Acting Deputy Under Secretary for Disability Assistance of the Veterans Benefits Administration. He is accompanied by Mr. Matthew Sullivan, Deputy Under Secretary for Finance and Planning, and Chief Financial Officer for the National Cemetery Administration. And Mr. David Barrans, Assistant General Counsel of the Department of Veterans Affairs. We thank you all for being here.

Mr. McLenachen, you are now recognized for five minutes, sir.

STATEMENT OF DAVID R. McLENACHEN, ACTING DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE OF THE VETERANS BENEFITS ADMINISTRATION, ACCOMPANIED BY MATTHEW SULLIVAN, DEPUTY UNDER SECRETARY FOR FINANCE AND PLANNING AND CHIEF FINANCIAL OFFICER FOR THE NATIONAL CEMETERY ADMINISTRATION, AND DAVID BARRANS, ASSISTANT GENERAL COUNSEL OF THE DEPARTMENT OF VETERANS AFFAIRS

Mr. McLENACHEN. Chairman Abraham, Ranking Member Titus and members of the committee, thank you for the opportunity to present VA's views on several bills that are pending before the committee.

Joining me today from the Department of Veterans Affairs is Mr. Matthew Sullivan, Deputy Under Secretary for Finance and Plan-

ning for the National Cemetery Administration, and Mr. David Barrans, Assistant General Counsel.

Mr. Chairman, we recognize the need for a more streamlined appeal process and appreciate the opportunity to comment on H.R. 1302, the VA Appeals Backlog Relief Act. However, the Department does not support this bill because we believe the appeal timeliness should be improved through comprehensive reform of the appeal process rather than imposing a statutory deadline for one stage of that process.

We would like to work with the committee to consider legislative reforms that will actually streamline the process, such as our proposal as fiscal year 2016 budget to expand the Board of Veterans' Appeals authority to conduct an initial review of evidence submitted during an appeal without remanding to VBA.

Regarding H.R. 1338, the Dignified Interment of Our Veterans Act of 2015, while the intent behind requiring this study is positive, we are concerned that the study may be unnecessary or premature at this time. VA is more than willing to work with the committee to gather responsive information on unclaimed remains of veterans, but we feel we can accomplish this without legislation.

We are pleased to support H.R. 1380, which would extend eligibility for a medallion furnished by VA to signify a veteran's status regardless of the date of the veteran's death. However, we would like to work with the committee to address a few technical concerns about the language in the bill. In particular, to ensure the provision of medallions does not disrupt the historic landscape of our national cemeteries. For this reason, we suggest amending the bill to allow provision of medallions for those who served during or after the first World War.

Mr. Chairman, we acknowledge that members of the National Guard and Reserves have admirably served this country and in recent years have played a very important role in our nation's national defense. Nonetheless, we cannot support H.R. 1384, the Honor Americas Guard Reserve Retirees Act, because it would represent a departure from active service as the foundation for veterans status. It would also conflict with the definition of veteran in 38 U.S.C. Section 101 and cause confusion about entitlement to VA benefits.

We strongly support the provisions of H.R. 2214, the Disabled Veterans Access to Medical Exams Improvement Act, your bill, Mr. Chairman, that would extend VA's authority to contract for compensation and pension examinations and authorize physicians to conduct these examinations in any state.

These provisions are essential to VA's goal of ensuring the timely adjudication of disability compensation claims. However, we oppose provisions in the bill that would limit our contract examination authority to 15 regional offices and prescribe the criteria for selecting those regional offices.

To ensure the timeliness of claim processing now and in the future, VA requires the authority to conduct contract examinations at as many regional offices as it considers appropriate.

We cannot support H.R. 2605, the Veterans Fiduciary Reform Act of 2015, because it would, among other things, create disincentives for recruiting paid and volunteer fiduciaries and generally

add complexity that VA cannot address without additional resources.

For example, the bill would limit fiduciary fees to three percent of the monthly benefits paid to a fiduciary on behalf of a beneficiary or \$35, whichever is lower. This would make it difficult for VA to find a fiduciary in cases where there is no qualified family member, friend or care provider who is willing to serve without a fee. Also, the bill's accounting and auditing requirements would add burden of fiduciaries, 90 percent of whom are volunteers, and would not significantly improve VA's oversight.

As outlined in detail in my written statement, we are concerned that several other provisions in the bill would be inconsistent with our efforts to transform this important program.

Mr. Chairman, at this time the Department does not have views on two bills that are subject of today's hearing, the Veterans National Remembrance Act and the Veterans Survivors Claims Processing Automation Act. We will continue to coordinate views on these matters and upon completion submit them to the committee.

This concludes my statement, Mr. Chairman. We are happy to entertain any questions that you or the members may have.

[THE PREPARED STATEMENT OF DAVID R. MCLENACHEN APPEARS IN THE APPENDIX]

Dr. ABRAHAM. All right. Thank you for your remarks. I will begin the questioning, Mr. McLenachen.

Please explain why the VA is advocating for the authority to use this contract examination in more than 15 regional offices.

Mr. MCLENACHEN. Without a doubt, as you mentioned in your opening statement, this is a very, very important issue for the department. If we are going to timely decide disability compensation claims, the ability to get an exam quickly, a good quality exam quickly, is critical to making that decision within 125 days. If we do not have the available exam resources through the contract option, it makes it very difficult to accomplish that important goal.

Dr. ABRAHAM. Okay, thank you. And of course you are the witness. Regarding H.R. 1380, please explain why the VA supports expanding the eligibility for a medallion that is furnished by the VA in order to signify the person's status as a veteran, but only for veterans who served on active duty on or after April 6th, 1917.

Mr. MCLENACHEN. Mr. Chairman, that is Mr. Sullivan's area of expertise, I will defer to him on that.

Mr. SULLIVAN. Mr. Chairman, we strongly support the goal to expand eligibility for the medallion to veterans. Our request is to amend the bill language to provide this expansion of eligibility for the medallion for those veterans who had a qualifying period of service on or after April 6th, 1917, which is the date that the U.S. interred World War I. We make this request because there is significant impact that this bill could have on the landscape of our national cemeteries, especially our historic national cemeteries, and our ability to maintain the historic headstones and markers, and the ability for VA to comply with our National Historic Preservation laws and regulations.

There are 115 national cemeteries out of our 132 that are currently on Federal Historic Register and those could be significantly

impacted by the expansion of this eligibility to all veterans, including those that had a period of service before the April 6th, 1917.

Secondly, we think that by setting that eligibility date with the period of qualifying service for April 6th, 1917, our data shows that we would still be able to cover the majority of those otherwise eligible veterans that have been denied this benefit. Fully 91 percent, which is a vast majority of those applicants that have been denied and would have otherwise been eligible because they died before 19—I am sorry, before 1990 would now become eligible because their period of qualifying service would have taken place on or after November 1st, 1917.

Dr. ABRAHAM. Mr. McLenachen, you state that a significant factor contributing to the delay in certifying appeals to the Board of Veterans Appeals is that the claimants may identify additional supportive evidence after filing a substantive appeal and before the appeal is certified to the VBA, in what percentage of the cases does that occur?

Mr. MCLENACHEN. I don't have that precise information with me, but I would be happy to provide that to you for the record, sir.

Dr. ABRAHAM. Okay, that will be fair enough. And I will of course stay with you.

In your testimony again, Mr. McLenachen, you raised concerns that the study mandated by H.R. 1338 may be premature. Isn't it appropriate for the VA to study the changes NCA has implemented since the enactment of the Dignified Burial and Other Veterans Benefits Improvement Act of 2012 in order to better evaluate whether additional modifications may be required?

Mr. MCLENACHEN. Yes, that is true, but I will again defer to Mr. Sullivan, Mr. Chairman.

Mr. SULLIVAN. Mr. Chairman, again, we do strongly support that goal of ensuring that the unclaimed veterans' remains receive dignified burials and memorialization. And we appreciate the intent of the bill to study the scope of issues related to that matter. However, we believe that our time and resources right now are better spent on implementing those existing authorities that we have, especially those new authorities that you mentioned that we received through that Dignified Burial and Other Veterans Benefits Improvement Act of 2012.

We have taken significant actions to implement those authorities and to facilitate the timely interment of unclaimed veterans' remains. I have just implemented recently two new programs, one to provide reimbursement for the cost of casket and urn to those third parties who had to expend those costs in the interment of unclaimed veterans' remains, as well as to provide a cost—I am sorry, provide reimbursement for the cost of transportation and other funeral expenses for the interment of unclaimed veterans' remains, again, better interred in our national cemeteries.

We think that with some time, especially to capture some data to look at the effectiveness of these programs, assess the efficacy of those programs in facilitating the interment of unclaimed veterans' remains, we may be able to identify the sources of delay, as well as collect more information data that could be used to inform such efforts in the future.

Dr. ABRAHAM. Okay, thank you.

Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman.

I would just ask Mr. Sullivan some questions about national cemeteries and the 11 states that don't currently have them, most of them in the West. I wonder if under the current policy the way it is defined of how you locate cemeteries if you anticipate that there will be a national VA cemetery in any of those 11 states that don't have one now? Now, I am not talking about a rural initiative, I am talking about a regular national veterans' cemetery.

Mr. SULLIVAN. Yes, Congresswoman. We have a long-held, established policy on establishment of new national cemeteries. It is a database policy based upon the distribution of the veteran population across the United States. It is our belief that through this strategy to serve the greatest densities of veteran population that are currently unserved by locating national cemeteries in those areas allows us to provide broad access and increased access for veterans to a burial option in a national or state veterans' cemetery.

Ms. TITUS. So do you think there will be a national cemetery in any of those 11 states ever because of the way the formula is construed that has been so long held?

Mr. SULLIVAN. Congresswoman, I believe that right now our plan does not allow us—our plan does not have any national cemeteries in those 11 states, but I can't state whether in the future we may adjust those policies to place a national cemetery in one of those 11 states.

As you are aware, because we are focusing on that strategy to provide the greatest population densities of unserved veterans with a burial option, we are targeting, you know, four new national cemetery establishments within the next three years. Those are in southern Colorado, western New York, Omaha, Nebraska, and Cape Canaveral, Florida.

We do also have plans again to implement our rule initiative, which would put a national cemetery presence in those states, eight of those states that you mentioned. Those states that do not currently have a national cemetery and do not have—are not already served 100 percent by an existing state veterans' cemetery or a neighboring national cemetery. So we do have some plans to try to address the rural populations in those eight states and we believe that as we continue to implement that plan we will be able to continue to increase that access for rural veterans.

Ms. TITUS. Well, those states that you mentioned that are getting another federal cemetery already have one and the 11 states in the west don't have any. Are there any state cemeteries that have achieved national shrine status?

Mr. SULLIVAN. Of the 11 state cemeteries that we visited to conduct our compliance review program audits, none have achieved the national shrine status yet. But again, of the 11 that we did visit, we did have five that were completely—I am sorry, were compliant with our operational standards and measures that did not require corrective action plans. And of the six that did not fully comply with our standards and measures, they were provisionally compliant with corrective action plans in place. And since our visits, 83 percent of those action plans have been completed, bringing

most of those state veterans' cemeteries into compliance with the same operational standards and measures, those national shrine standards that we hold for our national cemeteries.

Ms. TITUS. Are you all doing any kind of survey of veterans to see if they would prefer to be buried in a federal national cemetery as opposed to a state cemetery?

Mr. SULLIVAN. Yes, Congresswoman. In 2014, we conducted our first survey of satisfaction with state and tribal veterans' cemeteries. We have conducted that for 13 years for our national cemeteries, but 2014 was our first year for the state and tribal veterans' cemeteries. And the data suggests that the state and tribal veterans' cemeteries are comparable to our national cemeteries. Fully 97 percent of respondents to the state and tribal veterans' cemeteries survey responded that they were satisfied with the overall quality of service, the overall satisfaction rate with our state and tribal veterans' cemeteries. That closely mirrors the 98-percent satisfaction rate that we have with our national cemeteries.

Ms. TITUS. Don't you think those results are skewed? When you ask people if they are satisfied with a state cemetery, that is a whole lot different from asking veterans out there who aren't using the state cemetery would they go a national cemetery if one existed. That is like asking somebody eating ice cream, do you like ice cream.

Mr. SULLIVAN. Yes, Congresswoman. In an effort to try to get at what you are asking about, we did ask those next of kin that had a loved one buried in a state or tribal veterans' cemetery within the last year and who had also visited a national cemetery some questions to better understand the experience of those that are experiencing the state and tribal veterans' cemeteries.

For those respondents, they again overwhelmingly responded that the experience at the state and tribal veterans' cemeteries was comparable to the national cemetery. Eighty six percent when asked, based upon their visits, did the appearance of the state or tribal veterans' cemetery, was that comparable to a national cemetery, they said agreed or strongly agreed that, yes, it did. Seventy nine percent agreed or strongly agreed that the state or tribal veterans' cemeteries, the quality of service was comparable to that of a national cemetery. Again, 79 percent also agreed or strongly agreed that the honor of being interred at a state or tribal veterans' cemetery was comparable to that of a national cemetery.

And when asked, if they had the choice, would they have rather interred their loved one in a national cemetery versus that state or tribal cemetery, only 14 percent agreed or strongly agreed that they would have.

So we believe that the state and tribal veterans' cemeteries are providing the high quality of care that we expect at our national cemeteries.

Ms. TITUS. Thank you, Mr. Chairman.

Dr. ABRAHAM. Thank you.

Mr. Bost.

Mr. BOST. Thank you, Mr. Chairman, and I have just got a few questions.

Mr. McLenachen, is that correct? The 1384, the question I have, you said that there are many places where the change in that vet-

eran's description would mess with other law; is that correct, is that basically what you said?

Mr. MCLENACHEN. Yes, that the core feature of the states that govern veterans' benefits and all the services that the Department of Veterans Affairs provides, as well as their benefits programs, is based upon that core concept of veteran status and it has always been tied to active duty military service, with the exception of National Guard or Reservists who are disabled or die while they are doing their active duty for training or inactive duty for training.

Mr. BOST. And forgive my ignorance here. As a Marine veteran, I had always thought that if they served so many months in an active status they do get the veteran?

Mr. MCLENACHEN. Yes. So this bill concerns individuals who have had non-regular service for a period of 20 years until they reach the point of retirement from Reserve or National Guard service. So we are talking individuals who have had no active duty service and have not been disabled while they were doing their training in the Reserves or National Guard, they have only had non-regular service.

Mr. BOST. Okay, all right. And then the other question is in regards to the medallions. The date—and I am sure that, Mr. Sullivan, you are going to want to answer this—let me ask specifically, because it has to do with my district. We have a veterans' cemetery that was established by Abraham Lincoln in Illinois. It obviously falls under that situation where it is a historical site. What exactly are your concerns with that? Is it for the tombstone, the defacing of the tombstone? Or kind of explain to me, if you could.

Mr. SULLIVAN. Yes, Congressman. We are concerned with affixing a bronze medallion, based upon the size, it can be a small, medium or large one, affixing a bronze medallion to headstones and markers that in many cases could be over a hundred years old that are in these cemeteries, many of them which are Civil War era cemeteries. So we do think that there could be some issues with complying with laws and regulations that govern that, as well as doing damage to these historic headstones and markers.

Mr. BOST. So that is the reason for your suggestion of the date of the first day of the first World War; is that correct?

Mr. SULLIVAN. Yes, sir. If we did set the eligibility date on or after April 6th, 1917, in terms of having a period of qualifying service at that time, that we would be able to avoid most of those concerns because they would most of the time be headstones or markers or in cemeteries that are more recently established or placed into the ground.

Mr. BOST. The first national cemetery was established in what year, do you know?

Mr. SULLIVAN. I am sorry, I would have to provide that response for the record.

Mr. BOST. Okay, if you could just find it at some point, because I am trying to figure out do we have an idea of a total how many cemeteries this would affect that do not receive them, you know, I mean, how many are on the historical register.

Mr. SULLIVAN. Yes. We do have 115 of the 132 current national cemeteries that are on the National Register of Historic Places.

Mr. BOST. Okay.

Mr. SULLIVAN. And we also have the additional 33 soldier slots burial sites that would most likely be under those historic preservation requirements.

Mr. BOST. Repeat that one more time, I am sorry.

Mr. SULLIVAN. The 33 burial lots, the soldier slots, Confederate monument sites, again mostly from that Civil War era and before then, that would be again subject to these historic preservation laws and regulations that would be at risk we think with this medallion benefit.

Mr. BOST. Okay, thank you.

I yield back.

Dr. ABRAHAM. Thank you, Mr. Bost.

All right. Thank you, gentlemen, you are excused.

And I now recognize our final panel of witnesses today. Mr. Zachary Hearn, the Deputy Director for Claims Veterans Affairs and Rehabilitation Division at the American Legion; Mr. Paul Varela, the Assistant National Legislative Director for the Disabled American Veterans; Mr. Aleks Morosky, the Deputy Director of the National Legislative Service at the Veterans of Foreign Wars of the United States; Ms. Diane Zumatto, the National Legislative Director of AMVETS; and Mr. Christopher Neiweem, the Legislative Associate at the Iraq and Afghanistan Veterans of America.

I thank you all for being here. We thank you for your hard work and certainly being advocates for veterans.

Mr. Hearn, we will start with you. Five minutes, sir.

STATEMENTS OF ZACHARY HEARN, DEPUTY DIRECTOR FOR CLAIMS VETERANS AFFAIRS AND REHABILITATION DIVISION, THE AMERICAN LEGION; PAUL R. VARELA, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; ALEKS MOROSKY, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS; DIANE ZUMATTO, NATIONAL LEGISLATIVE DIRECTOR, AMVETS; CHRISTOPHER NEIWEEM, LEGISLATIVE ASSOCIATE, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

STATEMENT OF ZACHARY HEARN

Mr. HEARN. Good afternoon, Chairman Abraham, Ranking Member Titus and members of the committee.

On behalf of National Commander Mike Helm and the over two million members comprising the American Legion, I am pleased to offer remarks regarding pending legislation.

The slate of bills offered covers a wide range of topics, proof that the impact of the Department of Veterans Affairs and its benefits are due to the wide-ranging needs of the veterans community, many of whom have physical and emotional scars related to their service in the armed forces.

H.R. 303, the Retired Pay Restoration Act, entitles military retirees with a disability rating less than 50 percent to receive their VA disability payment concurrent with their military retirement. The unfortunate truth is that the current structure establishes two classes of veterans, those that receive a military retirement and those that do not. If a veteran retires from the military and has

less than a 50-percent disability rating, the veteran cannot receive the disability payment concurrent with military retirement.

The concept of VA disability is to compensate the veteran for loss of wages due to a disability incurred in service. If a veteran's disability is offset in the military retirement and that doesn't yield the same result, then it is clearly not beneficial to the veteran, nor does it properly compensate for the condition.

The American Legion fully supports veterans receiving their full disability compensation associated with their dedicated service and support H.R. 303.

VA's battle with its backlog of claims is well known and VA should be commended in its efforts to reduce the backlog. However, in its attempt to eliminate its backlog, it appears that it has traded one difficulty for another.

On June 7, 2010, VA's Monday morning workload report indicated over 192,000 appealed claims were awaiting adjudication. Five years later, that figure has exploded to exceed 305,000 claims, an over 58-percent increase.

Although H.R. 1302, does not eliminate the backlog of appeals, it does expedite the manner that the claims are to be certified to the Board. Over the past year, the VBA has kept in close contact with us regarding the impending onslaught of cases to be reviewed at the Board. As a result, the American Legion recently authorized the hiring of additional staff to support the incoming cases requiring American Legion representation.

Through passage of H.R. 1302, cases will no longer languish at the regional offices awaiting certification for well over a year, and we support passage of H.R. 1302.

Beginning with the scandal in Phoenix last summer, the American Legion began conducting outreach events throughout the nation to assist veterans attempting to gain access to their earned benefits. During the events, we also meet with VA Medical Center leaders to discuss concerns surrounding their facility.

We have visited rural locations such as Clarksburg, West Virginia and Harlingen, Texas, and urban locations such as Los Angeles and Philadelphia. Regardless of location, whether urban or rural, a common complaint is that VA is unable to recruit medical professionals. The American Legion insists that VA's inability to recruit medical professionals should not hamper a veteran's adjudication of a benefit.

H.R. 2214 provides VA the ability to enter into contracts with private physicians to conduct medical disability examinations. Through passage of this bill, Congress will be able to provide the tools to VA to conduct the compensation and pension examinations in a timely fashion, and have the veteran gain access to the benefits earned through their dedicated service.

Again, on behalf of National Commander Mike Helm and the over two million members of the nation's largest veterans service organization, we thank you for the invitation to offer our testimony and I will be happy to answer questions posed by the committee.

Thank you, Chairman.

[THE PREPARED STATEMENT OF ZACHARY HEARN APPEARS IN THE APPENDIX]

Dr. ABRAHAM. Thank you, Mr. Hearn.

Mr. Varela, five minutes.

STATEMENT OF PAUL R. VARELA

Mr. VARELA. Good afternoon, Dr. Abraham, Ranking Member Titus and members of the subcommittee. DAV appreciates the opportunity to discuss the merits of the bills before us today.

I will begin with two bills that are fully supported by DAV, H.R. 303 and H.R. 2691.

H.R. 303 would repeal the unfair offset currently imposed upon longevity military retirees when they are rated less than 50 percent for service-connected disabilities. This legislation would bring parity with their longevity retiree counterparts that are authorized to receive their full military retirement and VA disability compensation when they are rated greater than 50 percent for service-connected disabilities.

H.R. 2691 would improve and streamline claims processing for survivors. The bill would allow a claim to be registered with the VA when a survivor notifies the VA of a veteran's passing. In instances where the record contains sufficient information to award survivor's benefits, VA would be authorized to make such an award.

We are pleased to see the introduction of these two bills in the 114th Congress and look forward to working together to see these legislative initiatives enacted into law.

