LEGISLATIVE HEARING ON H.R. 569, H.R. 570, H.R. 602, H.R. 671, H.R. 679, H.R. 733, H.R. 894 AND H.R. 1405

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

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

ONE HUNDRED THIRTEENTH CONGRESS

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LEGISLATIVE HEARING ON H.R. 569, H.R. 570, H.R. 602, H.R. 671, H.R. 679, H.R. 733, H.R. 894 AND H.R. 1405

Tuesday, April 16, 2013

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 2:37 p.m., in Room 334, Cannon House Office Building, Hon. Jon Runyan [Chairman of the Subcommittee] presiding.

Present: Representatives Runyan, Bilirakis, Cook, Titus, Ruiz, and Negrete McLeod.

Also Present: Representatives Miller, and Michaud.

OPENING STATEMENT OF CHAIRMAN RUNYAN

Mr. RUNYAN. Good afternoon. This legislation hearing on H.R. 569, H.R. 570, H.R. 602, H.R. 671, H.R. 679, H.R. 733, H.R. 894, and H.R. 1405 will now come to order.

Today we have a large number of witnesses present due to the high level of interest in some of the bills before us. Therefore, in the interest of time, I am going to forego any lengthy opening statement and just briefly touch on three of the bills on the agenda today that I am proud to introduce.

First off, we have H.R. 569. The Veterans' Compensation Cost-of-Living Act or COLA of 2013 provides a cost-of-living adjustment increase to veterans' disability compensation rates and other benefits.

Also, H.R. 570, the American Heroes COLA Act, which is related to the former H.R. 569 COLA Act of 2013, except this bill seeks to make permanent the annual increase to veterans' disability compensation rates and other benefits by tying the increase to the cost-of-living adjustment for Social Security benefits.

With the passage of the American Heroes COLA Act, veterans will never again have to depend on congressional action to receive an increase in their cost-of-living adjustments they have more than earned throughout their service.

Instead, this increase will become automatic from year to year just as Social Security benefits increase and are adjusted automatically every year.

As some of you may recall last year, our annual COLA bill was held up in the Senate with reports that had been put on a secret hold by a senator. There is some question as to whether this bill

would pass and that veterans would receive their annual COLA in a timely manner.

This situation was unacceptable and unfair to veterans and thankfully with pressure from this Committee and the veterans' community, it was ultimately passed and signed into law. And I can tell you it was really close to the end of the year. It was November 27th which I know for a fact because that happens to be my birthday.

However, the final bill that I have here today that I have sponsored is H.R. 733 along with my good friend, Congressman Walz, the Access to Veterans Benefits Improvement Act, which provides certain local government employees and certain employees of Congress access to case tracking information through the Department of Veterans Affairs.

There is no doubt that we have a responsibility to serve our veterans by ensuring that every effort is made to simplify the claims process. Key actors in this effort are county veteran service officers whose expertise in claim development benefits veterans in many communities across America.

Their assistance is especially critical to many thousands of veterans who live in rural areas hours away from a VA regional office.

Many veterans are overwhelmed as they try to navigate their way through the claims process and they are also further frustrated when they ask for help from their county VSO or their Member of Congress and that person cannot directly access even the most basic information about the status of their claim.

This bill would allow these local government officials to check on the status of the veteran's claim and ensure that VA has all of the information needed to process claims in the most efficient manner possible.

Again, in the interest of time, I would reiterate my request that today's witnesses abide by the decorum or the rules to this hearing to summarize your statement to five minutes or less during the oral testimony. We have a large number of individuals ready to testify on the legislation today. I want to make sure everyone is heard in a timely manner.

I want to also remind all present that your written testimony will be made part of the hearing record, without objection.

I appreciate everyone's attendance at this hearing and now call on the Ranking Member, Ms. Titus, for her opening statement.

[THE PREPARED STATEMENT OF CHAIRMAN RUNYAN APPEARS IN THE APPENDIX]

OPENING STATEMENT OF HON. DINA TITUS

Ms. TITUS. Thank you, Mr. Chairman.

I do realize we have a full schedule and I will keep my remarks brief as well. But I think it is important that we thank our colleagues for the good work that they have done on these various bills and point out that they address some of the unique needs of our Nation's veterans.

The bills that are before us today are a variety of issues. They range from military sexual assault, recognizing guard and reserve members, increasing compensation, and improving the appeals

process, things that we have heard a lot about in testimony before this Committee.

I am also pleased to say that I am proud that I worked with the Chairman to introduce the disability compensation COLA bills which are H.R. 569 and 570.

Another bill on the agenda, H.R. 671, the Ruth Moore Act of 2013, is introduced by Ms. Pingree. I am very pleased to see that here today because we have heard some very compelling statistics about the women who are in our military and some of the problems that they face personally and also professionally as a result of this and how difficult sometimes it is to receive assistance and compensation and counseling and the things that they need. H.R. 671 will address some of these.

Also, H.R. 679, Mr. Walz's bill to honor the guard and reserves when they retire and they have been in that service their entire careers, just maybe not have been in the field, certainly should be recognized. And I support that.

Your other bill, Mr. Chairman, H.R. 733, Access to Veterans Benefits Improvement Act, would grant county officers and other state employees access to some records. We want to protect the privacy of our veterans, but we certainly need to expedite the process in helping them get compensation and remove the backlog as quickly as possible.

I know in my district office, as we try to help veterans, this is often a problem. I think your bill will go a long way to addressing that.

There are other bills that are before us today which target the appeals process. I am anxious to hear from our colleagues on these and, again, appreciate your thoughtful work.

I yield back.

[THE PREPARED STATEMENT OF HON. DINA TITUS APPEARS IN THE APPENDIX]

Mr. RUNYAN. I thank the gentle lady, and pleasure to have the Chairman of the Full Committee and the Ranking Member of the Full Committee here. And I know Chairman Miller would also like to make an opening statement.

So, Chairman, you are recognized.

OPENING STATEMENT OF CHAIRMAN JEFF MILLER

Mr. MILLER. Thank you very much.

With your permission, I want to make a few remarks on H.R. 602, the Veterans Second Amendment Protection Act, and that is a bill that I introduced to protect the constitutional rights of our veterans.

Mr. RUNYAN. Without objection.

Mr. MILLER. This piece of legislation would end an arbitrary process, which veterans are required to go through at the Department of Veterans Affairs where they actually strip certain veterans and other beneficiaries of their Second Amendment constitutional rights.

Under current practice, veterans who have a fiduciary appointed to manage their affairs are deemed to be mentally defective and as a result, these veterans are reported to the FBI's national instant

criminal background check or the NICS system, a system which prevents individuals from purchasing firearms in the United States and criminalizes the possession of a firearm.

I label this process arbitrary because pursuant to VA regulation 38 CFR Section 3.353, the definition of mental incompetency is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs including disbursement of funds without limitation.

In plain English, this means that if VA determines that a person cannot manage their finances and needs a fiduciary, their Second Amendment rights are automatically taken away. This really makes no sense.

As a reminder, a majority of VA's regulations concerning fiduciary matters are from 1975, although in the course of this Committee's oversight, VA has indicated that it will update these regulations. To date, no new fiduciary regulations have been promulgated.

In previous discussions with VA, I have emphasized that its regulatory scheme does not take into account the importance that our judicial system plays in determining when someone's constitutional rights should be infringed upon. I would again encourage VA to update its regulations accordingly.

And as a reminder, the department itself was opposed to judicial review of any kind on VA determinations all the way through 1988. Judicial proceedings are comprehensive and all interested parties have a right to be represented and heard during them.

This is a far cry from the process during which VA rating specialists determine that a veteran is mentally defective. Accordingly, the Veterans Second Amendment Protection Act would require that a judicial authority rather than an internal VA decision-maker make the determination that a veteran poses a danger to themselves or others prior to their name being sent to the NICS.

Taking away a constitutional right is a serious action and one that should not be taken lightly, particularly when it concerns our Nation's veterans. Affording veterans their due process rights under the law in any and all context is of utmost important to me and I think most Members of the Committee.

As will be further discussed during this hearing, there are other issues with VA's fiduciary program that also affect veterans' due process rights. And I will defer to the witnesses that have been called here today to testify as to the specifics of the fiduciary program as a whole for further comment.

Mr. Chairman, thank you to you and the Members of the Subcommittee, for your time. And I want to encourage all of you to support H.R. 602, the Veterans Second Amendment Protection Act. And with that, I yield back.

[THE PREPARED STATEMENT OF CHAIRMAN MILLER APPEARS IN THE APPENDIX]

Mr. RUNYAN. I thank the Chairman.

And with that, the chair would recognize the Ranking Member of the Full Committee, Mr. Michaud, for a statement.

OPENING STATEMENT OF HON. MICHAEL MICHAUD

Mr. MICHAUD. Thank you very much, Mr. Chairman and Madam Ranking Member, for having this hearing.

It is good to see the Chairman of the Full Committee. We are on the book ends now. Glad to see him here as well.

And I would like to thank Congressman Pingree for being here today to testify. My colleague from Maine introduced the Ruth Moore Act to help victims of military sexual assault get help that they need. And I am proud to be a co-sponsor of that legislation.

I would also like to welcome Ruth Moore from Milbridge, Maine. She is my constituent and the bill's namesake.

Ruth, I know it takes a lot to stand up and fight for the rights. I want to thank you for your continued advocacy of this very, very critical issue.

Sadly, sexual assaults in the military continues to be a problem for too many who are serving our great Nation. Our Nation must do more to address it and I look forward to hearing Congresswoman Pingree's testimony today.

The Ruth Moore Act is about making sure that victims of military sexual trauma get a fair shake and are not further victimized by the bureaucracy, something that I am confident that this Committee can deal with as we move forward to look at this legislation. I look forward to the congresswoman's testimony.

And I want to thank you very much, Mr. Chairman, for having this very important hearing on several bills that we are hearing today. And with that, I yield back the balance of my time.

Mr. RUNYAN. I thank the Ranking Member for that.

And at this time, I would like to welcome my colleagues in the House that are currently sitting at the witness table. First, we will hear from the gentle lady from Maine, Ms. Pingree, who is sponsoring H.R. 671. Then we will hear from the gentleman from Ohio, Mr. Johnson, who is sponsoring H.R. 894. And finally we will hear from the gentleman from Minnesota, Mr. Walz, who is sponsoring H.R. 679.

I would like to welcome you all to this legislative hearing. Your complete and written statements will be entered into the hearing record.

And with that, Congresswoman Pingree, we will start with you and you are now recognized for five minutes.

STATEMENT OF HON. CHELLIE PINGREE

Ms. PINGREE. Thank you very much, Chairman Runyan. Thank you to you and Ranking Member Titus.

I also want to thank Ranking Member Michaud for his very kind introduction. We are very proud of the work that Mike does back at home in Maine for all of our veterans and the work that he does on this Committee. And I am honored to serve with him. There are only two of us in Maine, so we have to cover a lot of territory.

And thank you to Chairman Miller for being here today and thank you for your great advocacy for veterans and your leadership on the Veterans' Affairs Committee. I appreciate your presence here and the work that you do.

I am very grateful that you are considering the Ruth Moore Act in this afternoon's legislative hearing and I appreciate the oppor-

tunity just to talk a little bit more about this bill and why I desperately think it needs to become the law.

The bill has been endorsed by every major VSO including The American Legion and the Veterans of Foreign Wars. We appreciate their support and all the work that they do for veterans and their families.

The Ruth Moore Act would relax the evidentiary standards for survivors of military sexual trauma who file claims for mental health conditions with the VA. Currently, MST survivors need further proof of the assault which for many of them is impossible.

Under the bill, in order to receive service-connected benefits, a veteran would need a statement that the assault took place along with a diagnosis from a VA health care professional that links the assault to a mental health condition.

This bill also requires the VA to report MST-related claims information back to Congress. As Members of Congress, we have a responsibility to ensure that the VA is providing timely and accurate decisions to veterans, but we cannot do that without sufficient data.