For H.R. 2214, DAV supports the provisions of the bill expanding VA's authority to enter into contracts with private physicians to conduct medical C&P examinations from 12 VA regional offices to 15, and extends the program until December 31st, 2017. We also urge the subcommittee to consider the merits of removing the cap placed on the number of VA ROs that can utilize contract examinations and make it available to all VO ROs as a means to improve claims processing.

For the following bills, H.R. 1338, 1380, 2706, DAV has no resolution from our membership pertaining to the issues identified within these bills, but would not oppose passage of the legislation.

For H.R. 1384, 2001, 2605, DAV has no resolution pertaining to the issues outlined within these bills and takes no position.

Finally, H.R. 1302. DAV opposes H.R. 1302 in its current form. The bill would require to certify appeals no later than one year after the date VA receives the VA Form 9. The bill seeks to reduce the amount of time an appellant must wait for VBA to certify an appeal to the Board of Veterans Appeals, also known as the Board.

We recognize the sponsor's intention to shorten this lengthy appeals process. However, the bill could create unintended adverse consequences for appellants. Requiring VBA to meet a hardened time limit raises several concerns.

First, the purpose of VBA's certification process is to ensure that all administrative and adjudicative procedures have been completed locally before an appeal is forwarded to the Board. VBA performs this record review to ensure that all issues have been properly addressed and that outstanding appeals for interrelated issues have not been overlooked. The purpose is to avoid unnecessary Board remands.

If VBA were forced to meet a one-year arbitrary certification deadline, errors and oversights would likely occur even more frequently and ultimately bring harm to appellants. VBA's staff may be compelled to simply certify these appeals without performing a thorough record review to meet this mandated deadline. This could result in increased Board remands, further delaying the appeals process.

Second, if an appeal requested a hearing before the Board and conjunction with an appeal and made that selection on the VA Form 9, the bill as written suggests that VBA must certify the appeal to the Board with or without conducting the hearing. As it stands today, an appeal cannot be certified if it carries an outstanding hearing request.

On January 2nd, 2015, DAV testified before this subcommittee regarding the appeals process and provided Congress with several recommendations to improve this process that were to strengthen the decision review officer program, create a new fully developed appeals pilot program, improve the rating board decision notification process. Although we appreciate the sponsor's intentions, for the reasons outlined above, DAV must oppose the bill in its current form.

Many of the issues plaguing VBA are resource related. Quite simply, VBA's personnel-to-workload ratio has been mismatched for quite some time in its attempt to do more with less. Consider that in the fiscal year 2016, VSO, independent budget recommendations, DAV and our VSO counterparts called for an additional 1,700 additional FTE for VBA, 850 as full-time employees, and 850 as two-year temporary employees. The Administration only requested 770 new FTE. VBA needs the people and the resources to keep up with the work. Dr. Abraham, Ranking Member Titus and members of the Subcommittee, we look forward to working together to identify practical solutions to better VBA's appeals process. This concludes my testimony and I'm prepared to answer any questions you may have. Thank you.

[The prepared statement of Paul R. Varela appears in the Appendix]

Dr. ABRAHAM. Thank you, Mr. Varela. Mr. Morosky, you have five minutes for the Veterans of Foreign Wars.

STATEMENT OF ALEKS MOROSKY

Mr. MOROSKY. Chairman Abraham, Ranking Member Titus and Members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States and our auxiliaries, I'd like to thank you for the opportunity to offer our thoughts on today's pending legislation.

The VFW strongly supports the Retired Pay Restoration Act which would allow all military retirees to receive VA service-connected disability compensation without forfeiting any portion of their retirement pay commonly known as concurrent receipt. Military retirees with service-connected disabilities do not enjoy the same earning potential as non-disabled retirees. Therefore, the VFW believes it is critical that all disabled retirees are able to collect both benefits without offset in order to grant them true parity with their non-disabled counterparts.

The VA Appeals Backlog Relief Act would require VA regional offices to certify all appeal forms to the Board of Veterans Appeals no later than one year after receiving them. In the past, we've seen how placing unsteady time constraints on VA's processes can lead to employees and managers making bad decisions in an effort to meet the timeline.

While the VFW agrees with the intent of this legislation, we would recommend this effort be studied as a pilot before full implementation across the department.

The VFW supports the Dignified Interment of Our Veterans Act of 2015, which calls for a study of NCA's interment process of unclaimed remains to include the estimated number of unclaimed remains that VA processes, and the overall effectiveness of the procedures used to communicate with funeral directors and medical examiners.

The VFW believes that every effort must be made to ensure that all veterans receive dignified burials, including those with no next of kin. The VFW supports H.R. 1380. Currently, VA may furnish a medallion for placement on a private marker for veterans who died on or after November 1, 1990. This bill rightly expands this honor to all veterans, regardless of the date of their death.

The VFW strongly supports the Honor America's Guard and Reserve Retirees Act. Many who serve in the Guard and Reserve are in positions that support the deployments of their active duty comrades, making sure the unit is fully prepared when called upon. Although many of these men and women serve at least 20 years and retire from the Reserve component, they are not considered veterans according to the letter of the law. This bill will finally grant these Guard and Reserve retirees the recognition they deserve.

The VFW supports the Disabled Veterans Access to Medical Examinations Improvement Act which would extend the authority of VA to contract with non-VA physicians to perform disability examinations set to expire at the end of the year. By extending the authority through 2017, this bill would continue to provide VA with the necessary tools to maximize veterans' access to medical care by freeing many VA physicians from the added responsibility of conducting disability evaluations.

The VFW supports the intent of the Veterans Fiduciary Reform Act of 2015, protecting veterans from fraudulent fiduciaries. Providing them an appeal process to have a new fiduciary appointed and ensuring that veterans are capable of managing their own finances is critical.

However, it is unclear to the VFW whether or not due process would be violated by the provision that would help the Secretary to appoint a fiduciary prior to the determination of incompetency. This would be countered due process provision in 38 CFR Paragraph 3.353(d) and (e) which provides for the presumption of competency prior to the court order or competency hearing. We look forward to working with Congressmen Johnson to ensure the intent of this bill is realized and that veterans' due process is fully protected.

The Veterans National Remembrance Act, this legislation would place states that do not currently have a national cemetery at the top of the priority list for future cemetery development.

The VFW supports NCA's analytical system of identifying locations that have a need for veteran burial options which currently sets thresholds at 80,000 veterans within a 75 mile radius. We feel this allows NCA to accurately align their resources with demand. The VFW would support this bill if it were amended to place all locations that qualify or will qualify for a national cemetery on a priority list that grants preference to states that currently do not have a national cemetery when all other factors are equal.

The VFW looks forward to working with Congresswoman Titus to find a compromise that will bring national cemeteries to states that do not have one, while ensuring that all veterans' burial needs are met.

And finally, the VFW supports the Veterans Survivors Claim Processing Automation Act, which would allow VA to pay benefits to veterans' survivors who have not filed formal claims so long as there is sufficient evidence in the veterans' record to establish eligibility.

The VFW believes that in no instance should a survivor be made to fill out unnecessary paperwork or resubmit evidence when adequate documentation is already on file. We also believe, however, that the survivor should have the opportunity when providing notification of the veteran's death to submit necessary documents that may not be contained in the records such as the death certificate without the need to file a formal claim.

Chairman Abraham, Ranking Member Titus, this concludes my statement and I'm happy to answer any questions you or the other members of Committee may have. Thank you.

[The prepared statement of Mr. Aleks Morosky appears in the Appendix]

Dr. ABRAHAM. Thank you Mr. Morosky. I will apologize. I have got to go (indiscernible).

Mr. BOST. Ms. Zumatto, you are recognized for five minutes.

STATEMENT OF DIANE ZUMATTO

Ms. ZUMATTO. Dr. Abraham and Representative Titus, I am just going to jump right in. The Retired Pay Restoration Act, AMVETS fully supports this legislation, both retirement pay and disability compensation are earned. They are two separate categories, and we believe that both should be received. This has been a longstanding goal of AMVETS, and also the Military Coalition.

VA Appeals Backlog Relief Act, AMVETS does not support this legislation.

The Dignified Interment of Our Veterans Act of 2015, AMVETS does support the intent of this bill, however, we do have several reservations which I outlined in my written testimony. So I won't repeat those now.

H.R. 1380, AMVETS is very supportive of this legislation, which eliminates the current date of death requirement with one exception, and that is for historic cemeteries headstones. I am a trained historic preservationist, and so I am pretty well aware of not only the laws that you have to comply with, but also the intent of preserving a historic site the way it is and not adding new things to it. So we totally agree with NCA on that point.

The Honor Americas Guard and Reserve Retirees Act, this is like the Representative Wall says, we have been working on this for years. You know, these people wore the same uniform that those of us on active duty did. They did the same jobs that we did, and I always use the example of my own experience. I did one three-year tour in the Army, and I am considered a veteran. But I know people who spent 25, 30, 40 serving in National Guard and they do not have the right to call themselves veterans. It just doesn't make sense. So we believe that it is the right thing to do and we would really like to see this come to fruition.

The Veterans Second Amendment Protection Act, AMVETS does support this legislation. The Disabled Veterans Access to Medical Exams Improvements, we also support this legislation. We think there are several benefits, which I did include in my written testimony. We have not taken a position on the H.R. 2605, although it is interesting that just a day or so ago somebody was giving me an example of a veteran who was essentially a prisoner of the person who was his fiduciary. So we do, you know, we think there is work to be done here, but I didn't really have a chance to fully review that piece of legislation. So at this point, I can't really take a position.

The Veterans Survivors Claim Processing Automation, we support that. I think Representative Ruiz was right on with what he said. You know, when you are in the grieving process, the last thing you want to be doing is trying to figure out what forms do I have to fill out and all of that. So if all the information was already available to the VA, hey, then let's go ahead and expedite.

The Veterans National Remembrance Act. You are passionate. I have to say that. I am not sure if this, you know, bill—we are not going to support it the way it is right now. We think so far the process that NCA is using is moving things forward. When that starts to fail, then you know, I think we should find another—a new way to figure out how to do this. And I guess that is the last one, so that concludes my testimony, and I would be happy to answer any questions.

[THE PREPARED STATEMENT OF DIANE ZUMATTO APPEARS IN THE APPENDIX]

Mr. BOST. Thank you Ms. Zumatto. And for five minutes, Mr. Neiweem, you're recognized.

STATEMENT OF CHRIS NEIWEEM

Mr. NEIWEEM. Thank you, Chairman Bost, Ranking Member Titus and distinguished members of the Subcommittee. On behalf of Iraq and Afghanistan Veterans of America, our nearly 400,000 members and supporters, thank you for the opportunity to share our views on these important bills today. And it is refreshing to see a fellow Illinois veteran in the chair, Mr. Chair.

H.R. 2214, we support this legislation which would expand examination authority for physicians that examine veterans' claims for disability compensation. Too often veterans continue to wait for long periods of time to receive decisions on their claims for disability compensation. Extending examination authority and extending contracts with licensed physicians will ensure efficiency in this process and will go a long way to eliminating redundant medical

examinations. This bill will aid VA in its goal to provide veterans timely and accurate medical examinations. We strongly support this.

In 2013 IAVA strongly pushed down on VA to eliminate the disability claims backlog, and this is the kind of legislation that will continue to move the ball forward, and we are appreciative that it was introduced.

H.R. 1380. This legislation would provide flexibility regardless of the date of death of an individual to be eligible to receive a medalion or other device that signifies status. Strongly support the legislation. I am glad Chairman Miller was introducing it and put it forward.

We understand H.R. 2001 has been removed from the docket today. Happy to allow our position to be submitted for the record and look forward to discussing it at a future date.

H.R. 303. This legislation would express a sense of Congress that military retired pay should not be offset or otherwise cut back because a veteran also earned, emphasis on earned, disability compensation. This bill would also remove the phase-in periods for concurrent receipt and for individuals who are retired or separated from military due to a service-connected disability, make them eligible for the full concurrent receipt of disability compensation and either retired pay or CRSC. Let's keep in mind that these veterans, especially those that are eligible for CRSC, have sustained injuries in combat. These are the last individuals that should be the targets of federal savings. IAVA strongly supports this legislation and many of our members have deployed not once, not twice, not three, but even four times and continue to step up. So we want to make sure that we are guarding against that. Appreciate the legislation.

H.R. 1338. This bill would require the Secretary of VA to study and report to Congress in a few key topic areas that relate to the issue of veteran burial and interment in national cemeteries and under the authority of NCA. This requirement would extend to identifying how many unclaimed remains exist in estimated figures. The bill would additionally require VA—current VA procedure to be the subject of review and further examine how those policies comport with state and local laws to allow the Secretary of VA to administer in this area.

The last key provision would require recommended legislative or administrative actions that can improve the way our government handles the remains of our veterans as we work to ensure they have a dignified final resting place, and we strongly support the legislation.

Looking at H.R. 1302. The legislation requires that a (indiscernible) certify a veteran appeal submission within one year of receipt. In a time when too many veterans again continue to feel that the VA claims process moves at a glacial pace, we support legislative requirements that mandate timely action, especially as we look at the current statistics with 520-day waits for remands in the appeals process. We've got to continue to double down and make this a focus so we can get this right.

Turning to H.R. 2605, the administration of VBA benefits to fiduciaries serving our veterans is a very technical and difficult task, and we greatly respect the work of the department to that end.

And this bill is seeking to make it work better. Our goal in this topic is to achieve the balance of ensuring the benefits are being paid and administered in such a way that accurately supports the veterans and their fiduciary, while at the same time not burdening them with excessive barricades to getting that support.

This bill would clarify the rules of fiduciaries to include a process by which temporary fiduciaries may be appointed to veterans. The bill would also provide a comprehensive set of reforms to supervise fiduciaries and clarify how investigations and the results of those actions should be administrated. This includes recourse for over-payments and the misuse of funds. The support Congress has given disabled veterans and the collaboration with VSOs to that end, and especially in the years since the Iraq and Afghanistan wars, has been strong. We have some of the strongest benefits now than at any time in history. However, the complexity of those benefits will require congressional oversight and perennial stakeholder input.

H.R. 1384. Simply put, this does not create any new benefits that would allow—but would rather allow our Reserve and Guard service members who serve on orders that are currently outside the scope of what classifies them as veterans be given that title in law. This has been a longstanding TMC goal with our partners and allies of the veteran community, and IAVA joins Rep. Walz and our allies at TMC in supporting this bill. And since the Groundhog Day reference is already used, I will use an original one. This issue is as perennial as the dress. Every single year we come back to it. The House passed it. We have got to get it done. We have got to get this right. I yield back, and I'm happy to answer any questions you may have.

[THE PREPARED STATEMENT OF CHRIS NEIWEEM APPEARS IN THE APPENDIX]

Mr. BOST. Thank you. And thank you to all of the panel. And we are going to go ahead and open up to questions. And I am going to yield myself five minutes. If I could, Mr. Morosky, in your written testimony you stated that although the VFW supports the intent of House resolution 2605, it has concerns about the provisions authorizing appointment of a temporary fiduciary prior to the determination of incompetency. Can you kind of expand there with the concerns that you might have?

Mr. MOROSKY. Sure, Mr. Chairman. And I want it to be clear that this bill does a lot of things and the VFW supports all the other provisions of this bill. I mean, you know, allowing the beneficiary to request an appointment of a new fiduciary without interruption, you know, requiring VA to conduct audits and investigate and report wrongdoing, these are all good things. It was just that one provision that was brought by one of our staff attorneys, and it was brought to our attention that if the Secretary were to appoint or produce a fiduciary on a temporary basis, and I believe the language is for 120 days prior to the determination of incompetency, then it could be in conflict with another portion of the code which provides for the presumption of competency prior to the court order. So we would be happy to work with the sponsor.

Mr. BOST. Yes, I was going to ask you if have—what suggestions you might have.

Mr. MOROSKY. And we would be happy to work on the sponsor with that, and you know, so that we can support this bill.

Mr. BOST. One question I also have for the whole panel, I know, Ms. Zumatto, you said that for historical purposes, and it is a concern of mine, I mean, all of us want our veterans to be honored to the best possible point. My question is with the other members of the panel, would a date change that it would be First World War to protect the integrity of the headstones of those veterans that served before be in agreement or is there concerns that is out there from any of your organizations?

Mr. MOROSKY. The American Legion obviously supports honoring the veterans in the way that you had mentioned, Chairman. I don't believe anybody at the American Legion has the preservation skills that my colleague here does in dealing with historical markers. So I do understand somewhat of what she says, but we obviously we fully support providing that or sending an earlier date, but at the same time we don't want to create a situation where we are damaging materials as suggested by our colleague.

Mr. BOST. Anyone? Okay. Thanks. Mr. Hearn, you stated that the Legion supports House Resolution 1302, please describe how it would expedite the appeals process if the VA were required to certify a VA Form 9 within one year of receipt?

Mr. HEARN. Thank you. As it stands now, I believe according to the most recent Monday morning workload reported, you are looking at somewhere 16 to 18 months getting close to 2 years before the average claim is getting sent up. I think I said 620 days. Knocking it down to 365 days is really three times the amount that VA has promised its veterans that they would adjudicate the original claim. Since VA is no longer taking informal claims, I guess they will have extra things to do, they will be able to handle that. Again, the staffing issue might be something that we need to examine a little bit closely. But the fact that you have cases languishing there for close to a year or over a year, I am sorry, to be certified to the Board. These are veterans in some cases that may be nearing homelessness, that are homeless, that are over 75, may have terminal illness. We need to get these claims adjudicated. I contacted the Board of Veterans Appeals this morning, and while nobody could provide me a hard date as far as American Legion cases were concerned, rough estimation is 500 veterans per year that the American Legion alone represents would be directly impacted on annual basis.

Mr. BOST. Okay. Thank you. With that, I recognize Ranking Member Titus for any questions she may have at this time.

Ms. TITUS. Thank you very much. Mr. Sullivan mentioned that the VA had conducted a non-scientific poll of the people who use state and tribal cemeteries. I don't know how many people were in that sample, but I would ask all of you, have you polled your members and asked them the question that if a national cemetery were available, would you rather be buried in the national cemetery or in a state cemetery. Just go down the row.

Mr. MOROSKY. I would just say, Madam Ranking Member, that we need to do that. That is a great question. We have not polled our membership. And that is a great question, and we can look at

doing a flash poll on that and ascertain that information for future use.

Ms. TITUS. That would be great. Thank you.

Ms. ZUMATTO. We have not polled our members, but as you saw in the written testimony, I did finally get to a couple of state cemeteries recently. And honestly I noticed almost a family feeling while I was there. The people that live around these cemeteries refer to it as their cemetery. They take a lot of pride in them. And because they are such an integral part of the communities, the sense that I got is the folks that—the veterans that are living there, yeah, they are very happy to be buried in the state cemetery. But no, we have not asked that question of our members.

Ms. TITUS. I imagine the people who live in Boulder City, that little community of few people outside of Las Vegas, do like that cemetery and do like to be buried there, but that is really not the question. Yes?

Mr. NEIWEEM. We have never conducted a poll, Congresswoman. But we have heard from people who have called us up and from veterans from states who don't have one, and have told us, you know, we think that it would be nice if we did. Of course, they all have state cemeteries but they would also like a national cemetery as well. We think that maybe one solution to this would be to just increase transparency of the process. I mean, you did just ask the gentlemen from NCA if there was going to be a national cemetery any time soon in any of those 11 states, and, you know, he couldn't really give you an answer. Maybe if there were more transparency, if veterans from those states knew where they fell on the list, it would sort of increase satisfaction a little bit more just knowing that where they fell in the priority.

Mr. VARELA. Ranking Member, I would like to take that question for the record just to be sure. The history of this issue goes back probably before I got up here to our legislative staff. I don't remember that coming up. I haven't heard it mentioned, but I will bring it back and find out if that is also an option.

Ms. TITUS. Thank you.

Mr. HEARN. Ranking Member, similar to Paul, I will take this back to the American Legion who handles this in his portfolio and see if I can get an answer for you.

Ms. TITUS. Thank you very much.

Mr. HEARN. You are welcome.

Ms. TITUS. You know, you mentioned transparency and I think that is important. So if we can't get this old formula changed that has been in place for so long and discriminates against veterans who live in those 11 states, maybe we can at least work together to get a set of standards that need to be met to receive the National Shrine Designation, and if those cemeteries don't meet it, veterans will at least know that they are not being in a place that meets that National Shrine standard. So maybe you can help me work on that.

I would just ask you one last little quick question too. It is something I mentioned in my opening statement. If the Supreme Court hands down a ruling that strikes down all existing state bans on marriage equality, do you think the VA—it is time to change the veterans law so that all veterans regardless of their marital status

and who they are married to and where they live get the same benefits?

Mr. MOROSKY. Madam Ranking Member, we support your legislation, supported it previously, and continue to support it.

Ms. TITUS. I appreciate that a lot. Thank you.

Mr. MOROSKY. Madam Ranking Member, the VFW believes that a veteran is a veteran and all those should be treated equally.

Mr. BOST. I believe that this was not on the agenda.

Ms. TITUS. Well, it wasn't. I mentioned it in my opening remarks, that is why I thought it would be appropriate to.

Mr. BOST. I don't think it is appropriate at this time. Thank you.

Ms. TITUS. That is the problem. You don't think it is appropriate. Thank you anyway.

Mr. BOST. Thank you to the Ranking Member. And if there is not anyone else seeking questions. As there are no further questions, I want to thank everyone here today for taking the time to come share their views on these nine bills. This is very important to the legislative process, and we appreciate your insight and feedback. I ask unanimous consent that the written statements provided by Representative Latta and Shuster and other submitted statements be placed in the hearing record. Without objections, so ordered. Finally, I ask unanimous consent that all members have five legislative days to reserve and extend the remarks, include extraneous material on any of all bills under consideration this afternoon. Without objection, so ordered. This hearing is now adjourned.