The bill is closely modeled after the 2010 change to VA regulations for combat veterans who have filed PTSD claims based on their military service. As I am sure most of you know, the VA relaxed the evidentiary standards for veterans who suffer from combat-related PTSD.

The VA finally acknowledged that far too many veterans who have deployed into harm's way suffered from service-related PTSD but could not through no fault of their own locate military documentation that verified the traumatic events that triggered their PTSD.

The VA now accepts their statement of traumatic events along with a PTSD diagnosis and a medical link as enough to receive disability benefits.

So what we have is an inequity in the system and those who were raped or harassed in the military have a much harder path to receiving benefits even though these injuries are service-connected and the same standards should apply.

Ruth Moore, who Ranking Member Michaud introduced earlier, who is here with her husband, Butch, and her daughter, Samantha, is who this bill is named for. She is a U.S. Navy veteran from Maine who was raped twice during her military service. When she reported it, she was discharged and labeled as having a personality disorder. She spent 23 years fighting the VA to get benefits and she battled homelessness and PTSD during that time.

I am very proud of Ruth for being here with us today, with her willingness to come forward and to help so many others in her own testimony both before this Committee and with the many people she has been willing to talk to about her story.

Ruth, like many MST survivors, did not have the military records that corroborated the rape, so her claim was repeatedly denied. And, unfortunately, she is not alone. DoD's own numbers indicated that over 85 percent of assaults go unreported.

So I ask you how are these veterans supposed to qualify for the help they need from the VA? The VA will tell you that the system accepts secondary markers as evidence to verify that these assaults

occurred. And as comforting as that sounds, we have seen time and time again that the VA is inconsistent in applying those standards.

What one regional office will accept as proof, another will deny. Almost every day I hear from another survivor who has had their claim denied after these secondary markers were ignored.

So I think it is a problem of fundamental fairness. If a medical diagnosis linked to a claimed event is enough for one group of veterans, it ought to be enough for another, especially when we know how hard it is for documentation to exist to support both instances of sexual assault or combat-related events.

Critics of this bill might say that it is too easy and veterans can just say anything to get those benefits. First of all, that is just simply not true. There still needs to be a medical diagnosis and a medical link which are not at all easy to come by.

And, secondly, we heard the same argument when the VA proposed similar changes for combat veterans. And I have not heard the VA say there were big problems with veterans lying about their service.

The bottom line is that it has gone on for too long. The burden of proof has been on the veteran and it needs to change now.

Mr. Chair, over the last two years, I have heard from dozens and dozens of veterans from all over the country, men and women who volunteered to serve, many of them planning on a career in the military, only to have their career cut short by the horror of a violent sexual assault.

Whether the attack happened on a navy base in Europe or a national guard training facility here in the U.S., whether they were soldiers, sailors, airmen, marines, the story too often has the same ending. The victims were blamed. The crime was covered up and the survivors themselves become the subject of further harassment and recrimination.

All too often what followed was years of mental health issues, lost jobs, substance abuse, and homelessness, but the stories do not have to end this way. With the Ruth Moore Act, we can change the VA's policies so that veterans who survive a sexual assault can at least get the benefits they deserve.

Thank you very much for your time and thank you for considering this bill.

[THE PREPARED STATEMENT OF HON. CHELLIE PINGREE APPEARS IN THE APPENDIX]

Mr. RUNYAN. Thank you, Congresswoman Pingree.

With that, I would recognize Congressman Johnson. You are now recognized for five minutes for your oral statement.

STATEMENT OF HON. BILL JOHNSON

Mr. JOHNSON. Chairman Runyan, Ranking Member Titus, and Members of the Subcommittee, I appreciate the opportunity to testify before you on H.R. 894. This is important legislation I introduced to reform the Department of Veterans Affairs' fiduciary program.

As most of you know, last Congress I served as the Oversight & Investigations Subcommittee Chairman on the House Veterans' Affairs Committee. 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 misfeasance 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, an Oversight & Investigations Subcommittee hearing held on February 9th of last year uncovered the fact 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 were also many honest and hard-working fiduciaries that experienced 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.

For these reasons, I am proud to sponsor H.R. 894, the Veterans Fiduciary Reform Act. This important legislation initially introduced last Congress is based on problems uncovered before, during, and after the hearing as well as valuable input from veteran 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 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 three percent or $35.00 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. 894 would enable veterans to appeal their incompetent status at any time, a right currently not granted to veterans.

Additionally, it would allow veterans to name a preferred fiduciary such as a family member.

Last year, my Subcommittee heard numerous complaints about the requirement for 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. 894 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 of monetary gain.

This bill will implement a straightforward annual accounting requirement and gives the VA the opportunity to audit fiduciaries whose accounting is suspect.

These significant changes would strengthen the VA 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 last Congress, the Veterans Fiduciary Act of 2012 passed the House Veterans' Affairs Committee unopposed and passed the Full House by voice vote on September 19th, 2012. Unfortunately, this important legislation was not considered by the Senate and, therefore, the VA's fiduciary program is still in urgent need of reform.

Chairman Runyan, Ranking Member Titus, thank you again for the opportunity to speak on this important legislation, H.R. 894. I am hopeful that this legislation will again be favorably considered by the Veterans' Affairs Committee and this time become law. Our veterans are willing to sacrifice everything to serve our Nation and they deserve to receive the care, the benefits, and the respect they have earned.

With that, I yield back, sir.

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

Mr. RUNYAN. Thank you, Congressman Johnson.

With that, I recognize Congressman Walz for his testimony.

STATEMENT OF HON. TIMOTHY WALZ

Mr. WALZ. Thank you, Chairman Runyan and Ranking Member Titus, for your commitment to our veterans and to our Full Committee Chairman and Ranking Member.

I may be somewhat biased, but I am incredibly proud of this Committee and the work you have done. And I would extend that to an incredible staff on the majority and minority side of making sure they are working to our veterans.

So thank you for bringing up H.R. 679 to give us the opportunity to present it, Honor America's Guard and Reserve Retiree Act.

This is one of those rare, very simple bills. First and foremost, it costs nothing, but it extends respect and honor to our veterans. It is something that they will not ask for, but they have certainly earned.

This is a case of a guardsman or woman can serve 20 years in uniform, by the way, meeting every standard of their active duty counterparts from enlistment standards to physical fitness to weapons proficiency to their professional training. In some cases, those can be months long and they are in many cases after 20 years, they are the most senior people responsible for the training of our warriors. But if they were never called to active duty, Title 10 for other than training for more than 179 days, we reward them with all of the benefits they have earned, financial benefits.

This bill is not about financial benefits. It is about what I consider to be a simple oversight that they do not have the legal ability to call themselves veterans of America's Armed Forces. And it corrects that. It is the right thing to do.

It has been vetted in the last two Congresses. The staff and the legal counsel have done a wonderful job of putting up a firewall to make sure this is not about additional benefits. It is about duty, honor, country, and respect.

It has passed the House of Representatives twice unanimously and has stalled in the Senate. And I think since that time, we have taken great care to educate our colleagues in the other chamber about what this is about.

I ask that we be given the opportunity to bring this up one more time to do what is right to allow those folks—most Americans do not know this is the case, but I think sitting next to Colonel Johnson and others in this room, veterans are very, very particular about getting right of where they served, what devices they wear, and how they are addressed. And getting this wrong for them, having someone who served in uniform for 20 years feel bad about referring to themselves as a veteran is simply wrong, and we can fix that with this bill.

So I thank you all.

Thank you, Chairman Runyan, for being an early supporter of this bill and give the opportunity.

I would also like to add one more word of support for the Chairman's H.R. 733, the Veterans Benefits Improvement Act. This is smart stuff. It came out of, and I watched this firsthand last May traveling with the Chairman in New Jersey and Minnesota, listening to veterans and the case was let's use this as a force multiplier. Let's use folks who can access this, help get knowledge of the claim, help the VA, be a partner with them to move this further. And this piece of legislation just puts another eye, another help, another way of moving the process forward.

And it originated out of the concerns of veterans and watching the Chairman hear that on both sides of the country there. And it was the same exact concerns. So I fully support this. I think it is a smart piece of legislation.

And with that, I yield back, Mr. Chairman.

[THE PREPARED STATEMENT OF HON. TIMOTHY WALZ APPEARS IN THE APPENDIX]

Mr. RUNYAN. I thank the gentleman for that.

And in the interest of time, we will forego a round of questions unless anyone has any questions for this panel. No?

On behalf of the Subcommittee, I thank you all for your testimony and you are now excused. We will ask the second panel to come to the witness table.

With this panel, we will first hear from Jeff Hall, the Assistant National Legislative Director for Disabled American Veterans. Then we will hear from Mr. Raymond Kelley, Director of National Legislative Service for Veterans of Foreign Wars. Next we will hear from Colonel Robert Norton, Deputy Director of Government Relations for the Military Officers Association, on behalf of H.R. 679. And then we will hear from Ms. Heather Ansley, Vice President of Veterans Policy for VetsFirst. And, finally, we will hear from Mr. Michael Murphy, Executive Director of the National Association of County Veterans Service Officers, who will testify on H.R. 733.

Thank you all for being here today.

And, Mr. Hall, you are now recognized for five minutes for your testimony.

STATEMENTS OF JEFFREY HALL, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; RAYMOND KELLEY, DIRECTOR OF NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS; ROBERT F. NORTON, DEPUTY DIRECTOR OF GOVERNMENT RELATIONS, MILITARY OFFICERS ASSOCIATION OF AMERICA; HEATHER ANSLEY, VICE PRESIDENT OF VETERANS POLICY, VETSFIRST, A PROGRAM OF UNITED SPINAL ASSOCIATION; MICHAEL D. MURPHY, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF COUNTY VETERANS SERVICE OFFICERS

STATEMENT OF JEFFREY HALL

Mr. HALL. Thank you.

Chairman Runyan, Ranking Member Titus, and Members of the Subcommittee, DAV is pleased to be here today to offer our views regarding pending legislation before this Subcommittee.

In the interest of time, my remarks today will be limited to only a few of the bills.

As you know, many disabled veterans, their survivors and dependents rely solely on their VA compensation or DIC as their only means of income. These men and women should not have to struggle simply to make ends meet because their rightfully earned benefits are not able to keep pace with inflation, nor should these deserving individuals have to sit in uncertainty from year to year.

H.R. 569 would provide a COLA effective December 1st, 2013 while H.R. 570 would provide annual COLAs to be automatic. DAV strongly supports enactment of both of these bills.

However, DAV remains adamantly opposed to the section in both of these bills requiring the rounding down of COLA increases to the next lower whole dollar amount. This unfair practice began more than 20 years ago and was only to be a temporary measure.

Nonetheless, the practice has continued and has cost veterans and their families millions and millions of dollars of compensation

earned through their selfless sacrifice and service to this great Nation.

Likewise, Mr. Chairman, DAV is steadfastly opposed to the so-called chained CPI which will not only have an adverse effect on disabled veterans, it will be a double impact on disabled veterans who are also seniors. And reducing the deficit on the backs of our disabled veterans and seniors who have already paid the prices is unacceptable.

Regarding H.R. 671, the Ruth Moore Act of 2013 would change the standard of proof required and allow service-connection for veterans suffering from certain mental health conditions including PTSD resulting from military sexual trauma that occurred in service even in the absence of any official record of the claimed trauma.

Enactment of this legislation would allow service-connection for certain mental health conditions which a veteran's claim was incurred or aggravated by military sexual trauma in service.

Similar to the evidentiary standard for PTSD, the veteran must have a diagnosis of the covered mental health condition together with satisfactory lay or other evidence of such trauma and an opinion by a mental health professional that the diagnosed mental health condition is related to the claimed military sexual trauma if consistent with the circumstances, conditions, or hardships of such service.

As such, Mr. Chairman, DAV strongly supports the enactment of H.R. 671 which would provide a more equitable standard of proof for veterans who suffer from serious mental or physical traumas in environments that make it difficult to establish exact causal connections.