[Whereupon, at 3:56 p.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT OF HONORABLE BILL JOHNSON (OH-06)

Chairman Abraham, Ranking Member Titus and Members of the Subcommittee: I appreciate the opportunity to testify before you on H.R. 2605, important legislation I introduced to reform the Department of Veterans' Affairs (VA's) Fiduciary Program.

As many of you know, I served as the Oversight and Investigations Subcommittee Chairman on the House Veterans' Affairs Committee for the 112th Congress. An investigation into the VA's Fiduciary Program by my subcommittee revealed shocking behavior on the part of the VA's hired fiduciaries, and gross malfeasance on the part of the VA. Some fiduciaries—entrusted to manage the finances of our nation's heroes who are unable to do so themselves—were caught abusing the system by withholding funds, embezzling veterans' money and other egregious actions.

Furthermore, I chaired an Oversight and Investigations Subcommittee hearing held on February 9, 2012, that exposed that many of the VA's Fiduciary Program policies do not correspond with actual practices. For instance, the VA claims to have a policy stating preference for family members and friends to serve as a veteran's fiduciary. However, the investigation into the Fiduciary Program revealed instances where this is not the case. In one instance, the VA arbitrarily removed a veteran's wife, who served as her husband's fiduciary for ten years, and replaced her with a paid fiduciary. There are also many honest and hardworking fiduciaries that experience difficulty performing their duties due to the bureaucratic nature of the VA's fiduciary program. We owe it to America's heroes to provide them with a fiduciary program that is more responsive to the needs of the veterans it is supposed to serve.

I also had the opportunity to participate in this subcommittee's follow up hearing on the Fiduciary Program earlier this month. It was disheartening to hear that some of the same issues from 2012 are ongoing. Additionally, while the VA issued a proposed rule to modernize the Fiduciary Program in January 2014, the VA has yet to issue the final rule.

For these reasons, I am proud to sponsor H.R. 2605, the "Veteran's Fiduciary Reform Act." This important legislation, initially introduced in 2012, was drafted based on problems uncovered from O&I's hearing an investigation, as well as valuable input from veterans' service organizations and individuals who have experienced dif-

difficulties with the program firsthand. It is designed to transform the VA's Fiduciary Program to better serve the needs of our most vulnerable veterans and their hard-working fiduciaries. And, most importantly, it will protect veterans in the program from falling victim to deceitful and criminal fiduciaries.

Specifically, the Veterans Fiduciary Reform Act would require a credit and criminal background check each time a fiduciary is appointed, and allow veterans to petition to have their fiduciary removed if problems arise. It would also decrease the potential maximum fee a fiduciary can receive to the lesser of 3 percent or \$35 per month, similar to Social Security's fiduciary program. This will help discourage those who enroll as VA fiduciaries with only a profit motive in mind.

Importantly, H.R. 2605 would enable veterans to appeal their incompetent status at any time. Additionally, it would allow veterans to name a preferred fiduciary, such as a family member.

This legislation also addresses the requirement of fiduciaries to obtain a bond. While proper in some settings, it is inappropriate when it causes unnecessary hardship, such as a mother caring for her veteran son. This legislation would require the VA to consider whether a bond is necessary, and if it will adversely affect the fiduciary and the veterans he or she serves. H.R. 2605 would also direct the VA's Under Secretaries for Health and Benefits to coordinate their efforts to ensure that fiduciaries caring for their loved ones are not overly burdened by redundant requirements.

Lastly, this bill aims to simplify annual reporting requirements. Currently, the VA does not have to review a fiduciary's annual accounting, and when it does, it places an onerous burden on those fiduciaries who are serving out of love, not for monetary gain. This bill will implement a straight forward annual accounting requirement, and give VA the opportunity to audit fiduciaries whose accounting is suspect.

These significant changes would strengthen the VA's standards for administering the Fiduciary Program, and increase protection for vulnerable veterans. Requiring background checks and lowering the fee a fiduciary can charge would also increase scrutiny of potential fiduciaries, and help root out potential predators. This legislation also adds a layer of protection for veterans with fiduciaries by incorporating the ability for veterans to petition to have their fiduciary removed and replaced.

I am proud that this legislation has passed the House of Representatives twice now—both in 2012 and in 2013 as part of larger legislation. Unfortunately, this important legislation has not been considered by the Senate, and therefore, the VA's Fiduciary Program is still in urgent need of reform.

Chairman Abraham, Ranking Member Titus, thank you again for the opportunity to speak on this important legislation. I am hopeful that this legislation will again be favorably considered by the Veterans' Affairs Committee, and this time become law. Our veterans were willing to sacrifice everything to serve our nation, and they deserve to receive the care, benefits, and respect that they have earned.

**STATEMENT OF
DAVID R. MCLENACHEN
ACTING DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE,
VETERANS BENEFITS ADMINISTRATION
AND
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
HOUSE COMMITTEE ON VETERANS' AFFAIRS
JUNE 24, 2015**

Mr. Chairman and Members of the Subcommittee, we are pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation affecting VA's programs. Accompanying me today is Mr. Matthew Sullivan, Deputy Under Secretary for Finance and Planning, National Cemetery Administration and Mr. David Barrans, Assistant General Counsel.

We regret that due to the short notice we received for some of the bills, we do not yet have cleared views and cost estimates concerning the draft bills related to "Veterans National Remembrance Act" and the "Veterans' Survivors Claims Processing Automation Act of 2015."

Also, at this time, cost estimates are not available for the following bills:
H.R. 1302, H.R. 1338, H.R. 1380, and H.R. 2605.

H.R. 303

H.R. 303, the "Retired Pay Restoration Act," would permit receipt of VA disability compensation for service-connected disabilities and either retired pay by reason of years of service in the Uniformed Services or Concurrent Retirement and Disability Pay. Because the bill would primarily affect the Uniformed Services and would not affect the operation of VA, we defer to the Uniformed Services as to whether H.R. 303 should be enacted.

H.R. 303 would expand eligibility for concurrent receipt of Veterans' disability compensation and either retired pay based on years of service or Combat-Related Special Compensation to retirees receiving disability compensation for service-connected disabilities with a combined disability rating of less than 50 percent. Specifically, the bill would amend section 1414 of title 10, United States Code, to redefine "qualified retiree" to remove the requirement of a combined disability rating of 50 percent or more, and to specifically exclude members retired from the Selected Reserve based on physical disability not incurred in the line of duty. These changes would be effective January 1, 2016, and would apply to payments for months beginning on or after that date.

Payments to chapter 61 retirees under this bill would result in additional cost to VA only for those rated less than 50 percent disabled. Therefore, VA did not consider Veterans with a rating greater than 40 percent in estimating the costs of this bill. According to the Department of Defense (DoD), any additional payment for those Veterans (with ratings of 50 percent or above) under this bill would be incurred by DoD, not VA, because these Veterans are already on the compensation rolls.

There are three groups of retirees who would become eligible to receive VA disability compensation concurrently with retired pay by reason of years of service in the Uniformed Services or Combat-Related Special Compensation due to this legislation: (1) Current retirees who filed a claim with VA and have been determined to have one or more service-connected disabilities with a combined rating of less than 50 percent, but have elected to receive military retirement payments instead of VA disability compensation; (2) Current retirees who have never filed a claim with VA but would otherwise have one or more service-connected disabilities with a combined rating of less than 50 percent; and (3) future retirees who have one or more service-connected disabilities with a combined rating of less than 50 percent. Benefit costs to VA associated with current and future retirees with ratings less than 50 percent are estimated to be \$467 million during the first year, \$3 billion over five years, and \$6 billion over ten years. Currently, these benefits costs are not funded in VA's budget. If the bill were to be enacted, Congress would have to provide additional mandatory appropriations to pay for the cost of this legislation.

H.R. 1302

H.R. 1302, the "VA Appeals Backlog Relief Act," would require VA regional offices (RO) to certify a "VA Form 9, Appeal to Board of Veterans' Appeals", commonly referred to as a "substantive appeal," filed by a Veteran not later than one year after receipt of the form.

Although VA appreciates the intent of the bill to expedite processing of appeals, the Department does not support this bill because we believe that timeliness should be

improved through a more holistic, comprehensive reform of the multi-step claims appeals process under current law. However, this bill seeks to address a single step in the multi-step process by imposing a statutory deadline, while ignoring the underlying laws that currently preclude efficiency in the overall process.

A significant factor contributing to delay in certifying appeals to the Board of Veterans' Appeals (Board) is the fact that a claimant may submit or identify additional evidence at any point in the appeals process, and if VA receives such evidence, the claim must be adjudicated anew, including complying again with the duty to assist in obtaining information and evidence to substantiate the claim under 38 U.S.C. § 5301A. Therefore, in many cases VA cannot control the time it takes for completion of a particular stage in the appeal process. For this reason, it would not be helpful to enact processing deadlines without first reforming the law that governs the process.

Under 38 U.S.C. § 7105(e)(1) as amended by Public Law 112-154, the Board has jurisdiction to review evidence submitted by a claimant or claimant's representative with a substantive appeal or after filing a substantive appeal, unless a claimant or the claimant's representative requests in writing that the RO initially review the evidence. Following enactment of this statute, the Veterans Benefits Administration (VBA) instructed the ROs to certify appeals to the Board at the earliest time allowable by law. Section 7105(e)(1), however, does not address whether VA has a duty to obtain evidence the claimant identifies, rather than submits, or to develop further evidence at this point in the proceedings. The Board therefore has implemented section 7105(e)(1) by remanding appeals to the RO to obtain and consider the evidence in the first instance, which unnecessarily prolongs the appellate process. Absent changes to this

adjudicative scheme, the RO may need to conduct additional cycles of development and review even after a substantive appeal is received. Therefore, in many cases, the delay in certifying an appeal to the Board is attributable to identification or development of new evidence. To address this issue, VA submitted a legislative proposal in the FY 2016 Budget to amend 38 USC § 7105(e)(1) to transfer jurisdiction over this function to the Board.

We also have noted a few technical issues with the bill. First, section 2 of the bill refers only to a VA Form 9 "submitted by a veteran." The plain language of the statute would not require expeditious certification of an appeal filed by any other claimant, including a Veteran's survivor. Second, section 2 states that an RO would certify a VA Form 9. However, under VA regulations, the RO certifies an "appeal" to the Board, not a form.

Costs related to this bill are not available at this time.

H.R. 1338

H.R. 1338, the "Dignified Interment of Our Veterans Act of 2015," would require VA to conduct a study and report to Congress on matters relating to the interment of unclaimed remains of Veterans in national cemeteries under the control of the National Cemetery Administration (NCA), including: (1) determining the scope of issues relating to unclaimed remains of Veterans, to include an estimate of the number of unclaimed remains; (2) assessing the effectiveness of VA's procedures for working with persons or entities having custody of unclaimed remains to facilitate interment in national cemeteries; (3) assessing State and local laws that affect the Secretary's ability to inter

such remains; and (4) recommending legislative or administrative action the VA considers appropriate.

The bill would provide flexibility for VA to review a subset of applicable entities in estimating the number of unclaimed remains of Veterans as well as assess a sampling of applicable State and local laws.

In December 2014, NCA published a Fact Sheet to provide the public with information on VA burial benefits for unclaimed remains of Veterans. NCA prepared the Fact Sheet in collaboration with representatives from VBA and the Veterans Health Administration (VHA). As well as being posted on VA's website, the Fact Sheet was widely distributed to targeted employees in VA, including Homeless Veteran Coordinators, Decedent Affairs personnel, VBA Regional Compensation Representatives, and NCA Cemetery Directors as well as shared in a GovDelivery message sent to over 28,000 funeral director and coroner's office recipients who are entities that may come to NCA seeking assistance to ensure burial of a Veteran whose remains are unclaimed.

NCA strongly supports the goal of ensuring all Veterans, including those whose remains are unclaimed, where sufficient resources for burial are not available, who earned the right to burial and memorialization in a national, state, or tribal Veterans cemetery, are accorded that honor. We remain unclear, however, about how the results of such a study could be used to further NCA's mission. NCA appreciates the continued Congressional support to meet the needs of Veterans whose remains are unclaimed. While NCA is concerned that the study may be unnecessary or premature at this time, we would appreciate working with the Committee to make sure any study that the

Department is mandated to produce is targeting data that can be used to better serve these Veterans.

Over the past several years, Congressional and Departmental actions have increased the Department's ability to ensure dignified burials for the unclaimed remains of eligible Veterans. The Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112-260) authorizes VA to furnish benefits for the burial in a national cemetery for the unclaimed remains of a Veteran with no known next-of-kin, where sufficient financial resources are not available for this purpose. Those benefits include reimbursements for the cost of a casket or urn, for costs of transportation to the nearest national cemetery, and for certain funeral expenses.

NCA is pleased to report that our final rule to implement this authority was published on April 13, 2015, and on May 13, 2015, we began to accept requests for reimbursement for caskets or urns purchased for the interment of deceased Veterans who died on or after January 10, 2014, without next of kin, where sufficient resources for burial are not available. As this new benefit is administered, NCA will have a new source for collecting data on the number of Veterans whose unclaimed remains are brought to NCA for interment. The data can be used to assist in targeting outreach efforts to partners and getting a fuller understanding of the issue.

The Department continues to identify areas to recommend legislative or administrative action that would support dignified burial of unclaimed remains of Veterans. Two legislative proposals are included in VA's FY 2016 Budget Submission. Currently, VA may furnish a reimbursement for the cost of a casket or urn and for the cost of transportation to the nearest national cemetery. These benefits are based on

the Veteran being interred in a VA national cemetery. The legislative proposals are to expand these two benefits to include those Veterans who are interred in a state or tribal organization Veteran cemetery.

In conjunction with discussions we had last year with congressional staff, NCA reviewed its internal procedures and began to follow-up every thirty days with public officials on any unclaimed remain cases shown as pending until the cases are scheduled for burial and the Veterans' remains are interred. While state and local laws designate who may act as an authorized representative to claim remains, NCA can work with any individual or entity that contacts us to determine a Veteran's eligibility for burial and schedule the burial in a VA national cemetery.

The work of the Missing in America Project (MIAP) and individual funeral directors is invaluable in complementing VA's role of ensuring that all Veterans, including those whose unclaimed remains are brought to us, receive the proper resources to ensure receipt of a dignified burial. Over the past several years, NCA has developed a strong working relationship with funeral homes, coroner offices, and medical examiners to actively provide responses to requests for eligibility reviews. In FY 2014, NCA processed 2,805 MIAP requests to determine eligibility for burial in a VA national cemetery, of which 1,642 were verified as eligible.

In light of VA's recent activities, detailed above, to implement legislation targeted at ensuring appropriate burial of the unclaimed remains of Veterans, NCA feels it is premature to undertake the proposed study. Furthermore, if legislation is passed requiring the study, we do not object to the proposed scope and content, but we are concerned that the timeframe for reporting in the bill is unrealistic.

To implement the mandatory requirements outlined in the bill, even with the flexibilities included in the bill language, the Department would be required to contract with one or more private entities to perform such a study. Survey instruments would need to be developed to assess the number of remains in the possession of funeral directors and other entities for individuals with no known next of kin, and an appropriate sample would have to be identified and a legal review of state and local laws conducted regarding unclaimed remains of Veterans.

The bill provides a reporting timeframe of one year. The need to get formal clearances on survey instruments takes several months; therefore, a more realistic timeframe would be two years.

The bill does not identify a funding source for this mandate. VA is still evaluating the cost associated with this legislation.

H.R. 1380

H.R. 1380 would amend 38 U.S.C. § 2306(d) to extend eligibility for a medallion furnished by VA in order to signify the deceased's status as a Veteran regardless of date of death. Public Law 110-157 gave VA authority to "furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased's status as a veteran, to be attached to a headstone or marker furnished at private expense," for eligible Veterans who died on or after November 1, 1990. H.R. 1380 would remove the date of death limitation by codifying in statute that eligibility exists regardless of date of death.

VA strongly supports the concept to expand eligibility for the medallion benefit; however, VA requests that the Committee amend rather than remove the current eligibility date of November 1, 1990. VA would greatly support an amendment to provide eligibility for individuals who served "on active duty on or after April 6, 1917." This amendment would align the bill to a legislative proposal that is included in VA's FY 2016 Budget Submission, which assumed benefit costs of \$482,000 in FY 2016, \$2.5 million over five-years, and \$5.2 million over 10 years.

Since VA began providing the medallion benefit in 2009 through January 15 2014, the vast majority (91 percent) of those claims were denied because the otherwise eligible Veteran died between 1960 and 1990. Additionally, there are more than 4.5 million deceased Veterans with service prior to April 6, 1917, which is the date the United States formally entered World War I. These Veterans could become eligible for the medallion benefit which could significantly impact the landscape of historic cemeteries and the historic headstones marking the graves of those who served prior to this date as well as impact the ability of NCA and other entities to comply with historic preservation and Federal stewardship statutes and regulations.

Costs related to this bill are not available at this time.

H.R. 1384

H.R. 1384, the "Honor America's Guard-Reserve Retirees Act," would honor as a Veteran any person entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who, but for age, would be entitled under that

chapter to retired pay for nonregular service. However, these individuals would not be entitled to any benefit by reason of this honor.

VA does not support H.R. 1384. It would conflict with the definition of "Veteran" in 38 U.S.C. § 101(2) and would cause confusion about the definition of a Veteran and associated benefits. In title 38, United States Code, Veteran status is conditioned on the performance of "active military, naval, or air service." Under current law, a National Guard or Reserve member is considered to have had such service only if he or she served on active duty, was disabled or died during active duty for training from a disease or injury incurred or aggravated in line of duty, or was disabled or died during inactive duty training from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident. H.R. 1384 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for Veteran status.

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

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

H.R. 2001

H.R. 2001, the "Veterans 2nd Amendment Protection Act," would provide that a person who is mentally incapacitated, deemed mentally incompetent, or unconscious for an extended period will not be considered adjudicated as a "mental defective" for purposes of the Brady Handgun Violence Protection Act in the absence of an order or finding by a judgment, magistrate, or other judicial authority that such person is a danger to himself, herself, or others. The bill would, in effect, exclude VA determinations of incompetency from the coverage of the Brady Handgun Violence Prevention Act. VA does not support this bill.

VA determinations of mental incompetency are based generally on whether a person because of injury or disease, lacks the mental capacity to manage his or her own financial affairs. We believe adequate protections can be provided to these Veterans under current statutory authority. Under the [National Instant Criminal Background Check System (NICS)] Improvement Amendments Act of 2007, individuals whom VA has determined to be incompetent can have their firearms rights restored in two ways: First, a person who has been adjudicated by VA as unable to manage his or her own affairs can reopen the issue based on new evidence and have the determination reversed. When this occurs, VA is obligated to notify the Department of Justice to remove the individual's name from the roster of those barred from possessing and purchasing firearms. Second, even if a person remains adjudicated incompetent by

VA for purposes of handling his or her own finances, he or she is entitled to petition VA to have firearms rights restored on the basis that the individual poses no threat to public safety. VA has relief procedures in place, and we are fully committed to continuing to conduct these procedures in a timely and effective manner to fully protect the rights of our beneficiaries.

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

The enactment of H.R. 2001 would not impose any costs on VA.

H.R. 2214

H.R. 2214, the "Disabled Veterans' Access to Medical Exams Improvement Act," would extend from December 31, 2015, through December 31, 2017, VA's authority under the Veterans Benefits Act of 2003 to provide for medical examinations by contract physicians in claims for VA disability benefits.

VA strongly supports this provision to extend VA's authority to contract for disability compensation and pension examinations to December 31, 2017. Extending

this authority is essential to VA's goal of ensuring the timely adjudication of disability claims. The extension would allow VHA to continue to focus its resources on providing health care that Veterans need. Further, this program provides quality disability examinations to Veterans in locations near their homes. This bill would also provide VA with additional flexibility needed to effectively utilize funds.

The bill would further revise provisions of the Veterans Benefits Act of 2003 and the Veterans' Benefits Improvement Act of 1996 relating to contract examinations to clarify that, notwithstanding any law regarding the licensure of physicians, a licensed physician may conduct disability examinations for VA in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, provided the examination is within the scope of the physician's authorized duties under a contract with VA and the physician is not barred from conducting such an examination in the location in which it occurs.

VA supports the provision regarding licensure requirements as a means to ensure the quality of contract examinations. The demand for medical disability examinations has increased, largely due to an increase in the complexity of disability claims, an increase in the number of disabilities which Veterans claim, and changes in eligibility requirements for disability benefits. This authority would help provide flexibility in examinations through non-VA medical providers while maintaining licensure standards and accelerating benefits delivery.

The bill would also limit to 15 the number of ROs at which the pilot program of contract disability examinations may be carried out under the Veterans' Benefits Improvement Act of 1996. Section 504 of Public Law 104-275 (1996) authorized VA to

provide contract examinations at 10 ROs using funds from the mandatory compensation and pension appropriation. Section 704 of Public Law 108-183 (2003) authorized VA to provide contract examinations "using appropriated funds, other than funds available for compensation and pension," but did not limit the number of ROs where such contract examinations may occur. Section 241 of Division I, Title II, Public Law 113-235 (2014) expanded VA's authority under the 1996 statute to provide contract examinations funded from the compensation and pension appropriation at no more than 12 ROs in FY 2015, 15 ROs in FY 2016, and as many ROs as the Secretary considers appropriate in FY 2017. H.R. 2214 would limit VA's authority under the 1996 statute to apply to 15 ROs. Sites would be selected based on: the number of backlogged claims, the total pending case workload, the length of time cases have been pending, the accuracy of completed cases, and overall timeliness of completed cases.

VA strongly opposes this provision as it would limit to 15 ROs VA's authority to utilize contract examinations using funds from the compensation and pension appropriation. Under current law, VBA has authority at 15 ROs in FY 2016 and at as many ROs as VA considers appropriate in FY 2017 and subsequent years. Limiting this authority to 15 ROs would restrict VA's ability to improve timeliness of benefit delivery if VBA determines it would be beneficial to use this authority at additional ROs in FY 2017 and subsequent years.

In addition, VA does not support the provision that would mandate factors VA must consider in selection of sites under authority of the Veterans Benefits Act of 2003 to provide for medical examinations by contract. Currently, VA has discretion to choose sites for this program and already considers the factors outlined in the bill as well as

other important criteria. These include: number of backlogged claims; total pending workload; and the length of time that claims have been pending. VA is concerned that limiting VA's discretion in this regard may lead to unintended consequences. The criteria in the bill exclude considerations such as availability of VA examiners in a selected area and workload of VA Medical Center examination units. High-performing ROs where the program has already proven successful could also be excluded if VA is held to rigid criteria in providing contract examinations. Therefore, it is imperative that the Secretary has the discretion to adjust to unforeseen factors unanticipated in this legislation.

Subsections 2(a) and 2(c) would not impose any costs on VA. VBA cannot estimate the savings of subsection 2(c) as we have not yet determined if the authority will be expanded beyond 15 ROs in FY 2017 and subsequent years.

H.R. 2605

H.R. 2605, the "Veterans Fiduciary Reform Act of 2015," would amend chapter 55 and 61 of title 38, United States Code, to change VA's administration of its fiduciary program for beneficiaries who cannot manage their own VA benefits.

Under this program, VA conducts oversight of beneficiaries and appoints and conducts oversight of fiduciaries for these beneficiaries. Currently, there are approximately 176,000 beneficiaries in the program who receive services from approximately 150,500 fiduciaries. Of those fiduciaries, approximately 90 percent are unpaid or volunteer fiduciaries. If the bill becomes law, it would, among other things, significantly expand the scope of VA's fiduciary program, create disincentives for

recruiting volunteer and paid fiduciaries, and generally add complexity that VA cannot address without additional resources.

Section 2(a) of the bill would require VA to notify a beneficiary of VA's decision that the beneficiary is incompetent for purposes of appointing a fiduciary and would state that the beneficiary may appeal that determination. These provisions are unnecessary, because current 38 U.S.C. § 5104 addresses notice to beneficiaries regarding VA's decisions, and 38 U.S.C. § 7105 prescribes a beneficiary's right to appeal.

Subsection (a) also would allow a beneficiary for whom VA has appointed a fiduciary to request removal of the fiduciary and appointment of a successor. Under current VA policy, a beneficiary may at any time for good cause request the appointment of a successor fiduciary. Accordingly, VA does not oppose this provision of subsection (a).

Subsection (a) would also require VA, in cases where a fiduciary has been removed, to ensure that a beneficiary's benefits are not delayed or interrupted. VA's objective, in cases where it removes a fiduciary and appoints a successor fiduciary, is to ensure the continuation of benefits. However, in some cases beyond the control of VA, benefits are delayed or interrupted during the replacement of a fiduciary. VA opposes this provision to the extent that it mandates, without exception or qualification, the delivery of benefits without delay upon removal of a fiduciary. Under current law, VA must conduct the investigation prescribed by Congress in 38 U.S.C. § 5507 when it replaces a fiduciary and sometimes encounters an uncooperative beneficiary or beneficiary's representative. This results in unavoidable delays in some cases.

VA supports the provision in subsection (a) requiring fiduciaries to operate independently in determining how to disburse funds in the best interest of the beneficiaries they serve. This provision would codify current VA policy.

VA opposes the provisions of subsection (a) that would allow a Veteran to "pre-designate" a fiduciary prior to any actual need, as the passage of time would in many cases render the initial designation outdated and of no use to the beneficiary or VA. We also note that VA's current appointment policy gives preference to the beneficiary's choice and family members' or guardian's desires as expressed at the time of the field examination, which VA believes is the best available and most relevant information for purposes of making a best-interest determination. Such determination should not be based upon outdated information.

Subsection (a) would also require VA to provide notice to beneficiaries regarding the bases for appointing someone other than the individual designated by the beneficiary. VA has already implemented notice procedures for its fiduciary appointment decisions and therefore this provision is unnecessary.

VA opposes the provisions of subsection (a) that would mandate preference for an individual who is the beneficiary's court-appointed guardian and give priority in appointment consideration to individuals holding a beneficiary's durable power of attorney (POA). This provision would not be a good policy choice for VA's most vulnerable beneficiaries. Under current policy, VA first considers the beneficiary's preference and then considers family members, friends, and other individuals who are willing to serve. VA prefers to appoint unpaid relatives prior to considering any other individual who is willing to provide fiduciary services only for a fee. VA's order of

preference is based on the type of fiduciary relationship and seeks to establish the least restrictive and most effective relationship.

Appointment of a court-appointed guardian often is the most restrictive method of payment and the most costly. Under current law, a VA-appointed fiduciary may collect a maximum of four percent of the monthly VA benefits paid to the beneficiary. Further, under VA's interpretation of the law, fiduciaries cannot calculate a fee based upon retroactive, lump-sum, or other one-time payments, or upon receipt of accumulated funds under management. However, under state law, guardians may collect fees in excess of the 4-percent Federal limit. Although the fee structure varies from state to state, basic fees range between 5 percent of all income received by the guardian to as high as 10 to 15 percent of all income and funds under management by the guardian.

Additionally, courts often allow extraordinary fees in excess of the standard fee. The appointment of a guardian often results in the guardian incurring the cost of attorney fees for filing motions and annual court accountings. These fees and costs can be in the range of thousands to tens of thousands of dollars per year and are paid for by the beneficiary out of the beneficiary's VA benefits. Additionally, VA is unable to conduct consistent and effective oversight of guardians who are appointed by a court, resulting in disparate treatment for vulnerable beneficiaries depending upon state of residence. VA does not support such treatment and believes that Congress established the fiduciary program for the purpose of ensuring a nationwide standard for beneficiaries who cannot manage their own benefits.

Based upon VA's experience, it would not be good policy to give a person holding a beneficiary's POA priority based only upon the existence of a POA. Veterans

and other beneficiaries in the fiduciary program can be extremely vulnerable and easily coerced into signing documents. Additionally, a POA can be executed and revoked by the beneficiary at any time. If an individual is holding a POA, VA would have no way of determining whether the POA is still in effect or if the beneficiary had the capacity to execute a legally enforceable POA under state law at the time. Implementing policies and procedures related to the adjudication of POAs would needlessly complicate and delay the fiduciary-appointment process. Also, under current law, VA has a duty to appoint, based upon a field examination and consideration of the totality of the circumstances, the individual or entity that is in the beneficiary's best interest. While such a determination might conclude that appointment of an individual who holds the beneficiary's POA is in the beneficiary's interest, VA strongly opposes giving undue preference and weight to the existence of a POA.

Subsection (b) would amend current law to limit fiduciary fees to 3 percent of the monthly benefits paid to a fiduciary on behalf of a beneficiary or \$35, whichever is lower. VA strongly opposes this provision. Payment of a fee is necessary if there is no other person who is qualified and willing to serve without compensation. Instances exist when the beneficiary's interests can only be served by the appointment of a qualified paid fiduciary. As of June 3, 2015, VA has identified and appointed fiduciaries willing to serve without a fee for more than 90 percent of its beneficiaries.

Under current VA policy, fiduciaries are not mere bill payers. To the contrary, it is VA's view that fiduciaries should remain in contact with the beneficiaries they serve and assess their needs. Without such an assessment, fiduciaries who serve VA's most vulnerable beneficiaries would be unable to fulfill their obligation to determine whether

disbursement of funds is in the beneficiary's interest. As noted above, for the vast majority of beneficiaries, a relative or close personal friend will perform the duties without cost to the beneficiary. However, there are difficult cases in which VA has no alternative but to turn to an individual or entity that is willing to serve Veterans and their survivors for a nominal fee. Reducing the fee further, at a time when VA is attempting to strengthen the role of fiduciaries in the program, would create a disincentive for serving these vulnerable beneficiaries. VA strongly opposes such a reduction because it would harm beneficiaries and needlessly hinder the program, which has a clear preference for volunteer service but recognizes the need for a pool of paid fiduciaries who are willing to accept appointment for a nominal fee in some of VA's most difficult cases.

VA supports the provisions of subsection (b) that codify VA's current policy regarding limitations on fees from retroactive and one-time payments and has no objection to the remaining fee provisions because they appear to restate current law.

Subsection (b) would require VA to provide materials and tools to assist a fiduciary in carrying out the responsibilities of a fiduciary under this chapter. It is always VA's objective to ensure that our most vulnerable Veterans and beneficiaries are properly taken care of. In assigning a fiduciary to handle the disbursement of funds for such an individual, VA equips the fiduciary with the needed resources and tools to perform these responsibilities. VA currently provides its fiduciaries with written materials, web-based training, and a dedicated telephone line for additional assistance. In addition, VA is actively working to enhance and increase the number of tools available to its fiduciaries. Therefore, this provision is unnecessary.

This subsection would amend the current statutory definition of "fiduciary" to add certain state, local, and nonprofit agencies. VA does not oppose this provision, as VA already appoints such agencies under current law if VA determines that it is in the beneficiary's best interest. However, including the listed agencies under the statutory definition of fiduciary codifies that VA must conduct the investigation required under current 38 U.S.C. § 5507 prior to appointment. Some of the current provisions of section 5507, such as credit and criminal background check requirements, cannot be made applicable to such agencies. While VA favors the investigation and qualification of agencies, the manner in which the qualification is performed will differ from that of an individual.

VA also opposes the provisions of subsection (c) that would require VA to compile and maintain a list of state, local, and nonprofit agencies eligible to serve in a fiduciary capacity for beneficiaries because it would be too burdensome and divert limited resources away from the primary program mission. VA notes that there are as many as 3,009 counties, 64 parishes, 16 boroughs, and 41 independent municipalities in the United States. In addition, there are over 19,000 municipal governments and more than 30,000 incorporated cities in the country. The resources needed to build and maintain such a list would exceed by far any benefit for VA beneficiaries in the fiduciary program. VA currently appoints fiduciaries according to an order of preference, which begins with the beneficiary's preference and otherwise seeks to appoint family members, friends, or other individuals who are willing to serve without a fee. VA rarely needs to appoint a state, local, or nonprofit agency for a beneficiary. Subsection (d) would amend current law to essentially strike "to the extent practicable" from 38

U.S.C. § 5507(a)(1)(B), thereby requiring a face-to-face VA visit with every proposed fiduciary. VA opposes this provision because it does not account for the circumstances actually encountered by VA in the administration of the program, and would needlessly delay some initial fiduciary appointments. There are certain cases in which a face-to-face interview of a proposed fiduciary should be waived. For example, a face-to-face interview may be unnecessary for natural parents of minor children or certain fiduciaries who have funds under management for multiple beneficiaries.

Subsection (d) would also require VA to complete the face-to-face interview of a proposed fiduciary within "30 days after the date on which such inquiry or investigation begins." VA opposes this provision. VA's current standard is to complete all initial appointment field examinations within 45 days. The face-to-face interview is only one element of the field examination. VA must also meet with the beneficiary, check the proposed fiduciary's criminal background and credit history, and develop additional information as necessary prior to recommending appointment. Other facts that impact the timeliness of initial-appointment field examinations include travel, availability of beneficiaries and proposed fiduciaries, workload, and availability of resources. Mandating the completion of an interview within 30 days without providing a significant increase in resources could negatively impact the quality of appointments and thus risk exploitation of beneficiary funds.

VA supports the provisions of subsection (d) that authorize criminal background checks and consideration of any crime in the best-interest determination applicable to fiduciary appointments.

VA is not opposed to the provisions of subsection (d) that would require VA to report to the beneficiary a crime committed by a fiduciary that affects the fiduciary's ability to serve, unless the disclosure of such information would harm the beneficiary.

Subsection (d) would remove the current statutory authority permitting VA, in conducting an inquiry or investigation on an expedited basis, to waive any inquiry or investigation requirement with respect to certain classes of proposed fiduciaries and would add to the list of proposed fiduciaries, the investigation of whom may be conducted on an expedited basis, a person who is authorized under a durable POA to act on a beneficiary's behalf. VA opposes removal of the waiver provision because it would needlessly delay certain fiduciary appointments, such as appointments of legal guardians and certain parents, for whom one or more of the inquiry or investigation requirements are not needed. In the case of a beneficiary's immediate family members seeking to provide fiduciary services, the proposal would result in greater intrusion into family matters with no real benefit for beneficiaries. VA's current policy is to first consider the beneficiary's preference and then to consider family members, friends, and other individuals who are willing to serve, which may include individuals designated by a POA. VA does not oppose permitting VA to expedite the inquiry or investigation regarding any proposed fiduciary, including a person holding a beneficiary's durable POA.

VA is not opposed to the investigation-of-misuse provisions in subsection (d) because they codify current VA policy. However, upon a determination of misuse, VA provides the decision to the VA Office of Inspector General for review and a determination regarding referral to the Department of Justice for prosecution. VA

opposes the provisions of this subsection to the extent that they mandate dissemination of information to specific agencies regardless of VA's own internal review.

VA has the capability to maintain the specific fiduciary-related information that subsection (d) would prescribe within its recently deployed information technology system. Accordingly, VA does not oppose the provisions that would require it to maintain additional information on the fiduciaries it appoints.

Subsection (e) would require each fiduciary to submit an annual accounting to VA for auditing. VA opposes these provisions because they would add burden for fiduciaries, most of who are volunteer family members or friends, and would not significantly improve VA's oversight of fiduciaries. Under current policy, which is based upon VA's experience in administering the program, VA requires fiduciaries to submit an annual accounting in every case in which: the beneficiary's annual VA benefit is equal to or greater than the amount paid to single Veteran compensated at the 100-percent service-connected rate; a beneficiary's accumulated VA funds managed by the fiduciary are \$10,000 or more; the fiduciary is also appointed by a court; or the fiduciary receives a fee. These accountings are comprehensive and must be supported by financial documentation that identifies all transactions during the accounting period. VA audits over 38,000 accountings each year.

VA currently pays benefits to more than 20,000 spouse fiduciaries, many of whom are also caring for severely disabled or infirm Veterans. Countless other beneficiaries receive only \$90 each month and reside in the protected environment of a Medicaid-approved nursing home. There are many other examples of beneficiaries being cared for by family members, who due to the recurring needs of their disabled

family member, expend all available VA benefits each month for the beneficiary's care. The additional burden imposed by documenting income and expenditure annually for the majority of our beneficiaries would be an undue hardship and would not result in any benefit to the beneficiary or the program.

VA opposes the provisions under subsection (e) that would require VA to conduct annual, random audits of paid fiduciaries. Under current policy, VA requires all paid fiduciaries to submit annual accountings. VA audits every accounting that it receives. VA already has authority to conduct any additional oversight it deems necessary based upon a case-by-case determination. Experience administering the program has not identified a need to randomly audit paid fiduciaries.

VA opposes the provision that requires caregiver fiduciaries to provide an annual accounting only with respect to the amount of VA benefits spent on food, housing, clothing, health-related expenses, and personal items and saved for the beneficiary. While we support the need for reduced personal supervision, VA is required to ensure that benefits under management are used for the benefit of the beneficiary. We interpret this provision to exclude caregivers from providing a full accounting of the benefits received. As such, this provision inhibits VA's ability to protect against misuse.

VA is not opposed to the provisions of subsection (f) but notes that the proposed amendment may insert ambiguity where it does not currently exist. This provision would amend 38 U.S.C. § 6107(a)(2)(C), which authorizes VA to reissue benefits if it is actually negligent. The amendment would imply that "not acting in accordance with [38 U.S.C. § 5507]" is actual negligence. Whether that implication is true in a given case would depend upon the circumstances.

Under current law, VA's publicly available Annual Benefits Report includes information regarding VA's oversight of the fiduciary program, specifically with respect to its misuse of benefits determinations and the Government's prosecution of misuse cases. This subsection would amend the law to require VA to instead provide Veterans' Affairs Committees of Congress an annual report. VA opposes section 2(g) to the extent that it could be interpreted to require VA to provide information solely to Congress, excluding stakeholders.

This section 2(h) calls for VA to submit to Congress within one year a comprehensive report on the implementation of the legislation. However, VA notes that a report to cover the 12-month period following enactment might be unreasonably short given that rulemaking may be required to implement certain provisions.

VA is aggressively looking for ways to improve program services and is not opposed to a discussion on the possibility of providing financial software to fiduciaries to simplify reporting.

No mandatory benefit costs are associated with this bill. Administrative and Information Technology costs related to this bill are not available at this time.

This concludes our statement, Mr. Chairman. We would be happy now to entertain any questions you or the other members of the Subcommittee may have.

STATEMENT OF
ZACHARY HEARN, DEPUTY DIRECTOR FOR CLAIMS
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"PENDING VETERANS' BENEFITS LEGISLATION"

JUNE 24, 2015

Chairman Abraham, Ranking Member Titus and distinguished Members of the committee, on behalf of National Commander Michael D. Helm and the over 2 million members of The American Legion, we thank you and your colleagues for the work you do in support of service members, veterans, and their families.

H.R. 303: Retired Pay Restoration Act

To amend title 10, United States Code, to permit additional retired members of the Armed Forces who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or combat-related special compensation.

H.R. 303, *the Retired Pay Restoration Act of 2015*, provides concurrent receipt to retirees with 20 or more years of military service that are rated less than 50 percent service-connected disabled. It eliminates the phase-in for all disabled veterans. It also allows Temporary Early Retirement Authority (TERA) retirees (also known as Chapter 61 retirees) to apply for Combat-Related Special Compensation (CRSC), for which they currently do not qualify.¹

The American Legion supports this bill.

H.R. 1302: VA Appeals Backlog Relief Act

To direct the Secretary of Veterans Affairs to establish a deadline for the certification of certain forms by regional offices of the Department of Veterans Affairs.

¹ Resolution No. 165

The June 7, 2010, Veterans Benefits Administration (VBA) Monday Morning Workload Report (MMWR) indicated that there were 192,527 appealed claims that were awaiting adjudication². The June 8, 2015, VBA MMWR indicated that there were 305,020 appealed claims awaiting adjudication. In five years, the number of claims have exploded by 58.4 percent causing veterans to wait years to have their claims adjudicated³.

H.R. 1302 directs VA to require the regional offices (RO's) to certify claims to the Board of Veterans Appeals (BVA) within one year of receipt of VA Form 9 indicating the veteran's intent to appeal the claim to the BVA. According to the June 8, 2015, MMWR, the average days pending for certification to the BVA is 620 days.

By resolution, The American Legion urges VA "to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner."⁴ Through enactment of H.R. 1302, this will direct VA to certify claims in a manner significantly more expeditious than the current policy allows.

The American Legion supports this bill.

H.R. 1338: Dignified Interment of Our Veterans Act of 2015

To require the Secretary of Veterans Affairs to conduct a study on matters relating to the burial of unclaimed remains of veterans in national cemeteries, and for other purposes.

This measure urges the VA to complete a study on matters relating to the interring of unclaimed remains of veterans in national cemeteries and submit a report to Congress on the findings. The study would determine the issues relating to the unclaimed remains of veterans (including an estimate of the number of unclaimed remains of veterans). In addition, the study would assess the effectiveness of the procedures of the Department of Veterans Affairs for working with persons or entities having custody of unclaimed remains to facilitate interment of unclaimed remains of veterans in national cemeteries under the control of the National Cemetery Administration (NCA), as well as assessing State and local laws that affect the ability of the Secretary to inter unclaimed remains of veterans in national cemeteries under the control of the NCA.

Since 2007, The American Legion has supported the mission of the Missing In America Project (MIAP) in locating and identifying the unclaimed cremated remains of veterans and securing a final resting place for these forgotten heroes. This bill would assist in dignifying veterans who have passed away but whose remains are still unclaimed. All of America's veterans deserve to be remembered for eternity with dignity and honor for their ultimate sacrifice.⁵

² Monday Morning Workload Report, June 7, 2010

³ Monday Morning Workload Report, June 8, 2015

⁴ Resolution No. 28

⁵ Resolution No. 24

The American Legion supports this bill.

H.R. 1380

To amend title 38, United States Code, to expand the eligibility for a medallion furnished by the Secretary of Veterans Affairs to signify the veteran status of a deceased individual.

The medallion is for veterans whose grave is located in a private cemetery and is marked with a privately purchased headstone or marker. Each medallion has the word “Veteran” inscribed across the top and indicates what branch of service the veteran served in. Currently, under Title 38, United States Code (U.S.C.), Section 2306 (d) (4) it states that the Secretary is to furnish upon request a medallion or other device of a design determined by the Secretary to signify the deceased’s status as a veteran to be attached to a headstone or marker.⁶ Nevertheless, this benefit is only made available for those eligible veterans that died on/or after November 1, 1990, per Public Law 110-157 Section 203 (b).⁷ This bill would expand the eligibility for veterans to receive a medallion regardless of the date of their death.

The American Legion supports legislation that would eliminate the legislation from expiring, making such authority permanent, and granting eligibility for this medallion to all veterans other than dishonorably discharged, regardless of their date of death.⁸

The American Legion supports this bill.

H.R. 1384: Honor America's Guard-Reserve Retirees Act

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

This legislation would provide a purely honorific title of “veteran” for those individuals who completed appropriate service in the National Guard and Reserve components of the Armed Forces, but for whatever reason do not have active duty service sufficient to bestow a title of veteran subject to the conditions provided for under the normal titles of the United States Code which assign veteran status for the purposes of benefits. This bill would not provide any benefit beyond the title of “veteran” and is stated to be intended purely as a point of honor.

The American Legion supports this bill.

⁶ [38 U.S.C. 2306](#)

⁷ [Public Law 110--157](#)

⁸ [Resolution No. 215](#)

H.R. 2001: Veterans 2nd Amendment Protection Act

To amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes.