H.R. 733, the Access to Veterans Benefits Improvement Act, would provide certain employees and Members of Congress and certain employees of state or local governmental agencies with the access to case tracking information in the VA.

DAV supports the intent of the bill as it could be beneficial to all parties in the process. However, the bill's current language is not explicit enough to ensure the privacy of a veteran or a claimant is safeguarded.

We recommend that the covered employee be required to obtain written consent from the veteran to access his or her records. Additionally, the veteran should be notified when his or her record is being accessed by the covered employee and the bill should plainly set forth any penalties for such access violations.

While DAV would not oppose passage of the legislation, we would urge the Subcommittee to consider these suggested language changes.

And, finally, H.R. 1405 would require the inclusion of an appeals form in any notice of decision from the VA. DAV supports the intent of this legislation, but we recommend changes to the language to avoid any confusion as to the purpose of the bill or what is intended by the phrases appeals form or a form that may be used to file an appeal.

If the intent is to include a standard VBA form to be used by a claimant to submit a notice of disagreement, then it should clearly state such. Otherwise, the intent of the form may become confused with the standard VA Form 9, appeal to the Board of Veterans' Ap-

peals, which is currently used by the board and included in a statement of the case after a notice of disagreement has been submitted.

It is our understanding that a standardized NOD form has been developed by VBA and is currently at OMB waiting approval. While we do not oppose the creation and use of any standard form directed at simplifying the process, our first concern is always with the claimant.

If VBA is going to use a standard NOD form, it must also allow for those instances wherein a claimant will submit their NOD in another form such as a letter. VBA should not be allowed to simply stop accepting NODs if they are not submitted in the prescribed manner.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions.

[THE PREPARED STATEMENT OF JEFFREY C. HALL APPEARS IN THE APPENDIX]

Mr. RUNYAN. Thank you, Mr. Hall.

Mr. Kelley.

STATEMENT OF RAYMOND KELLEY

Mr. KELLEY. Mr. Chairman, Ranking Member, Members of the Committee, on behalf of the two million members of the Veterans of Foreign Wars and our auxiliary, thank you for the opportunity to testify today on these pending bills.

The VFW supports H.R. 569. The Cost-of-Living Adjustment Act is important to veterans and their survivors' compensation to keep pace with inflation. However, to do that fairly and effectively, the currently used index, CPIW, must be used in relation to this bill and any future COLA adjustments. Converting to the chained CPI model will come at the expense of the needs of our veterans and their survivors and must be prevented.

The VFW also continues to oppose the round-down of COLA. This is nothing more than a money-saving gimmick that comes at the expense of our veterans and their survivors.

The VFW supports the intent of H.R. 570. Placing an automatic trigger to COLA adjustments for VA disability pension and survivor benefits will prevent confusion among veterans and survivors who know that VA COLA is somehow tied to Social Security, but do not understand the complete process.

Using Social Security as that automatic trigger will streamline the process and remove the confusion the current process holds.

The only concern the VFW has with this legislation is that there has been strong talk to change Social Security COLA to the chained CPI model. The VFW believes this index undercuts the purchasing power that CPIW provides for those who receive VA compensation. We recommend this bill be amended to maintain CPIW as the index used to calculate VA COLA.

The VFW supports H.R. 602. Servicemembers that have sought or may seek treatment for mental health conditions including TBI must know that seeking treatment and the possible loss of Second Amendment rights do not go hand in hand.

This bill provides an innocent until proven guilty clause by ensuring a judicial authority concludes that the veteran who sought

treatment is a danger to themselves or others before the Second Amendment right is revoked.

The VFW supports H.R. 671, the Ruth Moore Act. Relaxing the evidentiary burden on veterans who have experienced or suffered from military sexual trauma to the same level as combat PTSD only makes sense. We must trust our physicians in determining the root cause of this trauma and then make sure that those suffering from MST find the care and treatment they need.

The VFW supports H.R. 679, the Honor America Guard and Reserve Retirement Act. Twenty years of service to our country regardless of when or where one served should entitle that guardsman or reservist to the moniker of veteran. No added benefits will be provided, just the recognition that two plus decades of service should provide.

The VFW supports H.R. 733. The bill would grant certain Congressional staff and members of local governmental agency employees access to VA case tracking information. In doing so, this bill will allow Congress to better represent and respond to inquiries from their veteran constituents.

The VFW contends, however, that the state and county service officers should only have access to veterans for whom they hold a power of attorney or for veterans who are not represented by a service officer.

This will ensure that service officers who hold the POA will be maintained as the primary point of contact for the veterans they represent.

The VFW supports the intent of H.R. 894, the Improved Fiduciaries Veterans Act. Veterans who need a fiduciary are the most vulnerable of us and every effort must be made to protect them.

Congressman Johnson laid out all the reasons why this is important. However, in trying to remodel this comprehensively at one time, the VFW would like to point out a couple things that we feel might be an issue.

The VFW is concerned that the rewrite to paragraph 5502, a veterans' due process may be violated as the bill stands now. The reason we think this is currently the appointment of a fiduciary is provided for in regulation and not in code. By placing the authority of the appointment on the fiduciary in code, the appointment and due process provisions and regulation will be superseded without the addition of that protection in the statute.

The VFW would be happy to work with the Committee to ensure the intent of this bill is realized while due process is retained.

The VFW also supports the intent of H.R. 1405. However, we recommend that the bill be amended to describe the proposed form as a notice of disagreement and not as an appeals form.

This concludes my testimony and I look forward to any questions the Committee may have.

[THE PREPARED STATEMENT OF RAYMOND KELLEY APPEARS IN THE APPENDIX]

Mr. RUNYAN. Thank you, Mr. Kelley.

And with that, Colonel Norton.

STATEMENT OF ROBERT F. NORTON

Colonel NORTON. Thank you, Mr. Chairman, Ranking Member Titus, Members of the Subcommittee.

On behalf of the over 380,000 members of the Military Officers Association of America, I am honored to appear before you today.

I will limit my remarks to H.R. 679, the Honor America's Guard and Reserve Retirees Act of 2013. The key word in the bill, honor, is the very purpose of this legislation.

On Veterans Day, Memorial Day, and other days celebrating our national heritage and honoring all those who served and sacrificed on behalf of our country, there are tens of thousands of career national guard and reserve members who cannot stand to be recognized during such ceremonies as veterans of our Armed Forces.

That is because they are not veterans under the law, strange as that may sound. They are not veterans.

These are servicemen and women who have completed 20 to 35 years of service in the national guard or reserves. They are entitled to a military pension at age 60, government health care, and access to U.S. bases and posts all over the world. They have a military retiree ID card. They are also entitled to certain earned veterans' benefits.

Those veterans' benefits include the selected reserve Montgomery GI Bill, VA backed mortgage loans, servicemembers' group life insurance during service, and veterans' group life insurance later, and they are entitled to burial in national cemeteries administered by the VA and state veteran cemeteries established under Federal dollars.

During their careers, many of these career service guard and reserve servicemembers performed real-world military missions, but because their duties were performed under non-Federal orders, their contributions to the national security at home and overseas do not measure up for award of status as veterans of our Armed Forces. Only Federal active duty orders count for becoming a veteran under the law.

During the decades of the Cold War and continuing in practice today, there are some 29 different types of orders that the Pentagon uses to account for reservists' military duty. That dizzying array of orders reflects the different pay accounts and the types of missions that reservists perform.

The truth is that the services prefer to access guard and reserve manpower for lots of different kinds of work but not call them to active duty unless a formal national emergency is invoked.

The point is that in many cases, the work performed under those 29 types of orders is, in fact, operational duty or in support of operations. However, unless an order is issued under Title 10 active duty authority, the mission performed does not count for veteran status.

Under the law, the VA only accepts a DD–214 as proof of veteran status except in the unusual case where a reservist is injured or killed while performing in active duty or active duty for training.

The Honor America's Guard and Reserve Retirees Act simply authorizes career reservists who served for decades and performed their duty honorably but not under a Title 10 duty order that they be honored as veterans of our Armed Forces.

The bill is cost neutral and the language specifically prohibits the award of any new or unearned veterans' benefits. The Military Coalition has again endorsed the legislation and its letter of support is in my statement for the record.

MOAA is very grateful to Congressman Walz and to you, Mr. Chairman, for your leadership on this issue. The Subcommittee, the Full House Committee of Veterans' Affairs, and the Full House have passed similar legislation in the last two sessions of Congress. We look forward to the speedy passage of H.R. 679.

I will close by quoting a letter of a retired New York Army National Guard master sergeant who expressed his thoughts on this issue to military update syndicated columnist Tom Philpott.

And I quote, "I served 35 years as a guardsman and I am told I am not a veteran. I did two weeks at ground zero and many tours in Germany doing logistics for the War in Iraq, yet I am still not a veteran."

On his behalf and on behalf of tens of thousands of other career guard and reserve servicemembers, the Military Officers Association of America strongly urges passage again of H.R. 679.

Thank you, Mr. Chairman. I look forward to your questions.

[THE PREPARED STATEMENT OF ROBERT F. NORTON APPEARS IN THE APPENDIX]

Mr. RUNYAN. Thank you, Colonel Norton.

With that, Ms. Ansley.

STATEMENT OF HEATHER ANSLEY

Ms. ANSLEY. Thank you.

Chairman Runyan, Ranking Member Titus, and distinguished Members of the Subcommittee, thank you for inviting VetsFirst to share our views regarding the eight bills that are the subject of this afternoon's hearing.

First, we support the Veterans' Compensation Cost-of-Living Adjustment Act and the American Heroes COLA Act. Disabled veterans and their survivors depend on VA benefits to provide for themselves and their families.

Cost-of-living adjustments are an important aspect of ensuring that these benefits are able to meet a beneficiary's basic needs.

We urge the passage of both pieces of these legislation and would also associate ourselves with the comments of our colleagues who have spoken out against using the chained CPI to calculate the cost-of-living for those benefits.

Second, we support the Veterans Second Amendment Protection Act. We believe that this legislation will ensure that a veteran's Second Amendment rights are not unduly limited to VA's determination that the veteran requires assistance managing his or her benefits.

It will also help to ensure that fears about loss of Second Amendment rights are not barriers to treatment for veterans who may have mental health concerns. This legislation would ensure needed judicial protections.

Third, we support the Ruth Moore Act. This legislation would ease the burden on military sexual trauma or MST survivors in re-

ceiving benefits for an MST-related mental health condition and we also urge swift passage of this critical legislation.

Fourth, we associate ourselves with the comments of my colleague, Colonel Norton, in supporting the Honor America's Guard-Reserve Retirees Act and hope that that legislation will again be passed by this body and enacted into law.

Fifth, we have concerns about the Access to Veterans Benefits Improvement Act. Although we support the goal of ensuring that veterans receive timely information regarding the status of their claims, we are concerned that providing access to sensitive claimant information without regard to the designation of a power of attorney or written release of information could jeopardize sensitive information.

With proper safeguards, the ability to access information through VA's case tracking system could be of great benefit to veterans and those who are assisting them. However, VA must also take increased steps to provide accurate status information to claimants.

Next we would like to offer qualified support for the requirement for VA to include an appeals form in any notice of decision issued for benefits or H.R. 1405.

Specifically, we support this legislation but propose that the language be clarified to state that VA must provide a form that may be used to file a notice of disagreement with the decision to eliminate any potential confusion with VA's Form 9, the appeal to the Board of Veterans' Appeals.

The remainder of my remarks will be regarding H.R. 894. We support legislation to improve the supervision of fiduciaries of VA's beneficiaries which is again H.R. 894. We believe that VA's fiduciary program must be veteran centered and tailored to address the needs of those beneficiaries who truly do need assistance in managing their benefits.

This legislation takes important steps to ensuring that VA's fiduciary program has greater transparency. For example, if VA determines that a beneficiary is incompetent, then he or she must be provided with a written statement detailing the reasons for such a determination.

We suggest, however, that this provision would be strengthened by addressing the criteria that VA should use in making the determination.