Veterans are not required to give up their weapons for the purpose of receiving VA health care for mental health conditions. Under the Second Amendment to the Constitution of the United States each citizen has the right to keep and bears arms. However, there are concerns that the threat of being placed on a list that might deny veterans their Second Amendment rights could act as a deterrent for those who might otherwise seek treatment for their mental health conditions. The American Legion's concern is that some of the stigmas that are associated with mental illnesses may force a veteran to lose their Second Amendment rights as a result of seeking treatments and therapies for mental conditions such as posttraumatic stress disorder (PTSD), depression, and anxiety.

The American Legion reaffirms its recognition that the Second Amendment to the Constitution of the United States guarantees each law-abiding American citizen the right to keep and bear arms; and, that the membership of The American Legion urges our nation's lawmakers to recognize, as part of their oaths of office, that the Second Amendment guarantees law-abiding citizens the right to keep and bear arms of their choice, as do the millions of American veterans who have fought, and continue to fight, to preserve those rights, hereby advise the Congress of the United States and the Executive Department to cease and desist any and all efforts to restrict these right by any legislation or order.⁹

The American Legion supports this bill.

H.R. 2214: Disabled Veterans' Access to Medical Exams Improvement Act

To improve the authority of the Secretary of Veterans Affairs to enter into contracts with private physicians to conduct medical disability examinations.

To receive compensation manifesting from service or a service connected condition, a veteran must have a current diagnosis of a chronic medical condition, an incident in service, and a nexus statement (the connection of an event that happened while you were on active duty to a diagnosed condition today) from a medical professional. Due to higher rates of application for benefits by veterans and VA's difficulty in hiring medical professionals, it has become necessary to utilize private contractors for compensation and pension (C&P) examinations.

H.R. 2214 will allow greater authority to enter into contracts with private medical professionals to help alleviate the burden on VA for C&P examinations and ultimately allow for a quicker

⁹ Resolution No. 92

adjudication of claims. Through passage of Resolution 28, The American Legion urges VA to discover and employ efficient manners to adjudicate claims; through allowing greater access to medical professionals for C&P examinations, we believe will reduce the amount of time for veterans to wait for nexus statements regarding their claims for disability benefits.¹⁰

The American Legion supports this bill.

H.R. 2605: Veterans Fiduciary Reform Act of 2015

To amend title 38, United States Code, to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs.

VA's fiduciary program is designed to assign an individual to manage veterans' financial affairs because of injury, disease, being infirmed, or is deemed incompetent by the VA. Despite VA's efforts to expedite the fiduciary assignment process through its consolidation in recent years, little progress has been made in reducing the wait time to adjudicate claims pertaining to assigning a fiduciary.

H.R. 2605 attempts to address this issue by requiring VA to adjudicate fiduciary claims within 120 days and allowing veterans to receive their retroactive payments. The American Legion supports VA discovering methods to effectively and efficiently adjudicate claims¹¹; however, we have concerns regarding if VA has the capability to adjudicate these claims in the prescribed time period if they are not provided the necessary funding to accomplish the objective. Prior to requiring VA to adjudicate the claims fairly for these veterans, The American Legion believes this needs further study to ensure veterans are protected.

The American Legion will support this bill provided VA is provided the necessary funding to meet the objectives.

H.R. 2691: Veterans' Survivors Claims Processing Automation Act of 2015

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to adjudicate and pay survivor's benefits without requiring the filing of a formal claim, and for other purposes.

Eligibility for survivors' benefits can often be easily obtained either by evidence held by VA or through items such as a death certificate. For example, if a veteran received 100 percent service connection for 10 years prior to their death, the surviving spouse is entitled to Dependency

¹⁰ Resolution No. 28

¹¹ *ibid*

Indemnity Compensation (DIC). DIC benefits could also be awarded based upon a service connected condition either causing or contributing to the veteran's death. This information could easily be extracted from a death certificate.

H.R. 2691 strives to reduce the burden for many grief-stricken surviving spouses. If evidence obtained by VA clearly indicates the veteran's death was caused or contributed to by military service or a previously service connected condition, then the award should be granted. Resolution No. 28 supports VA discovering effective and efficient methods to administer its disability benefits¹². The American Legion strongly believes H.R. 2691 would assist in reducing the burden on surviving spouses and allows VA to adjudicate claims in a more efficient manner.

The American Legion supports this bill.

H.R. 2706: Veterans National Remembrance Act

To amend title 38, United States Code, Section 2403 part A to provide priority for the establishment of new national cemeteries by the Secretary of Veterans Affairs, and for other purposes

For those who gave the ultimate sacrifice for their country, in 1862 Congress established the Department of Veterans Affairs National Cemetery Administration (NCA) for the sole purpose of providing those veterans who fought in the Civil War a proper burial. The *Veterans National Remembrance Act* aims to amend title 38, U.S.C. Section 2403 part A which gives the Secretary the authority to "designate those cemeteries which are considered to be national cemeteries."¹³

This bill aims to add a new subsection that would give priority to a State that does not have a national cemetery. In the event that multiple states do not have a national cemetery, the Secretary would give priority "to that State that has the largest population of veterans."

While it would be beneficial to establish cemeteries where there is the greatest need, Section 2, Paragraph (2) (A) states that "the Secretary shall give priority to a state that does not have a national cemetery." Only after the Secretary "establishes two national cemeteries" in states without national cemeteries, the Secretary can waive the priority and "establish a national cemetery that will serve a larger population of veterans."

This bill seeks to prioritize states to receive national cemeteries regardless of veteran population. The American legion supports the prioritization of national cemeteries based on the needs of veteran population regardless of presence within a particular state.

The American Legion supports the proposition that cemetery placement must be based upon the needs of the veterans' community. However, The American Legion does not believe this need

¹² *Ibid*

¹³ 38 U.S. Code Section 2404 part A

be based upon the presence or absence of a cemetery on a state by state basis, but rather on the overall need of the general veterans' population.

The American Legion does not support this bill.

Conclusion

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million members of this organization. Questions concerning this testimony can be directed to Warren J. Goldstein in The American Legion Legislative Division (202) 861-2700, or wgoldstein@legion.org



National Service & Legislative Headquarters
 807 Maine Avenue, S.W.
 Washington, D.C. 20024-2410
 Phone (202) 554-3501
 Fax (202) 554-3581
 www.dav.org

**STATEMENT OF
 PAUL R. VARELA
 DAV ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
 COMMITTEE ON VETERANS' AFFAIRS
 SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
 UNITED STATES HOUSE OF REPRESENTATIVES
 JUNE 24, 2015**

Chairman Abraham, Ranking Member Titus and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing, and to present our views on the bills under consideration. As you know, DAV is a non-profit veterans service organization comprised of 1.2 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

H.R. 303, the Retired Pay Restoration Act

This bill would repeal legislation enacted in 2004 that created a phased reduction of military retirement offsets to Department of Veterans Affairs (VA) disability compensation in the case of longevity retirees; it also would authorize full disability compensation and a portion of military retirement pay in cases of service members retired under chapter 61 with 20 years or more of service.

DAV strongly supports this bill in accordance with DAV Resolution No. 053, adopted at our most recent national convention. Our resolution calls on Congress to support legislation to repeal the offset between military longevity retired pay and VA disability compensation

We have advocated for years that Congress should enact legislation to repeal the inequitable practice of requiring military longevity retirees pay be offset. Presently these retirees are ineligible to receive their disability compensation when they are rated less than 50 percent disabled.

All military retirees concurrently should be permitted to receive military longevity retired pay and VA disability compensation, also known as Concurrent Retirement Disability Pay (CRDP). DAV and our *Independent Budget* partners believe the time has come to finally remove the current prohibition imposed upon those longevity retirees rated less than 50 percent disabled.

Many veterans who retired from the armed forces based on length of service must forfeit a portion of their retired pay, earned through faithful performance of military duties, as a condition of receiving VA compensation for service-connected disabilities when they are rated less than 50 percent disabled. This policy is inequitable—military retired pay is earned by virtue

of a veteran's career of service, usually more than 20 years of honorable and faithful service performed on behalf of our nation. VA compensation is paid solely because of disability resulting from military service, regardless of the length of service.

If enacted into law, the provisions of H.R. 303 would become effective January 1, 2016.

H.R. 1302, the VA Appeals Backlog Act

This bill would require VA to take such steps as may be necessary to ensure that when a regional office of the VA receives a form known as "VA Form 9, Appeal to Board of Veterans' Appeals," or any successor form, submitted by a veteran to appeal a decision relating to a claim, the regional office would certify such form by not later than one year after the date of its receipt. This bill seeks to reduce the amount of time an appellant must wait for VBA to certify an appeal to the Board of Veterans' Appeals (Board), a period that currently can be up to two years.

The appeals process is a complicated multi-step and multi-path process that begins at the moment a claimant determines they are not satisfied with their rating decision and want to file an appeal. DAV takes this opportunity to describe in detail a typical appellate process, as follows—

Overview of the appeals process that begins at the VA regional office (RO):

- In order to initiate an appeal of a VBA decision, a claimant must file a Notice of Disagreement (NOD) within one year of receiving notice of their determination.
- Once a NOD is filed, an appellant will be issued an Appeals Election Letter, which confirms the Veterans Benefits Administration's (VBA) receipt of the appeal, solicits information regarding the availability of additional evidence and offers the appellant two options relative to the processing of their appeal. The veteran may opt to have their appeal reviewed under the Traditional Appeals Process or reviewed under the Decision Review Officer (DRO) Post Determination Review Process. An appellant must make an appeals processing election within 60 days of receiving the Appeals Election Letter or it will default to the Traditional Process.
- In most situations, based on our experience and judgment, but depending on the particulars of the appeal, DAV's NSOs will recommend their clients elect the local DRO review process. The DRO is a senior RO employee with the authority to reverse initial rating decisions, completely or in part, without any new or additional evidence. The DRO process is a *de novo* process, meaning they undertake an independent review of the claim being appealed, with no deference given to the rating board decision being challenged. A DRO has the authority to request medical exams or facilitate hearings to gather additional information from the appellant.
- After a DRO performs their *de novo* review they may issue a new rating decision favorable to the veteran. However, if the DRO does not grant the benefits sought, or if the maximum evaluation is not authorized, an appellant will be issued a Statement of the Case (SOC).

- For those who do not elect the DRO process, they will move directly to the SOC stage. On average, it can take up to two years from the time a NOD is received by VBA before an appellant receives a SOC, primarily due to a lack of adequate appellate personnel and the aforementioned practice of shifting existing DROs to rating-related activities.
- Upon receiving a SOC, an appellant then has 60 days to file a VA Form 9 with the VBA if they want to pursue review by the BVA. Within the Form 9, an appellant can elect a hearing before the BVA at its headquarters in Washington, D.C.; a hearing at the nearest VARO before a traveling member of the Board; a hearing at the nearest RO via satellite teleconference; or the option for no hearing. A hearing election can add as much as two years to an appeal process.
- Once the Form 9 is received by VBA, the appeal is considered formally filed to BVA and its receipt preserves a docket date for processing by the BVA. It then awaits review and certification by RO personnel (Form 8) before the case can be transferred to the BVA, which can take up to two years.
- Once the appeal is transferred to the jurisdiction of BVA, it is issued a docket number using the Form 9 filing date to determine its place in line, at which point it has traditionally awaited physical transfer to the Board.
- Once the appeal is physically received at the Board, it can take up to a year to issue a decision. If benefits are granted or previous VBA determinations upheld, the appeal is over, at least in terms of VBA's appeals process.
- If issues are remanded, meaning that additional development must be undertaken by VBA before the Board can issue their final ruling, the appeal continues. The remand process can add years more to the total timeline of the appeal if benefits remain denied at the RO level and the appeal is then rerouted to the BVA for a second review and disposition. This remand process can be repeated multiple times, leaving some veterans' appeals churning for years.

While we understand that the sponsor is seeking to provide relief for those appellants languishing within the appeals process, this bill may create unintended adverse consequences for appellants. Therefore, DAV must oppose this bill in its current form. Enforcing a hardened time limit for VBA to certify appeals to the Board raises several concerns that we urge the Subcommittee to take into consideration as it evaluates the merits of this bill.

First, the purpose of VBA's certification process is to ensure that all administrative and adjudicative procedures have been completed locally before an appeal is forwarded to the Board. VBA performs this "record review" to ensure that all issues have been properly addressed and that outstanding appeals or interrelated issues have not been overlooked. The purpose is to avoid unnecessary Board remands. If VBA is forced to meet a certain time constraint, more remands could be ordered by the Board for issues that otherwise could otherwise been resolved locally.

If VBA were forced to meet a one-year, arbitrary certification deadline, errors and oversights would likely occur even more frequently and ultimately bring harm to appellants. The incentive for VBA staff could be to simply certify these appeals without performing a thorough record review and fail to address matters locally, resulting in increased Board remand rates and further delaying the appeals process.

Second, if an appellant requested a hearing before the Board in conjunction with an appeal, and made that selection on the VA Form 9, the bill as written might suggest that VBA must certify the appeal to the Board with or without conducting the hearing. As is stands today, an appeal cannot be certified if it carries an outstanding hearing request.

On January 22, 2015, DAV testified before this Subcommittee regarding the dysfunction within the appeals process and provided Congress with several recommendations to improve this process, as follows—

Strengthen the DRO Program. DAV maintains that the DRO program is one of the most important elements of the appeals process, often providing positive outcomes for veterans more quickly and with less burden on VBA. The ability to have local review also allows our NSOs to support the work of the DROs in sorting through the issues involved in the appeal, similar to the way our NSOs help reduce the claims workload on ROs by ensuring more complete and accurate claims are filed by the veterans we represent.

Unfortunately, part of VBA's intense efforts to reduce the claims backlog over the past several years, and even before that, resulted in many ROs diverting DROs from processing appeals to performing direct claims related work. In fact, there have even been some discussions inside VBA about eliminating the DRO program altogether.

Last year, DAV undertook an informal survey of a number of our NSO Supervisors to gather their observations of how often DROs were performing direct claims processing work. We found that in most ROs surveyed, a majority of DROs were working at least part of their time on claims work during their standard 8-hour work day, and that a majority were working a significant part of their time on claims during overtime, including mandatory overtime. We shared these findings with VBA leadership who had already begun and have continued to make efforts to ensure that DROs focus on appeals work. Over the past year, we have observed a marked decrease of DROs performing claims work during normal working hours, though there is still significant claims work being performed during overtime hours. In addition to the problem of having appeals work pile up at ROs, having DROs perform claims work, particularly ratings, has secondary negative effects. First, it limits the number of DROs who can review appeals since they cannot review *de novo* an appeal that they helped to rate. Second, the fact that the original rating was adjudicated by a senior DRO may result in a higher standard being applied by a fellow DRO to overturn their colleague's decision.

For these reasons, it is imperative that VA and Congress look for reasonable proposals and measures, such as strict reporting requirements, to ensure that DROs perform only appeals-related work.

Create a new Fully Developed Appeals (FDA) Process. We are pleased to report that subsequent to the hearing on January 22, 2015, Chairman Miller and Representative O'Rourke introduced H.R. 800, the Express Appeals Act. This proposal continues to gain widespread support from Congress and other stakeholders.

Congress recognized that collaboration and innovation would be necessary to make measurable and sustainable headway towards true VA appeal reform. The FDA takes us one step closer to solving the challenges associated with appeal processing, while giving veterans different options in terms of how they choose to have their appeals processed.

The concepts contained within H.R. 800 are a great start. The bill still requires some modifications, but parties on both sides of the aisle are open to accepting feedback to see a FDA option become a reality for wounded, injured and ill veterans, their dependents and survivors.

Improve the rating board decision notification. Rating Board Decision (RBD) notification letters are meant to advise claimants of VA's decision on the issues; whether benefits have been awarded, whether prior ratings have been increased or sustained, the evidence used in reaching the decision, and most critical of all, an explanation to the claimant as to how VBA arrived at its decision. It is the final element of the notification process that requires ongoing improvement.

Well formulated RBD notices should be composed to make it easy for average, non-legal experts to understand. Well written decisions can help to prevent unnecessary appeal filings if they fully explain the rationale for VBA's conclusions. When a veteran understands the legal basis for why the benefits they sought were not awarded and what would be required to obtain them, it allows them to make better decisions about which appeals option, if any, to pursue. More complete and clear decision letters provide veterans and their representatives a better understanding of what is needed to prevail in their appeal, regardless of which option they choose.

We are pleased that subsequent to the January 22, 2015 hearing, VBA created a working group to address issues identified with their Automated Decision Letters (ADLs). The working group, which consisted of VSOs and representatives from the VBA, first met on April 29, 2015. Several ideas and recommendations were put forth during the meeting. Our collective suggestions to improve quality and readability were duly recognized and some are slated to be incorporated within future ADLs.

Although we appreciate the sponsor's intentions to shorten the appellate process, for the reasons outlined above, DAV must oppose this bill in its current form. We look forward to working with the Subcommittee to identify practical solutions to challenges in the VBA appeals process.

H.R. 1338, the Dignified Interment of Our Veterans Act of 2015

This bill would require the VA Secretary to study and report to Congress on matters relating to the interment of veterans' unclaimed remains in national cemeteries under the control of the National Cemetery Administration.

The study would assess the scope of the issues relating to veterans' unclaimed remains, including the estimated number of such remains; the effectiveness of VA procedures for working

with persons or entities having custody of unclaimed remains to facilitate the interment of such remains in national cemeteries; and the state and local laws that affect the Secretary's ability to inter unclaimed remains in such cemeteries.

The report would provide recommendations for appropriate legislative or administrative action to improve areas where deficiencies are identified.

DAV has no resolution pertaining to this recommendation, but would not oppose passage of this bill.

H.R. 1380, a bill to amend title 38, United States Code, to expand the eligibility for a medallion furnished by the Secretary of Veterans Affairs to signify the veteran status of a deceased individual

This bill would authorize the Secretary of Veterans Affairs to furnish a medallion or other device to signify the veteran status of a deceased individual, to be attached to a headstone or marker furnished at private expense, regardless of the date of death of such individual.

DAV has no resolution from our membership on this issue, but would not oppose passage of this legislation.

H.R. 1384, the Honor America's Guard-Reserve Retirees Act of 2015

This bill would bestow the designation of "veteran" to any person who is entitled to military retired pay for non-regular (reserve) service, or who would be so entitled but for age.

The bill stipulates that such person would not be entitled to any benefit authorized in title 38, United States Code, by reason of such designation.

DAV has no resolution pertaining to this matter and takes no position.

H.R. 2001 the Veterans 2nd Amendment Protection Act

This bill would prohibit, in any case arising out of the administration of laws and benefits by the VA, any person who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness from being considered adjudicated as a mental defective for purposes of the right to receive or transport firearms without the order or finding of a judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.

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

H.R. 2214

H.R. 2214, the Disabled Veterans' Access to Medical Exams Improvement Act, would extend and expand VA's authority to enter into contracts with private physicians to conduct

medical disability examinations as a tool in processing the volume of pending and future claims for disability compensation.

Under this legislation, VA's authority to contract for disability examinations as a pilot program would be extended until December 31, 2017; the authority is currently set to expire at the end of this year. The bill would also expand from 12 to 15 the number of VA Regional Offices (VARO) participating in this pilot program. Finally, the legislation would allow physicians licensed in a state, under a VA contract, to perform disability examinations and conduct such examinations in any state.

Over the past decade, DAV National Service Officers (NSO) have found that the quality and timeliness of compensation examinations conducted by contractors was generally as good, and sometimes better, than disability examinations conducted by VA physicians. Moreover, with demand for VA medical care rising, it is important that VA's treating physicians, especially specialists, remain focused on providing high quality care to their patients.

In addition, the more technologically advanced and user-friendly scheduling and IT systems used by some contractors has also contributed to higher customer satisfaction scores from veterans receiving contract examinations. For these reasons, we recommend the Subcommittee consider extending the authorization for three or more years to ensure that VBA continues to possess this tool to help reach timely claims decisions. We would even recommend that Congress consider whether it might be more cost efficient to extend the authorization even further to help reduce the average annual cost and conserve budgetary resources.

For many of the same reasons stated, we also support expanding the pilot program to more than 12 VAROs; in fact, we do not believe it to be necessary to place an arbitrary cap on the number of VAROs allowed to use contract examinations. The decision to use contract examinations should be determined solely by VAROs based on workloads, local capacity and available resources. If contract disability compensation examinations provide the same or better quality and timeliness, at the same or less cost per examination compared to the actual cost of using VA physicians, we find no compelling reason to limit their use to only 12 or even 15 VAROs. As such, we recommend that the Subcommittee consider removing altogether the limitation on the number of participating VAROs, thereby allowing each individual VARO to determine whether to use contract examinations.

DAV supports expanding the program to additional VAROs and extending the length of the program beyond December 31, 2017. Regarding a licensed physician's ability to conduct medical disability examinations across state lines, we have no resolution from our members on this issue, but would not oppose this provision of the bill.

H.R. 2605, the Veterans Fiduciary Reform Act of 2015

This bill would provide that, when in the opinion of the VA a VA beneficiary requires protection of benefits while a determination of incompetency is being made or appealed, or when a fiduciary is appealing a determination of misuse of such benefits, the Secretary may appoint one or more temporary fiduciaries for up to 120 days.

Under this bill, VA would be required to provide a written statement to a beneficiary when VA determines mental incompetence justifies appointment of a fiduciary. It would require the written statement detail the reasons for reaching such a determination and afford the beneficiary with the opportunity to appeal.

The bill would allow a beneficiary for whom the Secretary appoints a fiduciary, at any time, to request in good faith that the Secretary remove such fiduciary and appoint a new one. Under the bill, removal of or appointment of a new fiduciary would not delay or interrupt the beneficiary's receipt of benefits.

Under this bill veterans would retain the ability to pre-designate a fiduciary. If a beneficiary did not designate a fiduciary, the Secretary would appoint, to the extent possible, a fiduciary who is a relative, a guardian, or authorized to act on behalf of the beneficiary under durable power of attorney. The bill would provide for fiduciary commissions when necessary, and would authorize the temporary payment of benefits to a person having custody and control of an incompetent or minor beneficiary, to be used solely for the benefit of the beneficiary.

The Secretary would be directed to maintain a list of state and local agencies and nonprofit social service agencies qualified to act as fiduciary. Any certification of a fiduciary would be made on the basis of an inquiry or investigation of his or her fitness and qualifications, including face-to-face interviews and a background check.

A person convicted of a federal or state offense could serve as a fiduciary only if the Secretary found such person to be appropriate under the circumstances. Each fiduciary would be required to disclose the number of beneficiaries that the fiduciary represents. The Secretary would be required to maintain records of any person who has previously served as a fiduciary and had this status revoked, and notify the beneficiary within 14 days after learning that the fiduciary was convicted of a crime.

If there were a reason to believe that a fiduciary may be misusing all or part of a beneficiary benefit, the Secretary would be required under this bill to conduct a thorough investigation, and report the findings to the Attorney General and the head of each federal department or agency that pays a beneficiary benefit to any such fiduciary.

The bill also would require that each Veterans Benefits Administration regional office maintain specified fiduciary information. A fiduciary would be required to file an annual accounting of the administration of beneficiary benefits. The Secretary would be required to conduct annual random audits of fiduciaries who receive commissions for such service, and would require fiduciaries to repay any misused benefits.

The Secretary would be required to complete a report to the Congressional veterans committees on the implementation of this section.

DAV does not have a resolution from its members pertaining to this issue and takes no position on this bill.

H.R. 2691, the Veterans' Survivors Claims Processing Automation Act of 2015

This bill would authorize the Secretary of Veterans Affairs to pay benefits to a qualified survivor of a veteran who did not file a formal claim, provided the veteran's records contained sufficient evidence to establish entitlement to survivor benefits to a qualified survivor. Additionally, the bill would require VA to associate the date of the receipt of a claim under this authority as the date of the survivor's notification to VA of the death of the veteran.

Providing a reasonable exemption from standard form filing requirements is one way to streamline the claims process, as well as ease some of the processing burdens a survivor would otherwise experience. DAV supports this bill in accordance with Resolution No. 192, adopted at our most recent National Convention. Resolution No. 192 calls on Congress to support meaningful reforms in the Veterans Benefits Administration's disability claims process, and the draft bill is consistent with that goal.

H.R. 2706, the Veterans National Remembrance Act

This bill would amend title 38, United States Code, section 2404, to establish requirements for the Secretary when selecting sites for new national cemeteries.

This bill would direct the Secretary to evaluate such factors as veteran population and the preexistence of national cemeteries within a particular state when considering the establishment of a new national cemetery in the same state.

The bill would provide that if after two cemeteries are established in any one state the Secretary could waive the priority provisions for placing a cemetery in a state without a cemetery, if establishing a third cemetery within a particular state would serve a larger veteran population.

Although we do not have a resolution on this issue, DAV would not oppose passage of this legislation.

Mr. Chairman, this concludes my testimony. DAV appreciates your request for this statement. I would be pleased to answer any questions from you or members of the Subcommittee dealing with this testimony.

STATEMENT OF
ALEKS MOROSKY, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

WITH RESPECT TO

**H.R. 303, H.R. 1302, H.R. 1338, H.R. 1380, H.R. 1384, H.R. 2001, H.R. 2214, H.R. 2605,
and Draft Legislation**

WASHINGTON, DC

JUNE 24, 2015

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, thank you for the opportunity to offer our thoughts on today's pending legislation.

H.R. 303, Retired Pay Restoration Act

The VFW strongly supports this legislation, which would allow all military retirees to receive VA service-connected disability compensation without forfeiting any portion of their retirement pay, commonly known as concurrent receipt. This is currently only available to veterans who are rated at least 50 percent disabled and have completed 20 or more years of service.

Military retired pay and VA service-connected disability compensation are fundamentally different benefits, granted for different reasons. Military retired pay is earned by 20 or more years of service in the Armed Forces, allowing retirees to maintain their standard of living while attempting to enter the civilian job market for the first time in the middle of their prime working years. Service-connected disability compensation is a benefit meant to supplement a veteran's lost earning potential as a result of the disabilities he or she incurred while in service. Military retirees with service-connected disabilities do not enjoy the same earning potential as nondisabled retirees. Therefore, the VFW believes it is critical that all disabled retirees are able to collect both benefits without offset, in order to grant them true parity with their nondisabled counterparts.

The VFW is pleased that H.R. 303 would also allow for full concurrent receipt for chapter 61 retirees and those who receive both service-connected disability compensation and combat-related special compensation. In doing so, this legislation is fully consistent with VFW Resolution #415, and we urge its swift passage.

H.R. 1302, VA Appeals Backlog Relief Act

This legislation calls for the regional offices to certify all disability claims appeal forms to the Board of Veterans' Appeals no later than one year after receipt of the form. While the VFW agrees with the intent of this legislation, we recommend this effort be studied as a pilot before full implementation. We have seen how placing unstudied time constraints on VA's processes can lead to employees and managers making bad decisions in an effort to meet an untested timeline. Without understanding the current process and developing efficiencies that can and should take place, VA will be subject to an arbitrary deadline of productivity, without truly knowing how long the process should take.

H.R. 1338, Dignified Interment of Our Veterans Act of 2015

The VFW supports H.R. 1338. In January 2013, Public Law 122-260 was signed, allowing the National Cemetery Administration (NCA) to provide quicker and more dignified burials for veterans who pass away with no known next-of-kin. Prior to this law, funeral directors and medical examiners used a patchwork of their own resources and assistance from their local communities to provide burial services for these veterans. Because of this law, there is improved communication between VA and funeral directors, and VA has the authority to provide caskets or urns, and pay for the cost of the funerals and burials for veterans with no known next of kin.

While these improvements are important in providing dignified burials for all veterans, it is equally important to ensure these new provisions are working effectively. H.R. 1338 does just that. It calls for a study of NCA's interment process of unclaimed remains, to include the estimated number of unclaimed remains that VA processes, and the overall effectiveness of the procedures used to communicate with funeral directors and medical examiners. The VFW believes that every effort must be made to get end of life services right for our most vulnerable veterans – those with no next of kin.

H.R. 1380, to amend title 38, U.S.C., to expand the eligibility for a medallion furnished by the Secretary of Veterans Affairs to signify the veteran status of a deceased individual.

Currently, VA may furnish a medallion for placement on a headstone or marker for graves that are marked with a private headstone or marker for veterans who died on or after November 1, 1990. This bill rightfully expands this honor to all veterans regardless of their date of death. The VFW fully supports this legislation.

H.R. 1384, Honor America's Guard-Reserve Retirees Act

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

H.R. 2001, Veterans 2nd Amendment Protection Act

The VFW supports H.R. 2001, which would provide a layer of protection for veterans who might be seeking or undergoing mental health care for service-related psychological disorders from losing their Second Amendment right. Adding a provision that will require a finding through the legal system that the veteran's condition causes a danger to him or herself or others will prevent a veteran's name from being automatically added to federal no-sell lists.

H.R. 2214, Disabled Veterans' Access to Medical Exams Improvement Act

The VFW supports this legislation which would extend the authority of VA to contract with non-VA physicians to perform disability examinations. This authorization has been invaluable, allowing VA physicians to focus on providing direct medical care, while providing for the timely completion of evaluation exams through these contracts. Having been extended several times since 2003, the authority to allow contract physicians to conduct VA disability evaluations expires on December 31, 2015. By extending that authority through 2017, this legislation would ensure that VA has the necessary tools to maximize veterans' access to direct medical care through VA by freeing VA physicians from the added responsibility of conducting disability evaluations.

H.R. 2605, Veterans Fiduciary Reform Act of 2015

The VFW supports the intent of H.R. 2605. Protecting veterans from fraudulent fiduciaries, providing them an appeal process to have a new fiduciary appointed and ensuring veterans are capable of managing their own finances is critical.

However, it is unclear to the VFW whether or not due process will be violated by this bill's proposed changes to Paragraph 5502 of title 38 U.S.C., which will allow the Secretary to appoint a fiduciary prior to the determination of incompetency. This would be counter to the due process provision provided in 38 C.F.R. paragraph 3.353 (d) and (e), which provide for the presumption of competency prior to a court order or competency hearing.

We look forward to working with Congressman Johnson to ensure the intent of this bill is realized and that veterans' due process is protected in the process.

Draft Legislation, Veterans National Remembrance Act

The VFW supports the NCA's analytical system of identifying locations that have a need for veteran burial options, which currently sets the threshold at 80,000 veterans within a 75 mile radius. But missing from this analytical approach is a transparent prioritization of those areas that qualify for a National Cemetery under the threshold. This legislation would place states that do not currently have a National Cemetery at the top of the priority list for future cemetery development. Only after the establishment of two cemeteries in states that previously did not have a National Cemetery could the Secretary waive the priority requirement.

The VFW cannot support this legislation as written. The VFW would support if the bill were amended to place all locations that qualify, or will qualify, for the establishment of a National Cemetery within a specified period of time on a priority list that provides preference to states that currently do not have a National Cemetery when all other factors are equal. The VFW looks forward to working with Congresswoman Titus to find a compromise that will bring National Cemeteries to states that do not have one, while ensuring all veterans' burial needs are met.

Draft Legislation, Veterans' Survivors Claims Processing Automation Act

The VFW supports this legislation, which would allow VA to pay benefits to veterans' survivors who have not filed formal claims, so long as there is sufficient evidence in the veteran's record to establish eligibility. Covered benefits would include Dependency and Indemnity Compensation (DIC), Death Pension, funeral expenses, and accrued benefits. This would allow expedited access to benefits for survivors, while also giving VA an additional tool to reduce the claims backlog by issuing decisions more quickly.

Often, veterans' records already include the documents necessary to grant benefits to his or her survivors. Such documents may include DD Form 214, service-connected disability ratings, medical records, and household income information. The VFW believes that in no instance should a survivor be made to fill out unnecessary paperwork or resubmit evidence when adequate documentation is already on file. We do believe, however, that the survivor should also have the opportunity when providing notification of the veteran's death to submit necessary documents that may not be contained in the record, such as the death certificate, without the need to file a formal claim. Additionally, we believe that this legislation should require VA to issue a report on how many survivors are granted benefits under this authority, in order to ensure that it is properly utilized at all VA Regional Offices and Pension Management Centers.

Chairman Abraham, Ranking Member Titus, this concludes my testimony and I am happy to answer any questions you or the Committee members may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, VFW has not received any federal grants in Fiscal Year 2014, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.



SERVING
WITH
PRIDE



A M V E T S

NATIONAL
HEADQUARTERS
4647 Forbes Boulevard
Lanham, Maryland
20706-4380
TELEPHONE: 301-459-0600
FAX: 301-459-7924
E-MAIL: amvets@amvets.org

TESTIMONY

OF

DIANE M. ZUMATTO
AMVETS NATIONAL LEGISLATIVE DIRECTOR

FOR THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE

ON

DISABILITY ASSISTANCE

&

MEMORIAL AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

*ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION*

LEGISLATIVE HEARING ON:

**DRAFT LEGISLATION – VETERANS NATIONAL REMEMBRANCE ACT; &
VETERANS' SURVIVORS CLAIMS PROCESSING AUTOMATION ACT OF 2015;
HR – 303; 1302; 1338; 1380; 1384; 2001; 2214 & 2605**

24 JUNE 2015

Distinguished members of the DAMA Subcommittee, it is my pleasure, on behalf of AMVETS, to offer this testimony concerning the following pending legislation - HR: 303; 1302; 1338; 1380; 1384; 2001; 2214; & 2605, as well as the following draft legislation: the Veterans National Remembrance Act & the Veterans' Survivors Claims Processing Automation Act of 2015.

Since some of the bills being considered today deal with memorial affairs issues, I'd like to bring you up to speed on the National Cemetery oversight visits I've been conducting, on behalf of AMVETS, since 2014. I have had the opportunity to visit 15 veteran cemeteries in 10 states. 13 out of the 15 visits were made to National Cemeteries (Tahoma, WA; Leavenworth, KS; Ft. Bliss & Dallas Ft. Worth, TX; Jefferson Barracks & Jefferson City, MO; Alton, IL; Memphis, AR; Shiloh, TN; Corinth, MS; Florida, Bay Pines, Sarasota, FL). The remaining 2 cemeteries visited were State Veteran Cemeteries (Iowa, IA & Higginsville, MO)

Pending Legislation

HR 303, the Retired Pay Restoration Act – AMVETS supports this legislation which makes veterans eligible for concurrent receipt of both disability compensation and retirement pay. Since both of these forms of remuneration are literally earned by the veteran as a result of his/her service to this country, AMVETS strongly believes they should receive everything they are entitled to.

This has been long-standing AMVETS and Military Coalition legislative goal.

HR 1302, VA Appeals Backlog Relief Act – AMVETS does not supports this legislation which gives the VA up to one year to certify a veterans' VA Form 9, Appeal to Board of Veterans' Appeals. It is unclear to us, how this will speed up the appeals process. AMVETS believes that a 90 day timeframe would do more to speed up the appeals backlog.

HR 1338, the Dignified Interment of our Veterans Act of 2015 – AMVETS believes that every individual is entitled to a dignified burial and that no remains should be stored long term, whether at mortuaries, funeral homes, hospitals, etc. With this in mind, AMVETS supports the intent of this legislation which requires the Secretary of Veterans Affairs to conduct a study related to the issue of unclaimed veterans' remains.

That being said, we also have several reservations surrounding this legislation, including:

1. Over the course of the last year, NCA has taken some positive steps to inform the public about VA burial benefits for unclaimed veteran remains;

2. Some VSOs and other organizations around the country are already involved in identifying unclaimed veteran remains and are initiating the burial arrangement process;
3. AMVETS believes that any study will ultimately indicate that the problem of unclaimed veteran remains is a local, state or regional problem rather than a national one and that once these remains are confirmed to be veterans and are brought to the attention of NCA burial is arranged;
4. No veteran is ever interred in a National or State Cemetery alone. Many time VSOs and community members make an effort to attend these funerals, however, even if no one else attends, NCA personnel gather to honor and recognize each individual;
5. AMVETS also has concerns about who would conduct such a study? What would the qualifications be to perform this study? What questions would be asked? What if funeral directors, etc. refuse to cooperate with the study?; and
6. In this time of funding difficulties, is this the right time and do we have the resources to complete a nationwide study of this nature?

HR 1380, which expands the eligibility for a headstone medallion furnished by the VA - AMVETS is very supportive of this legislation which eliminates the current date of death requirement, with one exception – historic headstones. By affixing a modern device to a historic or historically significant headstone, the integrity of that feature is compromised.

Generally buildings, etc. over 50 years are considered historic, so there would have to be agreement between historic preservation professionals, NCA and other pertinent stakeholders.

HR 1384, the Honor America's Guard/Reserve Retirees Act – I, personally have been working on this legislation since it was first introduced, and this issue has been a long-standing goal of both AMVETS and the Military Coalition.

Here's the example I like to use when I discuss this issue – is it right that I am considered a veteran because I spent 3 years on active duty and someone who spent 20+ years in the Guard or Reserve is not? It's hard to justify when you think about it.

AMVETS believes that this is the right thing to do, because:

- this legislation is cost-neutral;
- it doesn't grant any additional benefits; and
- our Guard and Reserve retiree's wore the same uniform and performed many of the same tasks as those of us on active duty.

HR 2001, the Veterans 2nd Amendment Protection Act – AMVETS supports this legislation which seeks to protect veterans, who are incorrectly or indiscriminately labeled mentally defective by the VA from being placed in the FBI's National Instant Criminal Background Check System.

HR 2214, the Disabled Veterans' Access to Medical Exams Improvement Act – AMVETS fully supports this important piece of legislation which should help shorten the claims process by extending thru 31 December 2017, the authority of the VA to provide for licensed and approved contractors to conduct medical disability exams of applicants for VA benefits at any location in any state, etc.

AMVETS sees multiple benefits, including:

- exam location flexibility should make it easier on veterans to get to the exam location;
- by continuing to utilize approved contractors to perform exams, as well as VA employees, greater numbers of veterans should have timely access to exams and hopefully quicker decisions as well; and
- this is a logical way to expedite part of the VA claims process.

HR 2605, the Veterans' Fiduciary Reform Act of 2015 – AMVETS is not currently prepared to take a position on this legislation due to my extended absences due to health issues and the complex nature of the bill.

HR 2691, the Veterans' Survivors Claims Processing Automation Act of 2015 – AMVETS supports this legislation which would take the burden of filing a claim for benefits from the surviving spouse of a recently deceased veteran and, if there is sufficient evidence in the record to warrant such payment, would automatically pay those benefits.

HR 2706, the Veterans National Remembrance Act – While AMVETS appreciates the passion behind this legislation, we would not currently support it, because the established and well-grounded NCA policy which requires a veteran density of 80,000 within a 75-mile radius is working well and serving veterans at a rate of about 90%. If and when this formula is no longer effective, then NCA should explore other options.

This concludes my testimony at this time and I thank you again for the opportunity to offer our comments on pending legislation. I will be happy to answer any questions the committee may have.



Diane M. Zumatto
AMVETS National Legislative Director



Diane M. Zumatto of Spotsylvania, VA joined AMVETS as their National Legislative Director in August 2011. Zumatto a native New Yorker and the daughter of immigrant parents decided to follow in her family's footsteps by joining the military. Ms. Zumatto is a former Women's Army Corps/U.S. Army member who was stationed in Germany and Ft. Bragg, NC, was married to a CW4 aviator in the Washington Army National Guard, and is the mother of four adult children, two of whom joined the military.

Ms. Zumatto has been an author of the *Independent Budget (IB)* since 2011. The IB, which is published annually, is a comprehensive budget & policy document created by veterans for veterans. Because the IB covers all the issues important to veterans, including: veteran/survivor benefits; judicial review; medical care; construction programs; education, employment and training; and National Cemetery Administration, it is widely anticipated and utilized by the White House, VA, Congress, as well as, other Military/Veteran Service Organizations.

Ms. Zumatto regularly provides both oral and written testimony for various congressional committees and subcommittees, including the House/Senate Veterans Affairs Committees. Ms. Zumatto is also responsible for establishing and pursuing the annual legislative priorities for AMVETS, developing legislative briefing/policy papers, and is a quarterly contributor to '*American Veteran*' magazine. Since coming on board with AMVETS, Ms. Zumatto has focused on toxic wounds/Gulf War Illness, veteran employment and transition, military sexual trauma, veteran discrimination and memorial affairs issues.

Zumatto, the only female Legislative Director in the veteran's community, has more than 20 years of experience working with a variety of non-profits in increasingly more challenging positions, including: the American Museum of Natural History; the National Federation of Independent Business; the Tacoma-Pierce County Board of Realtors; The Washington State Association of Fire Chiefs; Saint Martin's College; the James Monroe Museum; the Friends of the Wilderness Battlefield and The Enlisted Association of the National Guard of the United States. Diane's non-profit experience is extremely well-rounded as she has variously served in both staff and volunteer positions including as a board member and consultant. Ms. Zumatto received a B.A. in Historic Preservation from the University of Mary Washington, in 2005.

AMVETS, National Legislative Director
 4647 Forbes Blvd, Lanham, MD 20706
 301-683-4016 / dzumatto@amvets.org



Statement of Christopher Neiweem
 Iraq and Afghanistan Veterans of America
before the
 Subcommittee on Disability Assistance and Memorial Affairs
 Wednesday, June 24, 2015

Statement of Christopher Neiweem
Legislative Associate
of
Iraq and Afghanistan Veterans Of America
before the
House Veterans Affairs Committee
Subcommittee on Disability Assistance and Memorial Affairs
hearing on
Legislative Hearing

June 24, 2015

Bill #	Bill Name or Subject	Sponsor	IAVA Position
H.R. 2214	Disabled Veterans' Access to Medical Exams Improvement Act	Rep. Abraham	Support
H.R. 1380	Expands Eligibility for SecVA to Furnish Medallions to Signify the Veteran Status of Deceased Veterans	Rep. Miller	Support
H.R. 2001	Veterans 2nd Amendment Protection Act	Rep. Miller	Support
H.R. 303	Retired Pay Restoration Act	Rep. Bilirakis	Support
H.R. 1338	Dignified Interment of Our Veterans Act of 2015	Rep. Shuster	Support
H.R. 1302	VA Appeals Backlog Relief Act	Rep. Latta	Support
H.R. 2605	Veterans Fiduciary Reform Act of 2015	Rep. Johnson	Support
H.R. 1384	Honor America's Guard Reserve Retirees Act	Rep. Walz	Support
H.R. 2706	Veterans National Remembrance Act	Rep. Titus	Support
H.R. 2691	Veterans' Survivors Claims Processing Automation Act of 2015	Rep. Ruiz	Not Opposed



Statement of Christopher Neiweem
Iraq and Afghanistan Veterans of America
before the
Subcommittee on Disability Assistance and Memorial Affairs
Wednesday, June 24, 2015

Chairman Abraham, Ranking Member Titus, and Distinguished Members of the Subcommittee:

On behalf of Iraq and Afghanistan Veterans of America (IAVA) and our nearly 400,000 members and supporters, thank you for the opportunity to share our views on these bills today.

H.R. 2214

Mr. Chairman, we support your legislation which would expand examination authority for physicians that examine veterans' claims for disability compensation. Too often, veterans continue to wait for long periods of time to receive decisions on their claims for disability compensation. Extending examination authority and extending contracts with licensed physicians will ensure efficiency in this process, and will go a long way to eliminating redundant medical examinations. This bill will aid the VA in meeting its goal to provide veterans timely and accurate medical examinations. IAVA supports this legislation.