We would also suggest that the legislation's use of the term mentally incompetent does not accurately reflect the limits of VA's role and instead suggest the use of the term financially incompetent.

Also included in this legislation are statutory protections to ensure that beneficiaries have the ability to request the removal and replacement of a fiduciary. This legislation also requires that any removal or new appointment of a fiduciary not delay or interrupt the beneficiary's receipt of benefits.

While matters of fiduciary appointments are being resolved, veterans must be able to continue to access their benefits. Access to benefits including retroactive benefits has remained a problem for too many veterans.

We also believe that efforts to strengthen the inquiry and investigation into the qualifications for fiduciaries will ensure a higher level of service for many of our beneficiaries. It will be important,

however, to ensure that VA exercises appropriate discretion to ensure that family member fiduciaries are not unduly burdened in complying with requirements.

Again, thank you for the opportunity to share our views on each of these bills and we look forward to answering any questions that you may have today. Thank you.

[THE PREPARED STATEMENT OF HEATHER ANSLEY APPEARS IN THE APPENDIX]

Mr. RUNYAN. Thank you, Ms. Ansley.

Mr. Murphy.

STATEMENT OF MICHAEL D. MURPHY

Mr. MURPHY. Mr. Chairman, Members of the Committee, and staff, it is truly my honor to be here for this hearing.

As Executive Director of the National Association of County Veterans Service Officers, I am here today to comment on the proposed bill, H.R. 733, to grant access to Veterans Administration information to governmental veteran service officers.

The National Association of County Veterans Service Officers is an organization made up of local government employees, local government employees that believe that we can help the Department of Veterans Affairs reduce the number of backlogged benefits claims that veterans are currently waiting to have adjudicated by the Department of Veterans Affairs.

Our members work in local government offices as an arm of government, if you will, in 37 states and currently it comprises 2,400 full-time employees in 700 communities. We are not like a veteran service organization. We are not dues driven or membership driven.

Every veteran, their dependents, and their survivors who live in our respective jurisdictions are our clients. We serve them at no cost to the client. We are equipped to handle and ready to assist veterans one on one with every Department of Veterans Affairs' benefit, state and local benefits, and the reason we are here today to assist them in tracking with their claim.

There are over 22 million honorably discharged veterans of the Armed Forces of the United States. During the course of their life after the military, they may have occasion to file a benefits claim for pension or compensation.

Most veterans are not a member of a veteran service organization, but the chances are that they will live in one of our communities served by a state, county, or veteran service officer, or city veteran service officer. To the citizens of our communities, we are the Veterans Administration.

The main issue we are here to talk about today is a lack of cooperation by the Department of Veterans Affairs in recognizing our members as an arm of government. We are treated as if we are a veteran service organization rather than what we are.

As governmental employees, we are not unlike the VA itself. There is just a failure to recognize us in that light.

Let's say a veteran comes into my office to file a claim for a knee injury that occurred while the veteran was on active duty in the army. We have to first determine his eligibility on wartime, peace-

time service, and a number of factors established by the Veterans Administration.

Let's say the veteran appears to be eligible. We then put together a claim for compensation, gather up medical evidence, service medical records, service records, buddy statements, and other pertinent information and submit the claim to one of a number of veteran service organizations.

We help the veteran select the veteran service organization to represent the veteran through the power of attorney. This is done so that the veteran may have representation at the VA regional office for any subsequent appeals that may occur.

Our local government veteran service officers may hold the power of attorney, but many are just too far away from the regional office to adequately represent their client. My own office is 305 miles away from the regional office.

Then after about three months, the veteran comes back into my office and asks what the status of his claim is because he has heard nothing. I have no way to gain this knowledge even though the claim originated in my office. I have to refer him to the VA's 1–800 number and hope that he can ask the right questions or back to the veteran service organization that holds his power of attorney and who he does not know and probably won't call. Hopefully he won't go to another jurisdiction and file another claim which adds to the backlog.

What we are asking in this bill under consideration is to allow the government veteran service officers to have read-only access to their clients' information. This will allow a local government veteran service officer to properly track and provide follow-up for their clients.

Sometimes a veteran will file an appeal on a deny claim and then go to another veteran service officer in another jurisdiction and file another claim for the same thing. This ultimately adds to the backlog and unnecessarily bogs down the system. If enacted, this bill would avoid duplication of claims which in turn will assist in reducing the backlog of claims.

We know there is much consternation on the part of the Veterans Administration regarding this issue. They have had some problems in the past keeping secure that information that veterans must give to the government to obtain the benefits they earned. We understand this and are held to the same standards as the VA already.

Remember that the majority of claims for compensation and pension originate in local governmental veteran service officers. We are required to keep secure that information that we are supplied to the veteran service organizations and ultimately to the Veterans Administration.

As a prerequisite to receive access to the VA databases, the government employee must be accredited with the Veterans Administration, must have attended and successfully completed training responsibility, involvement and preparation of claims or TRIP training, and must have had a background check performed on them as a condition of employment.

In closing, the National Association of County Veterans Service Officers recommends that this Committee move this bill along in

the legislative process. We believe that this bill has the potential to make a significant difference in the lives of returning veterans and will afford them a better opportunity to obtain their earned benefits.

Thank you for your time and attention.

[THE PREPARED STATEMENT OF MICHAEL D. MURPHY APPEARS IN THE APPENDIX]

Mr. RUNYAN. Thank you, Mr. Murphy.

And thank all of you for your testimony.

I wanted to give a special thanks to Colonel Norton. I know he went above and beyond, if you can believe that, having emergency dental surgery yesterday and not only that, his daughter was in Boston at the marathon.

So thank you for doing everything you could to get here to help us move this important legislation.

Colonel NORTON. Thank you, Mr. Chairman. I appreciate that.

Mr. RUNYAN. With that being said, Mr. Murphy, my first question is for you. Why do you believe the VA is reluctant to grant additional access to county veteran service officers?

Mr. MURPHY. I think it is exactly for the reason I stated in the testimony is that they have had problems with safeguarding this information in the past.

I think they received an awful lot of egg on their face over that lost computer or whatever the situation was. It hit the press. It was a bad situation for everybody involved. And we certainly understand that.

I mean, we are held to the same standards at the county level where I work. The HIPAA regulations, everything is exactly the same for us as for them. I think that is the main reason they are reluctant in doing it.

Mr. RUNYAN. I know in a Federal office, a veteran has to sign a release for us to even start to process their claim.

Is it much the same process where you are at?

Mr. MURPHY. Exactly. And when they come in, we hold a file on them, our own C file, if you will, and track that claim as best we can so that we have information readily available to the veteran.

Unfortunately, we just cannot find out the status of it based on that. So——

Mr. RUNYAN. That is kind of in the same line of questioning to Mr. Hall and Mr. Kelley. I understand the security concerns.

How do we avoid them? I mean, obviously Mr. Murphy has what he feels the fear of the VA, and we know you have to have clearance to do any of this. How do we make it happen and satisfy the VA fear?

Mr. HALL. When this legislation was, another version of it was in the last Congress, we had recommendations for improving the language of that to allow DAV to be able to support this.

We are pleased to say that it has moved along further in the present tense bill and we do not really have a problem in supporting this particular legislation or I should say it this way. We can support this legislation provided that those additional security measures that we are asking for are incorporated into that language, written permission from the veteran to ensure that he or

she has given that to that particular service officer to be able to access it, and also——

Mr. RUNYAN. Do you see an issue with people going out there without their request being made?

Mr. HALL. Could be. Again, one of our previous concerns on how we phrased it when the last bill was presented was simply they do not have to have a power of attorney and if they have access—I have to have a power of attorney through DAV. I am an accredited service officer to be able to do that. That gives me the ability to access the system.

What we are talking about in a bill, if we are going to allow anybody, any service officer, county service officer in this case that we are referring to, to access a record, they need to have written permission in the file from the veteran to do so.

Would they? Could. There is nothing in the bill that would stop them from doing it which leads to the second point which is the bill should contain language or a provision in there that clearly spells out any violations of such access.

And we are not saying that they are out there just maliciously and every one of them is going to do it. Let's be fair minded here. We want to ensure that it is minimized at the very most because even as the gentleman to the end has said, you know, there has been incidents in the past. We just want to ensure that a veteran is protected and we feel that our three recommendations that we have included will do that.

Mr. RUNYAN. I know everybody kind of commented on our notice of the disagreement of form. Is it more just how we are titling the form than anything else, Mr. Kelley?

Mr. KELLEY. It is. We read it and I called Mr. Hall and we both concluded the same thing. That there is a process in place. And it felt like because of the title of it that the process was being diverted. So just changing it to that notice of disagreement at the beginning clarifies that, the process stays the way it is. Nothing else would need to be changed within Code or regulation. And veterans would be better served with this bill passing.

Mr. RUNYAN. Ms. Ansley, did you want to say something?

Ms. ANSLEY. I would like to say I showed the bill to our National Service Director and got the very same question of which appeal form are we talking about? So it is people who look at the claims everyday. Nothing against including a notice of disagreement form. But he just was not certain exactly what it was that was being referred to, and he has been doing benefits for a number of years as an attorney. So we just want to make it clear, that was our only thing. And I think that would associate with my colleagues.

Mr. HALL. And again, Mr. Chairman, our understanding as of this morning that there is a standardized notice of disagreement form that has been created, developed, and is currently, by VBA, and is currently over at OMB waiting final approval. That clearly would say at the top of it notice of disagreement. And I understand now upon first reading it, as my colleagues have said, upon first reading, I didn't know exactly what form we were talking about. Because the only appeal form I know of is the VA Form 9, which is a Board form and not a VBA form. And so just a simple clarification of what exactly it is that, what form we are talking about to

be included. And so if it is the standardized notice of disagreement, then that is fine.

Mr. RUNYAN. Thank you. With that, I recognize the Ranking Member Ms. Titus.

Ms. TITUS. Thank you very much, Mr. Chairman. And thank all of you for coming. It is very valuable for us to have your wise counsel on these bills as we move forward. I would like to start by saying that I am the cosponsor, and a proud cosponsor, of 569 and 570, the American Heroes COLA Act. And I completely agree with those of you who made the statement that we do not want to see this tied to any kind of chained CPI. And I, that would not be my intent at all and I would fight against that.

Second, the bill that you all have been talking about is my bill, H.R. 1405, about the request to include the form when you send out a denial for benefits. And I very much appreciate your support. And I look forward to working with you on clearing up that language. We do not want to make it more trouble. We want to make it easier. And in previous hearings we heard that once you get the denial you have a certain amount of time to request the form. Then they have a certain amount of time to send you the form. And then you are down the road several months. If you get the form when you get the denial, then you can go forward much more quickly and expeditiously and that is what our intent was. So thank you for helping us clear that up. And we want to put that language in there that meets those needs.

Also, I just want to ask you kind of a general question. When I was in the Nevada legislature I had a bill to create the Office of Women's Services in Nevada. Some states have it. Some do not. We did not, even though we had about 30,000 women veterans in the state. And they are often referred to as forgotten veterans because they are less likely to take advantage of benefits, both health care and education, than our men. I am very supportive of Chellie Pingree's bill before us today about sexual assault. But I wonder if in some of your assistance to veterans groups you have come across other things that we could do to help with women veterans specifically that you might want to suggest to us? And if not right now, maybe you would think about that and get that information to me?

Mr. KELLEY. Thank you, ma'am. If I could, as you suggested, we would like to submit for the record on that. One of my colleagues in our national office has served on the VA Advisory Committee on Women Veterans and this is a big issue in terms of the cultural development, if you will, the cultural evolution of the VA. I think they are doing a lot more to be welcoming to women veterans. But there is still a lot more to be done. I mean, the face of the VA frankly still today looks like guys like me. But we need to be much more receptive to our young women warriors who are coming back from Iraq and Afghanistan, and for women who have served during previous periods of conflict. It is a very important issue. And we would look forward to providing some information to the record on that. Thank you.

Ms. TITUS. Thank you.