H.R. 1380

This legislation would provide flexibility, regardless of the date of death of an individual, to be eligible to receive a medallion or other device to signify veteran status. This legislative adjustment would serve the interest of our veterans and their families and we support Chairman Miller in introducing this bill. IAVA supports this legislation.

H.R. 2001

This legislation addresses a problem that impacts veterans' rights relating to the second amendment. Due to some injuries or health conditions, a veteran may become eligible for caregiver benefits administered by the VBA. VA can make



Statement of Christopher Neiweem
 Iraq and Afghanistan Veterans of America
before the
 Subcommittee on Disability Assistance and Memorial Affairs
 Wednesday, June 24, 2015

the determination that a veteran receiving treatment for an injury is in need of assistance and thus be eligible for support services such as the caregiver program. Often times, these veterans may be eligible for their caregiver or spouse to receive a stipend or power to assist and administer their finances.

The problem that is occurring is that VA is making the leap from the determination that a veteran may need assistance with their finances, to labeling the veteran unfit to handle a firearm. In other words, the message being sent is if you can't handle your finances, you cannot handle a firearm.

Each case should be examined on a case-by-case basis. This legislation would require a judicial authority to make the determination that the veteran is a threat to their self or others. The veterans who have defended this nation -- often rifle in hand -- should have the same constitutional rights as any other citizen and these decisions should be made in the light of a judicial court and not a backroom office in the VA. IAVA supports this legislation.

H.R. 303

This legislation would express a Sense of Congress that military retired pay should not be offset or otherwise cut back because a veteran also earned, I repeat "earned", disability compensation. This bill would also remove "phase in" periods for concurrent receipt, and for individuals who were retired and separated from the military due to a service-connected disability, make them eligible for the full concurrent receipt of disability compensation and either retired pay or CRSC.

Let us keep in mind that these veterans -- especially those that are eligible for CRSC -- have sustained injuries in combat. These are the last individuals that should be the targets of federal savings. IAVA supports this legislation.



Statement of Christopher Neiweem
Iraq and Afghanistan Veterans of America
before the
Subcommittee on Disability Assistance and Memorial Affairs
Wednesday, June 24, 2015

H.R. 1338

This legislation requires the Secretary of the VA to study and report to Congress on a few key topic areas that relate to the issue of veteran burial and interment in national cemeteries under the authority of the National Cemetery Administration. This requirement would extend to identifying how many unclaimed remains exist and estimated figures. The bill would additionally require current VA procedure to be the subject of review, and further examine how those policies comport with state and local laws to allow the Secretary of the VA to administer in this area.

The last key provision would require recommended legislative or administrative actions that can improve the way our government handles the remains of our veterans as we work to ensure they have a dignified final resting place. IAVA supports this legislation.

H.R. 1302

This legislation requires that a VARO certify a veteran appeal submission within one year of receipt. In a time when too many veterans feel that the VA claims process moves at a glacial pace, we support legislative requirements that mandate timely action. IAVA supports this legislation.

H.R. 2605

The administration of VBA benefits to fiduciaries serving our veterans is a very technical and difficult task and we greatly respect the work of the Department to that end, and this bill is seeking to make it work better. Our goal on this topic is to achieve the balance of ensuring the benefits are being paid and administered in such a way that accurately supports the veterans and their fiduciary, while at the same time not burdening them with excessive barricades to getting that support.

This bill would clarify the roles of fiduciaries, to include a process by which



Statement of Christopher Neiweem
Iraq and Afghanistan Veterans of America
before the
Subcommittee on Disability Assistance and Memorial Affairs
Wednesday, June 24, 2015

temporary fiduciaries may be appointed to veterans. The bill also would provide a comprehensive set of reforms to supervise fiduciaries and clarify how investigations and results of those actions should be administered. This includes recourse for overpayments and misuse of funds. The support Congress has given disabled veterans and the collaboration with VSOs, especially in the years since the Iraq and Afghanistan wars, has been strong and we have some of the strongest benefits now more than at any time in history. However, the complexity of those benefits will require congressional oversight and perennial stakeholder input. IAVA supports this legislation.

H.R. 1384

Simply put, this does not create any new benefits but would allow our Reserve and Guard service members who serve on orders that are currently outside the scope of what classifies as "veterans" be given that title in law. This has been a long-standing TMC goal and IAVA joins Rep. Walz and our allies at TMC in supporting this bill.

H.R. 2706

We support this legislation which would give the Secretary of the VA the authority to prioritize the placement of a future veterans cemeteries in a state that does not have one or otherwise serves a large portion of veterans. IAVA supports this legislation.

H.R. 2601

We do not oppose the legislation but require more time to study the measure in concert with engagement from our membership.

Mr. Chairman, IAVA appreciates the opportunity to offer our views on these bills. Thank you and I am happy to answer any questions you may have.



Statement of Christopher Neiweem
Iraq and Afghanistan Veterans of America
before the
Subcommittee on Disability Assistance and Memorial Affairs
Wednesday, June 24, 2015

**Biography of Christopher Neiweem
Legislative Associate, Iraq and Afghanistan Veterans of America**

As Legislative Associate at IAVA and former military police sergeant and Iraq war veteran, Mr. Neiweem maintains congressional relationships and supports policy priorities. He spent 6 years in the U.S. Army Reserve as a military police NCO and served a tour of duty in 2003 during Operation Iraqi Freedom detaining Enemy Prisoners of War (EPWs), and performing base security and customs in during the Iraq war. He holds both a Bachelor's and Master's Degree in Political Affairs and has been advocating for veterans nationally since 2011. Mr. Neiweem routinely provides editorial support for IAVA's policy priorities and has appeared in multiple local, state, and national media outlets supporting post-9/11 veterans. His policy portfolio covers veterans' health, benefits, and he has specialized in education issues, with an emphasis on holding for-profit colleges accountable.

Statement on Receipt of Grants or Contract Funds

Neither Mr. Neiweem, nor the organization he represents, Iraq and Afghanistan Veterans of America, has received federal grant or contract funds relevant to the subject matter of this testimony during the current or past two fiscal years.

Testimony submitted by Jeffrey Swanson, PhD and Richard Bonnie, LLB¹
Subcommittee on Disability Assistance and Memorial Affairs, Hearing
June 24, 2015, H.R.2001 - Veterans 2nd Amendment Protection Act

We thank the Committee for this opportunity to submit testimony
regarding H.R.2001: Veterans 2nd Amendment Protection Act.

The Veterans 2nd Amendment Protection Act (H.R. 2001) addresses an
important concern of fairness in a policy that is intended to protect
veterans but may infringe their rights without sufficient due process.
The policy in question is VA's current practice of reporting to the
FBI's National Instant Criminal Background Check System (NICS) the
names of veterans who are assigned a fiduciary to assist the veteran
in managing their benefit funds. What is controversial about this is
that VA decides, in a rather opaque administrative procedure, who gets
a "fiduciary" --and thus, indirectly, who is put into NICS--without
assessing whether a financially-challenged veteran is at risk of harm
to self or others. This decision occurs without a hearing before
either a judge or other objective, duly authorized administrative
officer in which the facts of the matter could be presented and
challenged.

Over the past several years, VA has reported the names of about
100,000² "incompetent beneficiaries" to the NICS--the database that

¹ Jeffrey Swanson, PhD, is Professor in Psychiatry and Behavioral Sciences at Duke University School of Medicine and also works part time as a research scientist under contract with the Durham VA Medical Center in Durham, NC. Richard Bonnie, LLB, is Harrison Foundation Professor of Law and Medicine and Director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia. The opinions expressed in this testimony are Dr. Swanson's and Professor Bonnie's and do not necessarily reflect VA policy.

licensed gun dealers query to determine whether people trying to buy a gun can legally do so. The proposed law, H.R. 2001, would remove these veterans' names from NICS and would uncouple the loss of gun rights from routine assignment of VA fiduciaries in the future. Would such changes be good or bad for veterans, or for the public? Our testimony offers some background information and research evidence to help legislators evaluate VA's fiduciary/gun-restriction policy and consider the possible advantages and drawbacks of rescinding it.

The Department of Veterans Affairs did not invent the idea of removing gun rights from people found incompetent to manage their money; the policy was apparently initiated to implement the 1968 federal Gun Control Act,³ which banned the possession of firearms by certain categories of persons assumed to be dangerous, including anyone "adjudicated as a mental defective." The archaic phrase gives offense to modern ears and lacks clinical meaning, but the Department of Justice (DOJ)⁴ has defined it specifically to include anyone who "lacks the mental capacity to contract or manage his or her own affairs" as determined by some lawful authority. According to current VA procedure, military veterans fall under this broad gun-disqualifying definition whenever the VA finds them to be financially incompetent and in need of a third-party "fiduciary" to manage VA benefit funds.⁵

² Unpublished communication from Veterans Benefits Administration (VBA) to Congressional office, 2015.

³ USA. Gun Control Act of 1968, Public Law 90-618, Title 18, United States Code - Firearms; Chapter 44 (Section 101). Washington DC: Congress of the United States; 1968.

⁴ Code of Federal Regulations, Title 27, Chapter II, Subchapter B, Part 478, Subpart B, Section 478.11

⁵ NICS Improvement Amendments Act of 2007 (P.L. 110-180)

VA's assignment of fiduciaries is made through an administrative process within the Veterans Benefits Administration (VBA), and without the requirement of either a formal evaluation of decision-making capacity by a healthcare professional or a genuine opportunity for a fair hearing for *adjudicating* the question of financial capacity as defined in the DOJ regulations.⁶ These strong due process objections to the VA's policy are clearly the main concern underlying H.R. 2001. The argument is mainly about procedure, and we have serious doubts about whether VA's current way of assigning fiduciaries actually meets the definition of "*adjudicated as a mental defective*" under the Gun Control Act. But it is worth asking whether this procedurally flawed policy is also substantively flawed. Is there a public-safety rationale for attaching gun rights to the fiduciary standard? What do we know about the relationship between the *ability* to manage money and *risk* of harm to self or others? Is there even a connection?

Recent research on post-deployment adjustment of Iraq and Afghanistan war veterans has found a modest statistical correlation between a measure of financial decision-making capacity and self-reported suicidality and interpersonal violent behavior.⁷ In a nationally representative random sample of 1,388 separated veterans and reservists from the era of our recent wars, participants were tested on basic money management skills and also queried about violence and suicidal behavior and thoughts. Veterans who scored poorly on

⁶ Wilder CM, Elbogen E, Moser L (2015). Fiduciary services for veterans with psychiatric disabilities. *Federal Practitioner* 32(1), 12-19.

⁷ Elbogen EB, Johnson SC, Wagner HR, Newton VM, Beckham JC (2012). Financial well-being and postdeployment adjustment among Iraq and Afghanistan War veterans. *Military Medicine* 177(6), 669-675.

financial management abilities were about twice as likely to report serious acts of violence, arrest, suicidal behavior, and use of illicit drugs, compared to those with good money management skills. These differences in relative risk associated with financial incapacity were statistically significant, even though the majority of veterans with financial incapacity were not violent or suicidal. Other research, on civilians with psychiatric disabilities who were found incompetent to manage their Supplemental Security Income (SSI) benefits, found that assignment of a family member as a "representative payee" was significantly associated with increased risk of violent acts by the incompetent beneficiary against family members.⁸

Does the fiduciary gun-restriction policy, as it stands, effectively prevent firearm-related violence and suicide among veterans? The full answer to that question is unknown, but the population impact of the policy is inherently limited by the very small proportion of at-risk individuals that it affects, considering the entire veteran population of approximately 22 million. There are undoubtedly better and more efficient, effective, comprehensive, and carefully-tailored ways to keep guns out of the hands of dangerous people⁹ than reporting a relatively small number of putatively financially incompetent veteran beneficiaries to the NICS.

⁸ Elbogen, EB, Swanson, JW, Swartz, MS, Van Dorn, R (2005). Family representative payeeship and violence risk in severe mental illness. *Law & Human Behavior* 29, 563-574.

⁹ McGinty EE, Frattaroli S, Appelbaum PS, Bonnie RF, Grilley A, Horwitz J, Swanson JW, Webster DW (2014). Using research evidence to reframe the policy debate around mental illness and guns: process and recommendations. *American Journal of Public Health*, 104(11), e22-e26.

But what about the 100,000 veterans who are already in NICS because they were assigned a fiduciary? What are the implications, for them and their families, of automatically restoring their gun rights without any case-by-case review? Unfortunately, there is little information publically available about the population of incompetent veterans who have already been reported to the NICS. However, we do know something about the distribution of psychiatric diagnoses of veterans in NICS, which are typically the diagnoses for which the veterans are receiving VA benefits: approximately 20,000 of the group--1 in 5 of those in NICS--have a diagnosis of schizophrenia or other psychotic illness, and about half of those have a "paranoid type" of schizophrenia, which is typified by delusions of persecution and threat from others.¹⁰

Do these mental health conditions significantly elevate the risk of violence and suicide and thereby justify legal restrictions on gun access? Sometimes, and it depends. Epidemiological studies of people with schizophrenia in the general community have found that the large majority are not violent towards others, but that the subgroup with acute symptoms of excessive and irrational threat perception--such as believing that others are "out to get me"--are significantly more likely to be violent towards others.¹¹

Also in NICS are about 23,000 veterans diagnosed with posttraumatic stress disorder and about 15,000 (mostly older) veterans suffering

¹⁰ Unpublished communication from VBA, *op. cit.*

¹¹ Swanson JW, Swartz MS, Van Dorn RA, Elbogen EB, Wagner HR, Rosenheck RA, Stroup TS, McEvoy JP, Lieberman JA (2006). A national study of violent behavior in persons with schizophrenia. *Archives of General Psychiatry*, 63, 490-499

from dementia with underlying causes ranging from Alzheimer's disease to traumatic brain injury;¹² research literature would suggest that both of these groups of veterans, too, carry some elevated risk of suicide or irresponsible behavior with firearms.^{13,14} Still, all of these diagnostic categories function as nonspecific risk factors for gun violence and suicide; there are many more people with these diagnoses who will not harm anyone than who will. That is because violence and suicide are caused by many interacting factors--mental illness being only one--and people with mental illness may carry other risk and protective factors for dangerous behavior.¹⁵ It is just the magnitude of the thing being prevented--death by a gun--that might justify limiting the rights of so many people who would not turn out to be violent in any case.

Civil rights advocates and gun violence prevention experts could each find fault with a policy that infringes the constitutional rights of so many while having only modest impact, at best, on gun violence and suicide. Hence, the criticism that animates H.R. 2001: that the VA's fiduciary/gun policy, without due process,¹⁶ precludes access to firearms by people who have not been shown to pose any particular risk

¹² Unpublished communication from VBA, *op. cit.*

¹³ Krysinskaa K and Lesterb D (2010). Post-traumatic stress disorder and suicide risk: A systematic review. *Archives of Suicide Research* 14(1), 1-23

¹⁴ Seyfried LS, Kales HC, Ignacio RV, Conwell Y, Valenstein M (2011). Predictors of suicide in patients with dementia. *Alzheimer's and Dementia*, 7(6), 567-573

¹⁵ Swanson JW, McGinty EE, Fazel S, Mays VM (2014). Mental illness and reduction of gun violence and suicide: bringing epidemiologic research to policy. *Annals of Epidemiology*. S1047-2797(14)00147-1

¹⁶ Flynn-Brown J (2014). Analyzing the constitutional implications of the Department of Veterans Affairs' process to determine incompetency: Is the federal government violating the Second Amendment and due process? *Hastings Constitutional Law Quarterly* 41(3), 521-560

of harming anyone. To make matters seem even more unfair, those "incompetent beneficiaries" reported by VA to the NICS have been subjected to different treatment than similarly-situated civilian counterparts. For instance, incompetent Supplemental Security Income (SSI) beneficiaries with "representative payees" assigned by the Social Security Administration do not similarly lose gun rights.¹⁷ Further, when states report "incompetent" individuals to NICS, it is because a state court has determined mental incompetency in a formal adjudicatory procedure--one that relies on expert clinical testimony and offers due process protections commensurate with the important rights at stake.

In the end, what would H.R. 2001 accomplish from the veteran's point of view? Mainly, it would mean that VA's appointment of a fiduciary to manage one's VA benefits would no longer be used, by itself, as a predicate for denying the veteran the right to purchase and possess a gun. This would reform the VA's arguably flawed policy going forward. However, the problem addressed by H.R. 2001 is more complicated in two ways. First, it is necessary for the VA to take appropriate steps to facilitate NICS reporting for veterans receiving mental health care in the VA system who are found by a lawful judicial or administrative authority to pose a danger to themselves or others. For example, the VHA could decide to report to NICS all involuntary commitments to VA hospitals; this would fill a gap created by the current inconsistent

¹⁷ Krouse WJ (2014). Gun control legislation in the 113th Congress. *Congressional Research Service Report* number 7-5700, R42987, www.crs.gov

NICS-reporting practices of state civil courts and public mental health authorities.

Second, it is necessary to address the fate of the 100,000 veterans who are already in NICS. Some of these veterans are disqualified under other criteria because, for example, they have been involuntarily committed or convicted of a felony or domestic violence misdemeanor, with corresponding additional records in the NICS. However, should the gun rights of all of the remaining veterans in this group be automatically restored by retroactively invalidating the VA's past actions? From the limited available data, it seems likely that automatically restoring all of these individuals' gun rights will provide legal access to firearms for at least some veterans who do, in fact, pose a danger to themselves or others. Therefore, for veterans already in the NICS because of a fiduciary determination by the VA, perhaps some level of systematic review on the question of dangerousness, with due process overseen by a federal court, might provide some needed protection and peace of mind--for the veterans themselves, as well as for their families and communities.



Informs ■ Educates ■ Advocates

**STATEMENT
OF THE
NATIONAL FUNERAL DIRECTORS ASSOCIATION**

**BEFORE THE
HOUSE COMMITTEE ON VETERANS AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL
AFFAIRS**

June 24, 2015

Chairman Abraham; Ranking Member Titus; Members of the Subcommittee, thank you for the opportunity to testify before you today about legislation relating to important issues facing our nation's veterans.

I am Lesley Witter, Senior Vice President, Advocacy for the National Funeral Directors Association (NFDA). I am testifying today on behalf of more than 13,000 funeral homes and over 20,000 licensed funeral directors and embalmers in all 50 states who are members of the NFDA. NFDA is the leading funeral service organization in the United States and around the world, providing a national and international voice for the profession. Funeral directors have a sacred trust to help ensure that every deceased veteran receives the care, honor and dignity they've earned because of their sacrifice in defense of the freedoms we enjoy today.

Mr. Chairman, NFDA would like to thank Representative Shuster for introducing this important legislation, and thank the subcommittee for considering it today. I would like to express NFDA's strong support for H.R.1338, the "Dignified Interment of Our Veterans Act of 2015", a bill that requires the Secretary of Veterans Affairs to study and report to Congress on matters relating to the interring of veterans' unclaimed remains in national cemeteries under the control of the National Cemetery Administration, including: the scope of the issues relating to veterans' unclaimed remains, including the estimated number of such remains; the effectiveness of VA procedures for working with persons or entities having custody of unclaimed remains to facilitate the interment of such remains in such cemeteries; state and local laws that affect the Secretary's ability to inter unclaimed veterans' remains in such cemeteries; and recommendations for appropriate legislative or administrative action.

Funeral homes across the country face a challenge that might surprise you. Many funeral homes are holding the cremated remains of unclaimed human remains, many of whom are Veterans, who have not been claimed by relatives or have no next of kin. In fact, it is estimated that there are as many as 1,000 unclaimed veterans remains in every state. "Unclaimed veterans" are defined by the Department of Veterans Affairs as those who die with no next of kin to claim their remains and insufficient funds to cover burial expenses. A VA pension or other compensation is no longer a prerequisite for unclaimed veterans to receive burial benefits.

Funeral directors would like to see all unclaimed remains receive a proper and dignified funeral and burial, and will be happy to work with the VA to identify veterans' remains that have gone unclaimed, and ensure that these Veterans receive the funeral and burial honors they deserve. However, funeral homes must balance their desire to ensure a dignified funeral and burial for unclaimed remains with legal barriers in place that can make it difficult for next of kin to be identified or located. The Dignified Interment of our Veterans Act would attempt to improve this process, by first reviewing how the VA handles remains, including how they are identified, claimed and interred. We are particularly interested in helping increase the effectiveness of VA procedures for working with persons or entities such as funeral homes that have custody of unclaimed remains to facilitate the interment of such remains in such cemeteries.

NFDA also commends the work done by the Missing in America Project in bringing the issues of unclaimed Veterans remains to national attention. The Missing in America Project estimates that there are remains of about 47,000 veterans stored throughout the United States that have yet to be identified and/or claimed. Many funeral homes have worked with the Missing in America Project to locate unclaimed Veterans remains and provide them with a dignified funeral. In fact, in 2009, eight Iowa

Veterans were laid to rest with full military honors at the Iowa Veterans Cemetery after a collaboration between Iowa funeral homes and the Missing in America Project. At that time, it was the largest military funeral in the United States for Veterans who had previously been unclaimed. The following year, in 2010, a military funeral was held for a World War II veteran whose cremated remains had been found in an Iowa funeral home. He had been waiting for 36 years to be buried and is now at the Iowa Veterans Cemetery in Van Meter, Iowa.

In 2013 a coalition including three Michigan Funeral Directors (Pat Lynch, John Desmond, and David Techner), The Jewish Fund, Missing in America Project and volunteers worked together to get full military burials for the unclaimed remains of 13 veterans who were left unclaimed in a Detroit morgue. The 13 veterans, who were buried in caskets, had all died within the past three years. On September 11, 2014 one Marine, one Air Force, two Navy, and nine Army veterans received the same honor in death that they had shown in life. "These men served our country honorably and deserve to be laid to rest in the same manner," said David Techner, funeral director of the Ira Kaufman Chapel in Southfield and a member of the coalition responsible for the burials.