Mr. HALL. I would just say, I do not personally have that in my portfolio at my office. But we do have quite a forward Stand Up for Women Veterans initiative that we have had for several years.

And what I would like to do is take that for the record and go back to our Deputy Joy Ilem who handles that particular matter and hopefully can provide you some, I am sure, some suggestions.

Ms. TITUS. Well I would appreciate that. And we will see if there is anything we can do legislatively. And I would like to work with the Chairman to follow up on some of that. So thank you very much.

Colonel NORTON. I would like to comment as well.

Ms. TITUS. Sure, please do.

Colonel NORTON. Three priorities is passing the Ruth Moore Act. Second is outreach to women veterans, to let them know they are veterans, to let them know there is access. I was at the Baltimore VA yesterday for an appointment. As I walked in and checked, I looked over at the sign to point you to the right room, there is a women's clinic there. I went up to the neurology floor where I needed to be seen, and more than half of the patients in there were female veterans. So women are starting to recognize they have those, that accessibility.

We also need to do training. So when a, when any veteran walks up, that they are treated properly. And specifically women veterans. So there is not the assumption that they are the spouse or the daughter of some other veterans. The training within VA to make sure that folks know that women veterans are coming here, treat them as such.

Ms. TITUS. Thank you. Thank you, Mr. Chairman.

Mr. RUNYAN. Thank you. Mrs. Negrete McLeod? Okay. Well on behalf of the Subcommittee I want to thank each of you for your testimony. And you are all now excused and I will ask the third panel to come to the table.

On this panel we will hear from David McLenachen, Director of Pension and Fiduciary Services with the U.S. Department of Veterans Affairs. He is accompanied by Mary Ann Flynn, Deputy Director for Policy and Procedures Compensation Service with the U.S. Department of Veterans Affairs, and Mr. Richard Hipolit. Mr. McLenachen, you are now recognized for your testimony.

STATEMENT OF DAVID R. MCLENACHEN, DIRECTOR, PENSION AND FIDUCIARY SERVICE, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MARY ANN FLYNN, DEPUTY DIRECTOR, POLICY AND PROCEDURES COMPENSATION SERVICE, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND RICHARD HIPOLIT, ASSISTANT GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS

STATEMENT OF DAVID R. MCLENACHEN

Mr. MCLENACHEN. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present VA's views on several bills that are pending before the Committee. Joining me today, as you just heard are Ms. Mary Flynn, an Assistant Director in VA's Compensation Service, and Assistant General Counsel Richard Hipolit.

The issues covered by these bills are important for veterans and we look forward to working with the Subcommittee on these bills. VA strongly supports the bills providing cost-of-living adjustments

to the rates of disability compensation and dependency and indemnity compensation because they tangibly express the Nation's gratitude for the service of disabled veterans and their survivors.

We are also glad to offer our support for H.R. 1405, which would require VA to provide with notice of each decision on a claim for benefits a standard form that may be used to appeal the decision. It would simplify the appeal process and improve the timeliness and quality of processing notices of disagreement.

H.R. 602 would in effect exclude VA determinations of incompetency from the coverage of the Brady Handgun Violence Protection Act restrictions. VA does not support this bill. However, we believe VA provides adequate protection to veterans who cannot manage their own financial affairs under current authority, which allows a beneficiary to reopen the issue of competence or petition VA for relief from the Brady Act restrictions.

Mr. Chairman, the Secretary and the Under Secretary for Benefits have a strong interest in ensuring that military sexual trauma receives the attention it deserves in VA. VA is committed to serving veterans by accurately adjudicating claims based on sexual trauma in a thoughtful and sensitive manner, while fully recognizing the unique evidentiary considerations presented by each individual claim. To address those considerations, VA developed policies and procedures intended to assist claimants in developing evidence for these claims and trained its personnel on proper adjudication. As we describe at lengthy in our testimony, our focused training and recognition of the unique evidentiary considerations for each claim has yielded a significant increase in grant rates.

Regarding H.R. 671, we do have concerns detailed in our testimony about the evidentiary standards in the bill which could have unintended consequences for the claims process. Because of the progress we have made with these claims under revised procedures, policies, and training, VA prefers to continue pursuing nonlegislative actions to address the special nature of claims based on military sexual trauma.

H.R. 679 would add a provision to current law to honor as veterans based on retirement status alone certain persons who performed service in the Reserve components of the armed forces. VA recognizes that the National Guard and Reserves have admirably served this country. However, VA does not support this bill because it represents a departure from active service as the foundation for veteran status.

H.R. 733 would require VA to provide a covered employee with access to VA's case tracking system to provide a veteran with information regarding the status of his or her claim regardless of whether the covered employee is acting under a power of attorney executed by the veteran. VA does not support this bill because it would lessen veterans' personal privacy protections while adding a significant administrative burden for VA.

VA appreciates the Committee's interest in improving the fiduciary program but finds several provisions of H.R. 894 problematic. Although VA does not support these measures, VA shares the desire to improve the program and has already taken significant steps to address concerns. For example, VA consolidated its fiduciary activities to six regionally aligned fiduciary hubs; rewrote all

of its fiduciary regulations; implemented a new field examiner training program; and designed a new information technology system for the program.

Currently, 92 percent of the beneficiaries in the program receive services from an unpaid, volunteer fiduciary, generally a family member or a friend. However, VA appoints paid fiduciary in some of its most difficult cases. This bill would reduce fiduciary commissions to three percent of the beneficiary's monthly benefits, or $35, whichever is less. It would also require both paid and volunteer fiduciaries to pay the expense of a surety bond out of the fiduciary's own funds rather than out of the beneficiary's funds. These provisions would create a strong disincentive for service vulnerable veterans and their survivors and might significantly impair the program.

Among other things, VA is also concerned about provisions that would require it to obtain an annual accounting regarding every beneficiary in the program that has a fiduciary, currently more than 135,000 beneficiaries. VA opposes these provisions because they would burden fiduciaries, again most of whom are volunteer family members or friends, without significantly improving VA's oversight.

Mr. Chairman, this concludes my statement. I am happy to entertain any questions that the Subcommittee may have.

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

Mr. RUNYAN. Thank you very much. And with that I really want to start with the fiduciary program. We had this conversation last year and you know, you said you intended to take a look at the statutes governing the fiduciary program and make recommendations that might improve it. Do you have any specific examples of any changes you have made to improve it?

Mr. MCLENACHEN. You mean separate from statutory matters? Yes, sir. In addition to the four that I have mentioned actually the system that we have designed is being piloted this summer. One of the most significant flaws we have had is an inadequate IT system for the fiduciary program. So we are actually beyond the point of design. We are building it now. And it will be piloted this summer.

Also we have issued guidance clarifying that the role of the fiduciary is actually to determine what is in the best interests of a beneficiary, not VA. This is one of the major issues that we discussed at the last hearing we attended.

We have issued guidance regarding fees, specifically whether a fiduciary can take fees out of a retroactive benefit payment which as you know happens in virtually every case where we award benefits. We have made it clear that that is not appropriate. Rather, fees can only come out of monthly benefits.

In addition we issued guidance to our fiduciary hubs instructing them to advise fiduciaries that they must provide a copy of an approved annual accounting directly to the beneficiary that they serve again to change the culture in the fiduciary program to ensure that fiduciaries are actually acting as fiduciaries. The point being that VA is not the fiduciary.

As far as statutory initiatives as part of the President's budget submission, we have a legislative proposal to provide VA an exemption to the Financial Right to Privacy Act so that we can obtain better information directly from financial institutions where fiduciary accounts are maintained. That is just a sample of some of the things we have done, sir.

Mr. RUNYAN. I will go back to the beginning part of the statement, when you are referring to guidance are you talking about regulation or training letters?

Mr. MCLENACHEN. Regulations sir, I think as I have mentioned in a prior hearing, they have been completely rewritten. The concurrence process in VA is as of today almost complete. OMB has an advance copy of it. I am very hopeful that those regulations will hit the street for public comment very soon. Many of the other things that we have done have been in guidance to our field personnel through what we call fast letters, those are guidance documents that we issue.

Mr. RUNYAN. I have another question going back to the COLAs. Can you explain the rationale behind the round down requirement? And any benefits that are derived from its usage?

Mr. MCLENACHEN. Well sir, my knowledge of it is pretty much consistent with the prior panel. Those round down provisions have been in place for approximately 20 years. It is my understanding that the original intent was to gain savings. However, they have been in place for a long time now. VA does not view the round down provision in your bills as a reduction in benefits. Rather, it is a continuation of benefits as they have been for a very long time. And VA fully supports your bills as well on that.

Mr. RUNYAN. Is there any other place that round down is used? For benefits anywhere else?

Mr. MCLENACHEN. It is not solely related to the DAC and compensation benefits. But I think I had better defer to Mr. Hipolit. He may have an idea of where it might be used in other law.

Mr. HIPOLIT. No, I do not have an example elsewhere, although that is something we certainly could check and provide to the Committee as a service if you would like us to do that.

Mr. RUNYAN. I would appreciate that. And one last question. You said, in going back to the fiduciary stuff, you are saying they are being rewritten. Is there a timeline where they are going to be available?

Mr. MCLENACHEN. Well I can tell you this, sir, that under an Executive Order regarding rulemaking, OMB has 90 days to review a regulation once VA submits it to OMB for review. So I view that as the outer boundary of the time. I know that all of the concurrence process within VA is nearly complete, based on the information that I have.

Mr. RUNYAN. Okay. With that I will recognize the Ranking Member Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman. And thank you all for being here. I understand your comments about H.R. 671, and the preference to do it through regulation, and not through legislation. In a previous hearing, the VA indicated that you would be willing to, or offering to, readjudicate all previously denied claims that were regarding military sexual trauma. I wondered if you could

give us an update on this? Tell us where it is, when it will be completed, how many cases have been readjudicated.

Mr. MCLENACHEN. Ma'am, I am going to let Ms. Flynn answer that question. She is the expert in this area.

Ms. TITUS. Thank you.

Ms. FLYNN. Thank you. Yes, ma'am. Since the hearing last July we have actually undertaken, we are going to do two different reviews. One has been completed, and that was a review of a statistically valid sample of MST claims that had previously denied where an examination was provided. So we sampled approximately 300 claims and our Nashville quality assurance office conducted a specially focused review on those cases. And that was at the request of Representative Pingree. We found that the overall accuracy of that focused review was that 86.19 percent were accurate. And that compares favorably with the current national benefit entitlement accuracy level of 86.31 percent.

With regard to the larger review that you mentioned, we are going to be sending out letters to veterans advising them of the opportunity to request VA review their previously denied MST claims. The steps that we have undertaken leading up to that have been that we requested and received an opinion from the Office of General Counsel regarding the authority to do a review, the scope of that review, and how to resolve various effective date issues. We have since prepared a letter to the veterans. That is scheduled to go out probably at the end of this week. And we expect that a certain percentage of them will request that their claims be reviewed again. At which time we will ensure that they get the proper full development and focused review by our claims adjudicators who have been specially trained in MST claims.

Ms. TITUS. And can you tell me how you determine who gets a letter?

Ms. FLYNN. In our database we have done a data pull that links, these will be people who have previously submitted a claim for PTSD based on military sexual trauma. If they were denied then they will be sent a letter. Now the caveat is that our database only linked that MST identifier going back to 2009.

Ms. TITUS. Only 2009?

Ms. FLYNN. I'm sorry. It's either 2008 or 2009. But there is definitely going to be a gap in years since the regulation that relaxed the evidentiary standards was put into place 2002. And so for those, to reach those veterans, we plan to have an outreach process and a notification process advising them of the opportunity to seek review of their claims.

Ms. TITUS. And how will you do that? When you talk about outreach, what does that mean?

Ms. FLYNN. Well our Public Affairs Office is working up a communications plan. It involves notifying the stakeholders, getting the word out to the VSOs, as well as the call centers, and the benefits assistance office, and enlisting the help of whoever we can to get the word out. In our experience, usually favorable reviews such as this, the word spreads quickly. So we are optimistic that we will reach the targeted audience.

Ms. TITUS. Thank you, Mr. Chairman.

Mr. RUNYAN. Mrs. Negrete McLeod? No questions? I do have another question. Mr. McLenachen, talking about having the standardized appeal form, in your opinion would such a form have any noticeable impact on the current backlog?

Mr. MCLENACHEN. Sir, I think it is our position that moving forward that is exactly the type of thing that VA needs to do. In other words, simplify the benefits programs that we administer by having things like standardized forms. What that leads to is ease in automating and developing rules based systems for the benefits that we administer. So this is a very good start. And we wholeheartedly support it for that very reason.

Whether it would have a measurable impact on the backlog? I cannot answer that question. On the other hand, it is a matter that relates directly to appealed cases. So that is not directly related to the backlog of claims that have not been adjudicated finally. But to the extent that there is a backlog of appeals, or there is delays in the appeals process because we cannot identify a notice of disagreement, currently a notice of disagreement can be written on anything and given to VA in any format as long as it is written. That creates problems because we are required by regulation to go out and clarify whether that is an NOD and what the claimant's intent is. So to the extent all of that removed from the system by having a standardized form, it would be very helpful in the appeal process.

Mr. RUNYAN. Thank you. With that, no further questions? Well on behalf of the Subcommittee I want to thank all of you for your testimony, and we look forward to working with you often in the future on a wide range of challenges facing our Nation's veterans. You are all excused. I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and include extraneous material. Hearing no objection, so ordered. I thank the Members for their attendance today and this hearing is adjourned.

[Whereupon, at 4:03 p.m., the Subcommittee was adjourned.]

APPENDIX

Prepared Statement of Hon. Jon Runyan, Chairman

Good morning. This legislative hearing on H.R. 569, H.R. 570, H.R. 602, H.R. 671, H.R. 679, H.R. 733, H.R. 894, and H.R. 1405 will now come to order.

Today we have a large number of witnesses present due to the high level of interest in some of the bills before us. Therefore, in the interest of time, I am going to forgo a lengthy opening statement and just briefly touch on three bills on today's agenda which I am proud to have introduced.

H.R. 569, the Veterans Compensation Cost of Living Act, or COLA, of 2013, provides a cost of living adjustment increase to veterans' disability compensation rates and other benefits.

H.R. 570 is the American Heroes COLA Act, which is related to the aforementioned COLA act of 2013, except this bill seeks to make permanent the annual increase to veterans' disability compensation rates and other benefits by tying the increase to the cost of living adjustments for social security benefits.

With the passage of the America Heroes COLA Act, veterans will never again have to depend on Congressional action to receive an increase to the cost of living adjustment they have more than earned through their service. Instead, these increases will become automatic from year to year just as Social Security benefits increases are adjusted automatically every year.

As some of you may recall, last year our annual COLA bill was held up in the Senate, with reports that it had been put on "secret hold" by a Senator. There was some question as to whether the bill would pass and if veterans would receive their annual COLA in a timely manner. The situation was unacceptable and unfair to our veterans. Thankfully, with pressure from this Committee and the veterans' community, the bill was ultimately passed and signed into law. However, last year's situation highlights the need for this legislation.

The final bill I have sponsored is H.R. 733, the Access to Veterans Benefits Improvement Act, which provides certain local government employees, and certain employees of Congress access to case tracking information through the Department of Veterans' Affairs.

There is no doubt that we have a responsibility to serve our veterans by ensuring that every effort is made to simplify the claims process. Key actors in this effort are county veteran service officers, whose expertise in claim development benefits veterans in many communities across America. Their assistance is especially critical to many thousands of veterans who live in rural areas, hours away from a VA regional office.

Many veterans are overwhelmed as they try to navigate their way through the claims process, and they are further frustrated when they ask for help from their county VSO, or their Member of Congress, and that person cannot directly access even the most basic information about the status of their claim.

This bill would allow these local government officials to check on the status of a veterans claim, and ensure that VA has all of the information needed to process claims in the most efficient manner possible.

Again, in the interest of time, I would like to reiterate my request that today's witnesses abide by the decorum and rules of this hearing and to summarize your statement to five minutes or less during oral testimony. We have a large number of individuals ready to testify on legislation today, and I want to make sure everyone is heard in a timely manner. I would also remind all present that, without any objection, your written testimony will be made part of the hearing record.

I appreciate everyone's attendance at this hearing and now call on the Ranking Member for her opening statement.

Prepared Statement of Hon. Dina Titus

Thank you Mr. Chairman.

Today, we have a full schedule that includes eight bills before us that address some of the unique needs of our Nation's veterans' population. The bills pertain to a variety of issues ranging from military sexual assault and recognizing Guard and Reserve members to increasing compensation and improving the appeals process.

I support several of these provisions, and I am proud to have worked with the Chairman to introduce the disability compensation COLA bills, **H.R. 569** and **H.R. 570.**

H.R. 602, the Veterans 2nd Amendment Protection Act, sponsored by Full Committee Chairman Miller would require that a judicial authority adjudicate a veteran or other beneficiary in need of fiduciary assistance as mentally defective for the purposes of reporting to the Department of Justice National Instant Background Check System, instead of the current system which requires VA to report these individuals to NICS.

The next bill on today's agenda, **H.R. 671, Ruth Moore Act of 2013,** was introduced by Ms. Pingree of Maine, and I am pleased to see it included here today. Many veterans who are victims of military sexual trauma (MST) express frustration with attempting to file disability claims for post-traumatic stress; particularly in trying to prove to that the assault ever happened. In July 2010, the VA relaxed its evidentiary standards for PTSD, which also includes MST. However, there are still disparities in compensation and confusion within VBA on when service-connection compensation for MST is warranted. H.R. 671 seeks to ensure that more is done to eliminate these hurdles.

H.R. 679, the Honor America's Guard-Reserve Retirees Act, sponsored by Mr. Walz of Minnesota, a Member of the Full Committee, would grant honorary veteran status to retired members of the Guard and Reserve who completed 20 years of service. I support this bill but understand the reservations concerning moving the envelope on what type of service accords veteran status, as outlined in VA testimony and in that of some of the VSOs.

Your other bill, Mr. Chairman, **H.R. 733, the Access to Veterans' Benefits Improvement Act,** would grant county veteran service officers, other State and local employees as well as staff of Members of Congress with greater access to veterans' claims information for tracking purposes. I understand and appreciate the need for county VSO's to have better access to claims for which they may have the Power of Attorney for the veteran.

Next, **H.R. 894,** introduced by Mr. Johnson of Ohio, also a Member of the Full Committee, seeks to reform VA's fiduciary program.

And finally, my bill, **H.R. 1405,** would target the appeals process. This measure would require that a VA Appeals form is included with a Notice of Decision letter, instead of waiting for a veteran to exercise his or her appeal rights before sending the form to the veteran. I believe this is a simple courtesy VA could extend to our Nation's veterans.

I thank all of the Members for their thoughtful legislation. And, I thank all of our esteemed witnesses for joining us today and look forward to receiving their testimonies.

Thank you and I yield back.

Prepared Statement of Chairman Jeff Miller

Thank you Mr. Chairman.

With your permission, I would like to make a few remarks on H.R. 602, the Veterans' Second Amendment Protection Act, a bill that I introduced to protect the constitutional rights of our Nation's veterans.

This piece of legislation would end the arbitrary process through which the Department of Veterans Affairs (VA) strips certain veterans and other beneficiaries of their second amendment rights.

Under current practice, veterans who have a fiduciary appointed to manage their affairs are deemed to be "mentally defective." And as a result, these veterans are reported to the FBI's national instant criminal background check system (NICS), a system which prevents individuals from purchasing firearms in the United States, and criminalizes the possession of a firearm.

I label this process "arbitrary" because pursuant to VA regulation thirty-eight CFR section three point three five three, the definition of mental incompetency is:

"one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation."

In plain English, this means that if VA determines that a person cannot manage their finances and needs a fiduciary, their second amendment rights are automatically taken away. This makes no sense. As a reminder, a majority of VA's regulations concerning fiduciary matters are from 1975. Although in the course of this Committee's oversight, VA has indicated that it will update these regulations, to date, no new fiduciary regulations have been promulgated.

In previous discussion with VA, I have emphasized that its regulatory scheme does not take into account the importance that our judicial system plays in determining when someone's constitutional rights should be infringed upon.

I would again encourage VA to update its regulations accordingly. As a reminder, the department itself was opposed to judicial review of any kind on VA determinations all the way through 1988. Judicial proceedings are comprehensive and all interested parties have a right to be represented and heard during them.

This is a far cry from the process during which a VA rating specialist determines that a veteran is mentally defective. Accordingly, the Veterans' Second Amendment Protection Act would require that a judicial authority – rather than an internal VA decision-maker – make the determination that a veteran poses a danger to themselves or others prior to their name being sent to the NICS.

Taking away a constitutional right is a serious action and one that should not be taken lightly, particularly when it concerns our Nation's veterans. Affording veterans their due process rights under the law in any and all contexts is of utmost importance to me.

As will be further discussed during this hearing, there are other issues with VA's fiduciary program that also affect veterans' due process rights. I will defer to the witnesses that have been called here today to testify as to the specifics of the fiduciary program as a whole for further comment.

Mr. Chairman, I thank you and the Members of the Subcommittee for your time. I would like to encourage all of you to support H.R. 602, the Veterans' Second Amendment Protection Act, and I yield back.

Prepared Statement of Hon. Chellie Pingree

Thank you Chairman Runyan and Ranking Member Titus for having me here today and for considering the Ruth Moore Act in this afternoon's legislative hearing. I appreciate the opportunity to talk more about this bill and why I think we desperately need it to become law.

This legislation has been endorsed by the American Legion, Disabled American Veterans, Veterans of Foreign Wars, Vietnam Veterans of America, Iraq and Afghanistan Veterans of America, Service Women's Action Network, Military Officers Association of America, the National Organization of Veterans' Advocates, and the Fleet Reserve Association. We appreciate their support and all the work they do for veterans.

The Ruth Moore Act would relax the evidentiary standards for survivors of military sexual trauma who file claims for mental health conditions with the VA. Currently, MST survivors need further proof of the assault—which for many of them is impossible. Under this bill, in order to receive service-connected benefits, a veteran would have to provide a statement that the assault took place; along with a diagnosis from a VA health care professional that links the assault to a mental health condition.

This bill also requires the VA to report MST related claims information back to Congress, such as the number of denied and approved MST claims each year, and the reasons for denial. As members of Congress, we have a responsibility to ensure that the VA is providing timely and accurate decisions to veterans, but we cannot do that without sufficient data.

This bill is closely modeled after the 2010 change in VA regulations for combat veterans who have filed PTSD claims based on their military service.

As you know, in 2010, the VA relaxed the evidentiary standards for veterans who suffer from combat related PTSD. The VA finally acknowledged that far too many veterans who have deployed into harm's way suffered the emotional consequences of their service but could not, through no fault of their own, locate military documentation that verified the traumatic events that triggered their PTSD.

The VA now accepts their statement of traumatic events, along with a PTSD diagnosis and a medical link, as enough to receive disability benefits.

So what we have is an inequity in the system, and those with a combat related mental health condition have an easier path to benefits than those who were raped or sexually harassed—even though both are service-connected injuries and the same standards should apply.

Ruth Moore, who this bill is named for, is a US Navy veteran from Maine who was raped twice during her military service. When she reported it, she was discharged and labeled as having a personality disorder. She spent over 23 years fighting the VA to get disability benefits, and she battled homelessness and PTSD during that time.

Ruth, like many MST survivors, did not have military records that corroborated the rape, so her claim was repeatedly denied. Unfortunately, she is not alone: DoD's own numbers indicate that over 85% of assaults go unreported. So I ask you, how are these veterans supposed to qualify for the help they need from the VA?