Mr. Chairman, I would also like to express NFDA's support for H.R.1380, a bill introduced by Mr. Miller of Florida that authorizes the Secretary of Veterans Affairs to furnish a medallion or other device to signify the veteran status of a deceased individual, to be attached to a headstone or marker furnished at private expense, regardless of the date of death of such individual.

In addition, NFDA supports H.R. 2706, the "Veterans National Remembrance Act" introduced by Ranking Member Titus that directs the Secretary of Veterans Affairs, in selecting a location for the establishment of a new national cemetery, to: (1) give priority to a state that does not have a national cemetery and that has the largest population of veterans among states without such a cemetery, and (2) ensure that such location is within 10 miles of a significant amount of the population to be served by such cemetery during the 25 years following its establishment. NFDA supports this bill because the family of every deceased veteran should have easy and convenient access to a national cemetery. In a survey of our members, the average number of miles to the nearest VA cemetery was approximately 65 miles, however, responses to this question ranged from 1 to 330 miles.

Furthermore, NFDA strongly supports legislation that is not up for consideration today. H.R. 1911 is legislation that will create equity among veterans and ensure that veterans receive a dignified funeral and burial regardless of ability to pay or circumstances of death. NFDA respectfully asks that the Subcommittee consider this important legislation and encourages Congress to enact Mr. Hunter's bill.

Mr. Chairman and distinguished members of the committee, on behalf of the members of the National Funeral Directors Association, I want to ensure you that funeral directors throughout this country remain dedicated to doing our part in honoring our nation's veterans and their families. I want to conclude my testimony today by thanking you for the opportunity to testify on behalf of the NFDA. I hope my testimony has been helpful.

TESTIMONY OF BRIGADIER GENERAL (RET) STEPHEN N. XENAKIS, MD

Erik Erikson Scholar

The Austen Riggs Center

Subcommittee on Disability Assistance and Memorial Affairs, Hearing June 24, 2015

H.R.2001 - Veterans 2nd Amendment Protection Act

Thank you to the Committee for this opportunity to submit testimony regarding H.R.2001 - Veterans 2nd Amendment Protection Act. I am Dr. Stephen Xenakis, retired Brigadier General and Army Medical Corps Officer, with 28 years of active military service. I am certified by the American Board of Psychiatry and Neurology in General Psychiatry and Child and Adolescent Psychiatry, and have dedicated my professional career to providing medical and psychiatric care to our soldiers and veterans and sustaining the readiness of our fighting force. First and foremost, I am dedicated to improving and protecting their health and wellbeing, and therefore urge the committee not to pass H.R.2001 - Veterans 2nd Amendment Protection Act (H.R.2001) in its current form.

Under the current process, if a veteran is determined to be incapable of managing his or her disbursement of funds from the Veterans Benefits Administration (VBA), the veteran is assigned a fiduciary, categorized as mentally incompetent¹, considered "adjudicated mental defective," and therefore prohibited from purchasing or possessing firearms.² In its current form, H.R.2001 would change the process, stating those who are deemed mentally incompetent by the Department of Veterans Affairs' (VA) would NOT be considered adjudicated mental defective "without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others."³ The result being, individuals who are currently prohibited from purchasing or possessing firearms, because of a VBA fiduciary finding, would no longer be prohibited.

Though I concur that there is room for improvement in the VA interpretation of the mentally incompetent determination, H.R. 2001 is misguided in its approach. Yes, there may be individuals who have been swept into the "adjudicated mental defective" category because they need assistance

¹ 38 CFR 3.353 - Determinations of incompetency and competency

² U.S. Department of Veterans Affairs, Veterans Benefits Administration. (n.d.). Fiduciary. Retrieved June 19, 2015, from <http://www.benefits.va.gov/fiduciary/beneficiary.asp>

³ Rep. Jeff Miller. (2015). H.R.2001 - Veterans 2nd Amendment Protection Act. Retrieved June 19, 2015, from <https://www.congress.gov/bill/114th-congress/house-bill/2001/text>

managing their disbursement of VBA funds and for whom firearms access would not pose a risk to themselves or anyone else. However, there are also individuals in this category for whom access to a firearm would indeed be dangerous. Therefore restoring firearms in the sweeping manner to everyone declared mentally incompetent by the VA, as H.R.2001 would do, would put our veterans, and citizens, in harm's way.

To discuss H.R.2001 is to discuss this country's veteran suicide crisis, and to discuss suicide is to discuss access to firearms. The high suicide rate among the veteran population is devastating; a 2012 report from the VA reported an estimated 22 veterans per day commit suicide.⁴ Data shows recent veterans who were on active duty during the wars in Iraq and Afghanistan have a marked increased risk of suicide compared to the general population (41% higher suicide risk among deployed veterans; 61% higher risk among those non-deployed).⁵ Access to firearms is a significant part of the problem; a study of male veterans found that veterans were more likely than non-veterans to use firearms as a means to suicide.⁶ Research shows firearms are the most lethal means to suicide; an estimated 85% of suicide attempts using a firearm are fatal, compared to 2% by poisoning or overdose, or 1% by cutting.⁷

The evidence is strong and paints a grim picture – suicide is a serious public health problem. According to 2013 data from the Centers for Disease Control and Prevention, suicide is the 10th leading cause of death for all age groups.⁸ Suicide is the second leading cause of death for those age 25-34, ahead of heart disease, liver disease, or HIV.⁹ Over half of the 41,149 suicides in 2013 were by firearm.¹⁰

Our society can mitigate this problem however with smart policies and practices. We should take a page out of the military training manuals. The military trains us to think "safety first" and avoid

⁴ Department of Veterans Affairs, Mental Health Services, Suicide Prevention Program. (2012). *Suicide Data Report, 2012*. Retrieved June 22, 2015, from <http://journalistsresource.org/wp-content/uploads/2013/02/Suicide-Data-Report-2012-final.pdf>

⁵ Kang, H., Bullman, T., Smolenski, D., Skopp, N., Gahm, G., & Reger, M. (2015). Suicide risk among 1.3 million veterans who were on active duty during the Iraq and Afghanistan wars. *Annals of Epidemiology*, 25(2), 96-100.

⁶ Kaplan, M. S., Huguette, N., McFarland, B. H., & Newsom, J. T. (2007). Suicide among male veterans: a prospective population-based study. *Journal of Epidemiology and Community Health*, 61(7), 619-624.

⁷ Harvard T.H. Chan School of Public Health. (2001). Means Matter, Lethality of Suicide Method. Retrieved June 22, 2015, from <http://www.hsph.harvard.edu/means-matter/means-matter/case-fatality/>

⁸ Centers for Disease Control and Prevention. (2013). Injury Prevention & Control: Data & Statistics (WISQARS). *Ten Leading Causes of Death and Injury*. Retrieved June 22, 2015, from <http://www.cdc.gov/injury/wisqars/leadingcauses.html>

⁹ Centers for Disease Control and Prevention. (2013). Injury Prevention & Control: Data & Statistics (WISQARS). *Ten Leading Causes of Death and Injury*. Retrieved June 22, 2015, from <http://www.cdc.gov/injury/wisqars/leadingcauses.html>

¹⁰ Centers for Disease Control and Prevention. (2013). FastStats, Suicide and Self-Inflicted Injury. Retrieved June 22, 2015, from <http://www.cdc.gov/nchs/fastats/suicide.htm>

unnecessary harm and injury. It is our standard practice among military psychiatrists to confront a potentially suicidal soldier and intervene aggressively to protect the soldier and the family. I routinely ask – “do you have weapons, where are they, what can you and your family do now to keep you and them safe?” As such, it is absolutely crucial, that any veteran who has been deemed mentally incompetent by the VBA go through an individualized process to restore his or her firearms rights, including an assessment for risk to self and others consistent with best medical practices, to ensure that the veteran would not constitute a danger to the self or others going forward. Such a process is not outlined in H.R.2001 and, therefore, I urge the committee not to pass the amendment in its current form.

STATEMENT OF HON. BOB LATTA (OH-05)

Mr. Chairman,

I thank you for the opportunity to provide a statement for the record for today's legislative hearing in the House Committee on Veterans' Affairs, Disability Assistance and Memorial Affairs Subcommittee, that includes strong bipartisan legislation I introduced, H.R. 1302, the VA Appeals Backlog Relief Act, which would help expedite the appeals claims process.

Our great nation is blessed to have the bravest men and women in the world serving in our armed forces and putting their lives on the line every day in order to defend the freedoms we hold so dear. The sacrifices they make are incredible and it is incumbent upon Congress and the Department of Veterans Affairs (VA) to ensure they receive the timely care and benefits they have earned and deserve upon their return home.

The VA's lack of timely claims processing, and the massive backlog that has been created, has long been a major problem. Thanks to the quality work of this subcommittee, and the full committee, a good deal of progress has been made; however, there is still more work to be done, especially on the appeals side.

As it currently stands at the VA, there are at least 300,000 appeals claims pending, with nearly 60,000 pending VA Form 9's with an average pending time of well over 600 days. In my home state of Ohio, county veterans service officers and veterans service organizations have contacted me regarding the possibility of five to ten year wait times on appealed issues, with a major cause of the delay due to the lengthy time it takes the local VA Regional Office (VARO), once they have received a completed VA Form 9, to certify the case to the Board of Veterans Appeals. In response, and with the input of these officers and organizations, I introduced the VA Appeals Backlog Relief Act. This important legislation would make it mandatory for all appeals claims to be certified to the Board of Veterans Appeals (BVA) no later than 12 months after the VARO receives the completed VA Form 9, which is more than ample time to complete this process.

I commend the Chairman and Ranking Member for their hard work and dedication to helping our nation's veterans and thank them, and the subcommittee, for including H.R. 1302 as part of this legislative hearing. I would ask my colleagues for their continued support of H.R. 1302 so we can better fulfill our obligations to our nation's veterans.

Thank you.

Congressman Bob Latta

STATEMENT OF HON. BILL SHUSTER (PA-09)

Chairman Abraham, Ranking Member Titus and Members of the Subcommittee: Thank you for allowing me to testify today on behalf of my bill H.R. 1338, the Dignified Interment of Our Veterans Act of 2015.

The issue of unclaimed veteran remains was first brought to my attention by two dedicated community servants from my district, Mr. Lanny Golden and Mr. Ron Metros. They catapulted my awareness of the tragic state of thousands of veteran remains and the important work being done by selfless volunteers associated with organizations like the Missing in America Project whose mission it is to locate, identify, and inter the unclaimed remains of American veterans.

The Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 placed shared responsibility on the Veteran Affairs Administration, veteran service organizations, and funeral directors to identify the veteran status of the deceased and make every effort to locate the next of kin. Despite the best efforts of these agencies, it is estimated that 47,000 unclaimed, uninterred veteran cremains remain on shelves collecting dust. The Pennsylvania State Coordinator for the Missing in America Project, who is also a licensed funeral director, estimates he has interred more than 125 unclaimed cremains from Western Pennsylvania in the last three years. We can speculate regarding the reason for this epidemic but we cannot know for sure without giving this issue the attention it deserves.

In order to help address this problem, I introduced legislation that requires the Secretary of Veterans Affairs to conduct a study on matters relating to claiming and interring of unclaimed veteran remains. The intent of the study is to confirm the scope of this problem, uncover any barriers associated with claiming and interring veteran remains, and solicit recommendations from the Department of Veterans Affairs on potential program improvements. This is the first step in fixing this issue and bringing honor back to our fallen heroes.

I would be remiss if I didn't highlight efforts by the Department of Veterans Affairs National Cemetery Administration to bolster outreach efforts over the last year and their implementation of new tracking protocols that ensure claimed veterans are interred within a timely manner. I'm confident they'll apply the same level of vigor in finding solutions to the obstacles that have yet to be uncovered.

Lastly, I would like to say thank you to all who have served this great nation and ensure that your final resting place be of dignity and honor. We will not forget you.

PARALYZED VETERANS OF AMERICA

Chairman Abraham, Ranking Member Titus, and members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to provide our views on pending legislation before the Subcommittee.

H.R. 303, the "Retired Pay Restoration Act"

PVA supports H.R. 303, the "Retired Pay Restoration Act." PVA has always strongly supported the repeal of the current inequitable requirement that a veteran's military retired pay based on longevity be offset by an amount equal to his or her VA disability compensation. Veterans are the only group of federal retirees that have to surrender a portion of their retirement pay to receive their disability compensation. This requirement essentially forces disabled military retirees to fund their own disability benefits.

While this issue has always been about funding, PVA believes this is more about fairness. Is it fair that an individual who has done his duty and served 20 years of faithful service be penalized because he or she also became disabled during that service? PVA does not believe this is fair.

H.R. 1302, the "VA Appeals Backlog Relief Act"

PVA supports the intent of H.R. 1302, the "VA Appeals Backlog Relief Act," and sees a level of value in it. We are concerned that there may be some instances where the veteran submits additional evidence or information with the substantive appeal that may require the VA to do additional development to assist the veteran in substantiating his or her claim. This development might preclude the VA from compliance with the certification deadline in some instances. Unfortunately, PVA does not believe this law would be enforced to the point that there would visibly be any significant change. In fact, some veterans' appeals could be negatively impacted if their appeal was certified prior to the receipt of supporting evidence, PVA recommends language allowing for an exception for those situations where additional development might be needed. PVA wholeheartedly supports seeking methods to reduce the time for certification as some appeals are waiting up to three years to be certified.

H.R. 1338, the "Dignified Interment of Our Veterans Act of 2015"

PVA supports H.R. 1338, the "Dignified Interment of Our Veterans Act of 2015." All veterans who have honorably served in the military deserve a proper and dignified interment. Requiring the Secretary to conduct a study on the matters relating to the disposition of unclaimed remains is appropriate to ensure that all veterans receive the handling and recognition their service deserves.

H.R. 1380

PVA supports H.R. 1380 to expand the eligibility for a medallion furnished by the Secretary to signify the veteran status of a deceased individual. By removing any limitation due to date of death of a veteran, all those who served will be eligible for the recognition they earned through their service.

H.R. 1384, the "Honor America's Guard-Reserve Retirees Act"

PVA supports H.R. 1384, the "Honor America's Guard-Reserve Retirees Act." We believe everyone who raises their hand to support and defend the Constitution of the United States should be recognized for their service, to include the Guard and Reserve. The mission of many guard and reservists is to facilitate and support the deployments of their comrades, so the unit is fully prepared when called upon. Unfortunately, the law does not currently allow those who have served several years under non-federal status orders, and are entitled to retirement pay, TRICARE, and other benefits, to call themselves "veterans." These men and women have taken the same oath as an active duty servicemember and have made sacrifices that have earned the right to call themselves veteran. But at the same time, it is critical that these individuals recognize at their retirement that the title of "Veteran" does not come with the benefits earned by those who have served on active duty for 20 years.

This is our only concern, that there will now be a perceived “double-standard” on how we treat our “veterans.”

H.R. 2001, the “Veterans 2nd Amendment Protection Act”

PVA has no position on HR 2001, the “Veterans 2nd Amendment Protection Act.”

H.R. 2214, the “Disabled Veterans’ Access to Medical Exams Improvement Act”

PVA supports H.R. 2214, the “Disabled Veterans’ Access to Medical Exams Improvement Act.” VA has had great success with the use of contract physicians. Extending the temporary authority until December 31, 2017 will further support the effort to reduce the backlog and then provide additional authority beyond VA’s backlog reduction goal to ensure the ability to maintain the 125 day decision goal. More importantly, if VA misses its 2015 backlog reduction target, contracted physicians will still be available to continue supporting the process with no additional legislation required.

H.R. 2605, the “Veterans Fiduciary Reform Act of 2015”

PVA supports H.R. 2605, the “Veterans Fiduciary Reform Act of 2015.” Often beneficiaries languish and even die during the protracted effort to appoint a fiduciary. There have been many iterations of this legislation circulating for the last few years; this legislation addresses many concerns that have been expressed on fiduciary services. In particular, this legislation is taking steps to minimize the impact on family members who serve as fiduciaries and included a provision for caregivers.

Efforts to appoint fiduciaries seem to have become worse following the centralization of fiduciary services. When these issues were handled at the regional office level, the local field examiners and estate analysts had a more personal awareness of beneficiary issues associated with incompetency ratings. Since the onset of centralization, it has become increasingly difficult to assist beneficiaries in situations where their welfare may be compromised. Practical options such as supervised direct pay are less likely to be utilized when functional contact between field examiners and rating activities is limited. Rating calculators do not effectively analyze the potential danger or lack thereof of paying benefits to beneficiaries who are rated as incompetent.

With regards to notification to claimants, it is important to explain that what is needed to challenge a determination of competency is an expression of competency from a medical professional that addresses the ability to manage funds. Often documentation to support a negative determination will consist of statements that the individual receives help in paying the bills which clearly is an insufficient basis for determination.

H.R. 2691, the “Veterans’ Survivors Claims Processing Automation Act of 2015”

PVA supports H.R. 2691, the “Veterans’ Survivors Claims Processing Automation Act of 2015.” The legislation allows VA to pay benefits to a survivor who for whatever reason didn’t file a claim as long as sufficient evidence of record existed to grant the claim. For example, in the case of a veteran who was known to have been exposed to Agent Orange and died of lung cancer, the VA could establish entitlement to DIC in the absence of a properly filed claim. In such a case the notification of death would become the date of claim. While this may not be the intent of the legislation, this could protect a date of claim which could otherwise be untimely and will ensure the survivor receives benefits their loved one earned. This is appropriate legislation that will pay benefits to a veteran’s survivor as quickly as possible and streamline the process. In many cases, the benefits a disabled veteran receives may be the only family income.

One change that PVA would like to see in the language is in Section 2(B)(ii) that states “. . . the date on which the survivor of a veteran notifies the Secretary of the death.....” As in many cases with legislation, PVA believes this should read “survivor or duly appointed representative” to ensure it is clear that veteran service officers or others that may be assisting the survivor can act on their behalf. It may also be appropriate to include language referencing VA learning of the death from another federal agency such as the Social Security Administration or the Internal Revenue Service before a survivor may notify VA. Limiting notification to the survivor strikes PVA as being too narrowly defined. However, this being said, VA has already initiated a process to automatically begin payment of DIC to the spouse of record in cases where the veteran has been rated at 100% for ten years, without a requirement for the widow to file a claim. This legislation would better establish that process into law.

H.R. 2706, the “Veterans National Remembrance Act”

PVA supports H.R. 2706, the “Veterans National Remembrance Act.” With the rapid aging of our World War II population and increasing number of daily losses

of these heroes, the need for National Cemeteries is increasing. It is critical that these veterans have the ability and the opportunity to lie for all eternity with their fellow veterans if they and their family so chooses.

Mr. Chairman and members of the Subcommittee, we appreciate your commitment to ensuring that veterans receive the best benefits and care available. We also appreciate the fact that this Subcommittee has functioned in a generally bipartisan manner over the years. We look forward to working with the Subcommittee as we continue to provide the best care for our veterans.

Information Required by Rule XI 2(g)(4) of the House of Representatives

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2014

No federal grants or contracts received.

Fiscal Year 2013

National Council on Disability—Contract for Services—\$35,000.

Disclosure of Foreign Payments

“Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.”

STATEMENT OF THE HON. GUS M. BILIRAKIS

Chairman Abraham, Ranking Member Titus, and members of the Disability Assistance and Memorial Affairs Subcommittee,

Thank you for holding this very important hearing and for the opportunity to discuss my bill, H.R. 303, the Retired Pay Restoration Act.

Prior to 2004, existing laws and regulations dictated that a military retiree could not receive both payments from the DoD and the VA.

Through the enactment of the Concurrent Retirement and Disability Payments (CRDP) program authorized within the FY 2004 NDAA, those who are 100% disabled were able to receive both earned benefits for the first time ever.

Since then, the law has expanded the eligibility allowing more retirees to receive both payments—like those with 20 or more years of service and a 50% or higher disability rating through the VA.

The program established a system which gradually phased in these payments through 2014, which is when these retirees would be receiving both payments in full.

While our efforts have taken great strides towards resolving this issue, much more needs to be done. Statistics reveal that there are still nearly 550,000 military retirees who may be eligible to receive both military retired pay and VA disability compensation, but are unable to do so under the current guidelines of this program.

In short, this means that there are 550,000 Veterans who are currently being denied the benefits they are entitled. Given their unwavering sacrifice to this great nation, I firmly believe we must provide the benefits they have earned. This is unacceptable, and this is why I continue to advocate for the Retired Pay Restoration Act, which my father sponsored during his time in Congress.

H.R. 303 would serve to ensure that our nation’s Veterans are not negatively affected by having their military retirement pay deducted by the amount of their VA disability compensation. Many have rightly argued that this represents an injustice for Veterans having one earned benefit pay for the other.

Every Congress I am encouraged by the immense bipartisan support for my bill, the Retired Pay Restoration Act. Last Congress, H.R. 303 received a total of 107 bipartisan cosponsors. This is a clear testament that both sides of the aisle recognize that this is an issue that needs to be rectified.

We have the support from Veterans and the organizations that work closely with them. I greatly appreciate the support from our witnesses today; especially from the VSOs that came to testify before this Committee. It is clear that there is a need to do more in what we—as a nation—do in repaying the brave men and women for their sacrifice.

Military retirement pay and service-connected disability compensation are two completely different benefits. One does not diminish the merits of the other.

It is our responsibility to give our Veterans what has been earned through service to God and country. The question now is this: what do we intend to do about it?

H.R. 303 is the clear answer. I urge all my colleagues to show your support for our nation's heroes by cosponsoring and supporting this bill. Let's get this done for our Veterans. Thank you.