The VA will tell you that their system accepts "secondary markers" as evidence to verify an assault occurred—and as comforting as that sounds, we've seen time and time again that the VA is vastly inconsistent in applying those standards. What one Regional office will accept as proof another will deny. Almost every day I hear from another MST survivor who has had their claim denied after these secondary markers were ignored.

This is a problem of fundamental fairness: If a medical diagnosis and link to a claimed event is enough for one group of veterans, it ought to be enough for another. Especially when we know how prevalent sexual assault in the military is and how hard it is for documentation to exist to support these instances of assault.

Critics of this legislation might say that it makes it too easy to get benefits and veterans could just say anything to get those benefits. First of all, that's simply not true. There still needs to be a medical diagnosis and medical link, which are not at all easy to come by. And secondly, we heard that same argument when the VA proposed a similar change for combat veterans, and I haven't heard the VA say they've had big problems with veterans lying about their service.

The bottom line is that for too long the burden of proof has been on the veteran—and that needs to change now.

Mr. Chairman, over the last two years I have heard from dozens and dozens of veterans from all over the country. Men and women who volunteered to serve their country, many of them planning on a career in the military, only to have that career cut short by the horror of a violent, sexual assault.

Whether the attack happened on a Navy base in Europe or at a National Guard training facility here in the U.S., whether they were soldiers, sailors, airmen or Marines, the story too often has the same ending: The victims were blamed, the crime was covered up, and the survivors themselves became the subject of further harassment and recrimination. And too often, what followed was years of mental health issues, lost jobs, substance abuse and homelessness.

These stories don't have to end this way. With the Ruth Moore Act, we can change the VA's policy so veterans who survive a sexual assault can at least get the benefits they deserve.

Again, thank you Mr. Chairman, Ranking Member Titus and Members of the Committee for considering this legislation. I am happy to answer any questions you may have.

Executive Summary

HR 671, Ruth Moore Act of 2013

Related Bill(s): S.294

Sponsor: Congresswoman Chellie Pingree, (D- ME -01)

SUMMARY AS OF:
2/13/2013—Introduced.

Ruth Moore Act of 2013 - Directs the Secretary of Veterans Affairs (VA), in any case in which a veteran claims that a covered mental health condition was incurred in or aggravated by military sexual trauma during active duty, to accept as sufficient proof of service-connection a diagnosis by a mental health professional together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such condition is related to such trauma, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and to resolve every reasonable doubt in favor of the veteran. Allows such service-connection to be rebutted by clear and convincing evidence to the contrary.

Includes as a "covered mental health condition" post-traumatic stress disorder, anxiety, depression, or any other mental health diagnosis that the Secretary determines to be related to military sexual trauma.

Requires the Secretary to report annually to Congress in each of 2014 through 2018 on covered claims submitted.

Current Sponsors (*Original): Blumenauer*, Brownley*, Capps*, Connolly, DeFazio, DelBene, Ellison, Grijalva*, Honda*, Jones, Kuster, Larsen*, Lewis*, McGovern*, Michaud*, McLeod, Murphy, O'Rourke, Payne, Polis, Rush*, Shea-Porter*, Titus, Tsongas*

Supported by: American Legion, Disabled American Veterans, Fleet Reserve Association, Iraq and Afghanistan Veterans of America, Military Officers Association of American, Service Womens Action Network, Veterans of Foreign Wars, Vietnam Veterans of America.

Prepared Statement of Hon. Bill Johnson

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

I appreciate the opportunity to testify before you on H.R. 894, important legislation I introduced to reform the Department of Veterans' Affairs (VA) Fiduciary Program.

As most of you know, last Congress, I served as the Oversight and Investigations Subcommittee Chairman on the House Veterans' Affairs Committee. 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 misfeasance 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, an Oversight and Investigations Subcommittee hearing held on February 9 of last year uncovered the fact 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.

For these reasons, I am proud to sponsor H.R. 894, the "Veteran's Fiduciary Reform Act." This important legislation, initially introduced last Congress, is based on problems uncovered before, during, and after the hearing, 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 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. 894 would enable veterans to appeal their incompetent status at any time, a right not currently granted to veterans. Additionally, it would allow veterans to name a preferred fiduciary, such as a family member.

Last year, my Subcommittee heard numerous complaints about the requirement for 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. 894 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 gives VA the opportunity to audit fiduciary's 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 last Congress, the Veterans Fiduciary Act of 2012 passed the House Veterans' Affairs Committee unopposed, and passed the full House by voice vote on September 19, 2012. Unfortunately, this important legislation was not considered by the Senate, and therefore, the VA's Fiduciary Program is still in urgent need of reform.

Chairman Runyan, Ranking Member Titus, thank you again for the opportunity to speak on this important legislation, H.R. 894. 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.

Executive Summary

Last Congress, the Veterans Fiduciary Act of 2012 passed the House Veterans' Affairs Committee unopposed, and passed the full House by voice vote on September 19, 2012. Unfortunately, this important legislation was not considered by the Senate, and therefore, the VA's Fiduciary Program is still in urgent need of reform.

H.R. 894, the "Veteran's Fiduciary Reform Act," is designed to transform the VA's Fiduciary Program to better serve the needs of our most vulnerable veterans and their hardworking fiduciaries, and to protect veterans in the program from falling victim to deceitful and criminal fiduciaries.

In order discourage bad actors from enrolling as VA paid fiduciaries, this legislation 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.

Importantly, H.R. 894 would enable veterans to appeal their incompetent status at any time, a right not currently granted to veterans. It would also allow veterans to name a preferred fiduciary, such as a family member.

This legislation also takes several important steps to provide straightforward guidelines and prevent burdensome requirements on fiduciaries. It would require the VA to consider whether acquiring a bond for each fiduciary is necessary, and if it will adversely affect the fiduciary and the veterans he or she serves. And it would also implement a straight forward annual accounting requirement that gives the VA the opportunity to audit fiduciary's whose accounting is suspect.

Prepared Statement of Hon. Timothy J. Walz

I am here to speak in support of H.R. 679, Honor America's Guard-Reserve Retirees Act. The bill ensures that we recognize the service and sacrifice of members of the National Guard by honoring them with status as Veterans under law. I would like to thank Chairman Runyan and the group of bi-partisan Members of Congress who introduced this bill with me.

I would like to commend the Subcommittee's Chairman and the Ranking Member, as well as the Majority and Minority staff for what I consider being an exceptional work ethic in this Subcommittee, a sense of urgency to get things done. Thank you for the opportunity to move this legislation forward.

The men and women of the reserve components take the same oath to serve and protect our country as the active component: they sacrifice their time and energy and stand ready if called upon, to serve in combat in time of war. For those who have completed 20 years or more in the reserve component but have not served a qualifying period of Federal active duty, we honor their service with similar benefits given to active duty military retirees - with one notable exception: they are denied the title "Veteran".

Today, a reservist can successfully complete a Guard or Reserve career but not earn the title of, "Veteran of the Armed Forces of the United States," unless he or she has served on Title 10 active duty for other than training purposes. Title 38

excludes from the definition of "Veteran career," those reservists who have not served on Title 10 active duty for other than training purposes. Drill training, annual training, active duty for training, and Title 32 duty are not deemed qualifying service for "Veteran" status.

H.R. 679 would recognize all people who served in the National Guard and Reserve for more than 20 years by honoring all of them with the status of Veteran. It specifically bestows no additional benefits to these brave men and women, it merely honors them with a title of Veteran.

H.R. 679 is about recognizing our National Guard and Reserve components play an integral role in the Defense of our Nation. It is about recognizing that our all-volunteer force would be unsustainable if it were not for the men and women who dedicate twenty years of their lives to the training and welfare of America's Soldiers, Airmen, Sailors and Marines. These servicemembers could have spent their time and talents doing other things; they could have spent their weekends enjoying time with their families. Instead they chose to prepare to defend our country. It is high time that the U.S. Congress honor their service and sacrifice.

This is a question of honor for those who have served our Nation faithfully for 20 years in the Guard or Reserve. This legislation corrects this injustice, at no cost to taxpayers. There are over 280,000 former Reservist and Guardsman across the country who served dutifully for 20 years that will benefit. I believe that these men and women have earned the respect and recognition that comes with the designation of "Veteran," which is why we have introduced H.R. 679, the Honor America's Guard-Reserve Retirees Act.

The House of Representatives passed this legislation without any opposition in both the 111th and 112th Congresses. Last Congress fifty-three bi-partisan members made supporting this legislation a priority, and the legislation continues to gain support today.

I emphatically encourage the House Veterans Affairs Committee to streamline this legislation through the Committee and bring this to the floor of the House of Representatives. Thank you for your time and consideration.

Prepared Statement Jeffrey C. Hall

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

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

H.R. 569

H.R. 569, the Veterans' Compensation Cost-of-Living Adjustment Act of 2013, would increase, effective December 1, 2013, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. Although a cost-of-living adjustment (COLA) was passed last year at the modest increase of 1.7%, each of the past two years, there was no increase in the rates for compensation and DIC because the Social Security index used to measure the COLA did not increase. Many disabled veterans and their families rely heavily or solely on VA disability compensation or DIC as their only means of financial support have struggled during these difficult times. While the economy has faltered, their personal economic circumstances have been negatively affected by rising costs of many essential items, including food, medicines and gasoline. As inflation becomes a greater factor, it is imperative that veterans and their dependents receive a COLA and DAV supports this legislation; however, DAV is adamantly opposed to Section 2(c)(2) of the bill requiring the practice of rounding down COLA increases to the next lower whole dollar amount, which incrementally reduces the support to disabled veterans and their families. The practice of permanently rounding down a veteran's COLA to the next lower whole dollar amount can cause undue hardship for veterans and their survivors whose only support comes from these programs and it is time to end this practice.

H.R. 570

H.R. 570, the American Heroes COLA Act, would provide for annual COLAs to be made automatically by law each year for the rates of disability compensation for veterans with service-connected disabilities as well as the rates of DIC for survivors of certain service-connected disabled veterans. DAV supports this legislation; however, as mentioned, DAV is adamantly opposed to the section of the bill requiring the practice of rounding down COLA increases to the next lower whole dollar amount.

H.R. 602

H.R. 602, the Veterans 2nd Amendment Protection Act, would clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes. An individual who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered mentally defective without the finding from a judge, magistrate, or other judicial authority of competent jurisdiction that such individual is a danger to himself or herself or to others. DAV has no resolution on this matter.

H.R. 671

H.R. 671, the Ruth Moore Act of 2013, would improve the disability compensation evaluation procedure of the Secretary of Veterans Affairs for veterans with mental health conditions related to military sexual trauma. DAV supports this legislation.

This bill would change the standard of proof required to establish service connection for veterans suffering from certain mental health conditions, including post-traumatic stress disorder (PTSD), resulting from military service or from military sexual trauma that occurred in service.

Essentially, H.R. 671 would eliminate the requirement of an in-service, verifiable stressor in conjunction with claims for PTSD. Under this change, VA would now be able to award entitlement to service connection for PTSD even when there is no official record of such incurrence or aggravation in service, provided there is a confirmed diagnosis of PTSD coupled with the veteran's written testimony that the PTSD is the result of an incident that occurred during military service, and a medical opinion supporting a nexus between the two.

In November 2010, VA modified its prior standard of proof for PTSD related to combat veterans by relaxing the evidentiary standards for establishing in-service stressors if it was related to a veteran's "fear of hostile military or terroristic activity." H.R. 671 would build upon that same concept and expands it to cover all environments in which a veteran experiences a stressor that can reasonably result in PTSD, regardless of whether it occurred in a combat zone, as long as it occurred when the veteran had been on active duty. The legislation would also remove the current requirement that the diagnosis and nexus opinion come only from VA or VA-contracted mental health professionals, but would instead allow any qualified mental health professional.

This legislation would also allow VA to award entitlement to service connection for certain mental health conditions, including PTSD, anxiety and depression, or other mental health diagnosis described in the current version of the Diagnostic and Statistical Manual for Mental Disorders (DSM), which a veteran claims was incurred or aggravated by military sexual trauma experienced in service, even in the absence of any official record of the claimed trauma. Similar to the evidentiary standard above for PTSD, the veteran must have a diagnosis of the covered mental health condition together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such covered mental health condition is related to such military sexual trauma, if consistent with the circumstances, conditions, or hardships of such service even in the absence official record of such incurrence or aggravation in such service and if so all reasonable doubt will be resolved in favor of the claimant.

DAV supports H.R. 671, which is consistent with DAV Resolutions 30 and 204. DAV Resolution 204 states that, "[e]stablishing a causal relationship between injury and later disability can be daunting due to lack of records or certain human factors that obscure or prevent documentation of even basic investigation of such incidents after they occur..." and that, "[a]n absence of documentation of military sexual trauma in the personnel or military unit records of injured individuals prevents or obstructs adjudication of claims for disabilities for this deserving group of veterans injured during their service, and may prevent their care by VA once they become veterans..." Further, DAV Resolution 30 states that, "[p]roof of a causal relationship may often be difficult or impossible..." and that, "...current law equitably alleviates

the onerous burden of establishing performance of duty or other causal connection as a prerequisite for service connection...” Enactment of H.R. 671 would provide a more equitable standard of proof for veterans who suffer from serious mental and physical traumas in environments that make it difficult to establish exact causal connections.

H.R. 679

H.R. 679, the Honor America’s Guard-Reserve Retirees Act, would recognize the service in the reserve components of certain persons entitled to receive retired pay under Chapter 1223 of title 10, United States Code, by honoring them with status as veterans under law. DAV has no resolution on this matter.

H.R. 733

H.R. 733, the Access to Veterans Benefits Improvement Act, would amend title 38, United States Code, to provide certain employees of Members of Congress and certain employees of State or local governmental agencies with access to case-tracking information of the VA.

DAV had concerns about this legislation when it was introduced in the 112th Congress. While we were supportive of the previous bill’s intent, we advanced our concerns about the broad language, which would have allowed certain individuals to gain unrestricted access to veterans’ claims information without accreditation or security permission. We are extremely pleased some of our suggestions were considered and the language changed in the previous bill and now carried forward in H.R. 733. DAV supports the intent of this legislation, as it would provide assistance to the veteran by keeping them informed as to the current status of their claim for benefits; especially important during a time when the time for a claim to be processed is averaging over 280 days.

DAV National Service Officers (NSOs) are accredited by the VA and given access to veterans’ records and computerized processing systems, but only for those in which we hold power of attorney. DAV NSOs regularly interact with certain local government employees, such as County Veterans Service Officers (CVSOs), who provide local assistance to veterans. When the assistance desired involves obtaining an update as to the status of a pending claim, CVSOs generally are not able to access the information and they must contact the accredited representative of record, such as a veterans service organization (VSO) to obtain a status of the pending claim, and then inform the veteran. If the veteran does not have an accredited representative, such as a VSO, the CVSO is very limited as to the information that may be accessed. Likewise, an accredited representative only has access to those cases for which they hold power of attorney.

Allowing certain covered employees of Members of Congress or local government agencies to access the VA’s case-tracking system to obtain a status of a claim submitted by a veteran without a properly executed power of attorney poses many serious questions. As a matter of privacy, veterans or other claimants must be protected from anyone without accreditation from being allowed to access VA’s system and gain private information on the veteran or other claimant.

This legislation sets out to amend title 38, United States Code, by adding a new subsection 5906, which, as written, would allow virtually any covered employee to gain access to any veteran’s private information; far greater access than afforded to an accredited representative, such as a DAV NSO. First, the bill should contain the explicit language contained in title 5, United States Code, section 552a(b), requiring the covered employee to have the written permission of the veteran or claimant requesting assistance from the covered employee. Without such request and written permission, the covered employee has no proprietary reason to access any veteran’s information.

Secondly, as stated in H.R. 733, before the covered employee is able to access the VA’s system, he or she is required to certify that such access is for official purposes only. While we certainly agree with this requirement, DAV believes that written consent to do so should be obtained from the veteran or claimant in order to access the status of the veteran’s pending claim. Thirdly, the bill should plainly set forth the penalties for any violations, such as accessing or attempting to access the status of any pending claim without the expressed written consent of the veteran or claimant.

Lastly, DAV believes the bill should also contain an additional safeguard provision wherein the veteran or claimant is notified when his or her record is being accessed by a covered employee. This would further assure the veteran or claimant, especially those without representation, has authorized the covered employee to perform such action on their behalf and is aware when it is occurring. This would also

alert VA when a covered employee is attempting to gain access without the express written consent of the veteran or claimant.

Again, the intent of this bill is to help veterans by providing these covered employees limited access to VA's electronic database solely for the purpose of obtaining the status of a claim. DAV believes this could be very beneficial to all parties in the process, including DAV NSOs when DAV is the accredited representative of record. DAV simply wants to ensure that proper security measures are in place to protect the privacy of veterans and claimants. As such, DAV supports the intent of the bill, but we recommend the aforementioned changes in the bill's language in order for us to be able to fully support H.R. 733. We feel the bill's current language is not explicit enough to ensure the privacy of a veteran or claimant is safeguarded; however, DAV would be pleased to work with the Subcommittee to make these necessary changes in the bill's language.

H.R. 894

H.R. 894 would improve the supervision of fiduciaries of veterans under laws administered by the Secretary of Veterans Affairs. Our understanding of the bill's primary intent seems to be a restructuring of existing law with improved protection of a beneficiary's benefits from abusive, fraudulent or illegal activity by an appointed fiduciary, while allowing the beneficiary to be more engaged in the process when a fiduciary is appointment. While DAV does not have a resolution on this particular matter, we are supportive of the intent of this legislation.

H.R. 1405

H.R. 1405 would require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought. Initially we note the term "appeals form" in this legislation is apparently referring to a forthcoming standardized VA form for the purpose of a notice of disagreement, not a VA Form 9, Appeal to the Board of Veterans' Appeals. Currently, there is no prescribed or standardized form for a claimant to utilize when filing a notice of disagreement, which is the first step in the appellate process. It should be noted while there is no requirement for a claimant to utilize a VA Form 9 for a substantive appeal, it does make it easier for all parties involved by clearly laying out what is being contested, whether a hearing is being requested and specific contentions for each issue being contested.

We believe a standardized form to be used for the purpose of a notice of disagreement makes equal sense to that of a VA Form 9, which is used for perfecting a substantive appeal. However, VA must still be required to accept written disagreement or appeal in another form, provided it clearly identifies the benefit(s) being sought.

As stated, a standardized form to be used for a formal Notice of Disagreement (NOD) would be extremely beneficial to a veteran in many ways. For example, currently when a decision is sent to a claimant from the VA it simply provides appeal rights, which means claimants often send in their written disagreement by way of letter or by using a VA Form 21–4138, Statement in Support of Claim. However, many claimants do not clearly identify the correspondence as being an NOD to a particular decision. Many claimants mistakenly utilize an appeal form (VA Form 9), to express their disagreement, not knowing the first step in the appellate process is the NOD. Confusion begins when an appeal form is filed without their being an NOD of record. This prompts VA to accept the appeal form as the NOD, so when the claimant actually receives the appeal form included in the Statement of the Case, further confusion occurs. Many claimants do not understand they must complete the form again, because the first one submitted is actually an NOD. As such, the claimant fails to complete and submit a second appeal form, eventually leading to the appeal period expiring and being closed. Having a standardized VA form to be included with the notice of decision may alleviate these occurrences.

DAV supports the intent of this legislation, but we feel the language is far too simplified and broad. We recommend a modest reworking of the language so it would alleviate any confusion as to the purpose of this bill or what is intended by "appeals form" or "a form that may be used to file an appeal . . . " as proposed in Section 1, which would amend section 5104(b) of title 38. If it is a form to be used to submit a notice of disagreement, then it should clearly state such, rather than confusing it with a currently utilized appeal form.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions from you or members of the Subcommittee.

Prepared Statement of Raymond C. Kelley

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the nearly 2 million men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

H.R. 569, Veterans' Compensation Cost-of-Living Adjustment Act of 2013:

Disabled veterans, their surviving spouses and children depend on their disability and dependency and indemnity compensation to bridge the gap of lost earnings and savings that the veteran's disability has caused. Each year, veterans wait anxiously to find out if they will receive a cost-of-living adjustment. There is no automatic trigger that increases these forms of compensation for veterans and their dependents. Annually, veterans wait for a separate Act of Congress to provide the same adjustment that is automatic to Social Security beneficiaries.

The VFW supports this legislation that will bring parity to VA disability and survivor recipients' compensation by providing a COLA beginning December 1, 2013, so long as VA disability, pension and survivor benefits continue to be calculated with the currently used Consumer Price Index – W and not change the calculations for these adjustments to the Chained – Consumer Price Index.

The VFW continues to oppose the "rounding down" of the increase. This is nothing more than a money-saving gimmick that comes at the expense of our veterans and their survivors.

H.R. 570, American Heroes COLA Act:

The VFW agrees with the intent of this bill, which would provide for an automatic trigger for COLA, eliminating the confusion and uncertainty the current process brings. However, with the concerted effort to change the index used to calculate COLA from the Consumer Price Index – W to Chained – Consumer Price Index, the VFW must oppose this bill in its current form. The VFW would provide support if this legislation was amended to provide for the automatic Social Security trigger, therein removing the Congressional step of passing a standalone bill, but maintain the current index to calculate the rate of COLA.

H.R. 602, Veterans 2nd Amendment Protection Act:

The VFW supports H.R. 602, 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 671, Ruth Moore Act of 2013:

The VFW strongly supports this legislation and believes that it is long overdue. *"The Ruth Moore Act of 2013"* would relax evidentiary standards for tying mental health conditions to an assault, making it easier for Military Sexual Assault (MST) survivors to receive VA benefits.

Current regulations put a disproportionate burden on the veteran to produce evidence of MST – often years after the event and in an environment which is often unfriendly - in order to prove service-connection for mental health disorders.

With the extraordinarily high incidence of sexual trauma in the military and the failure of many victims to report the trauma to medical or police authorities, it is time Congress amends this restrictive standard. This legislation does that by providing equity to those suffering from post-traumatic stress disorder, anxiety, depression and other mental health diagnoses that are often related to MST. It puts MST in line with VA's standard of proof provided to combat veterans who suffer PTSD. Passage of this bill will allow those who have suffered from sexual violence in the military to get the care and benefits they deserve. The VFW urges Congress to pass this legislation quickly.

H.R. 679, 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 to make 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. 733, Access to Veterans Benefits Improvement Act:

The VFW supports this legislative proposal, which would grant certain congressional staff members and local governmental agency employees access to VA's case-tracking information. This bill will allow Congress to better represent and respond to inquiries from their veteran constituents.

The VFW contends that state and county service officers should only have access to veterans for whom they hold a Power of Attorney (POA) or for veterans who are not represented by a service officer. This will ensure that service officers who hold a POA will be maintained as the primary point of contact for the veterans they represent.

H.R. 894, Improvement of Fiduciaries for Veterans:

The VFW supports the intent of H.R. 894. 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 Chapter 55 of title 38 U.S.C. The VFW believes that changing the title of paragraph 5502 to read "Appointment of fiduciaries" from "Payments to and supervision of fiduciaries" will codify how and when the Secretary can appoint a fiduciary without regard to the due process provision provided in 38 C.F.R. paragraph 3.353 (d) and (e).

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

H.R. 1405, Inclusion of Appeals Forms in Notices of Decisions of Benefits Denials:

The VFW supports the intent of H.R. 1405. Ensuring VA has a clear notice of disagreement from the veteran is important to due process. Currently, veterans write a letter disagreeing with VA's decision. This acts as the "Notice of Disagreement." Providing veterans with a standardized form to file the disagreement will help both the veteran and VA during the appeals process.

However, the VFW is concerned by the current language of the bill. The VFW recommends amending this legislation to more clearly describe the bills intent. By amending Section 1, Paragraph (a), subparagraph (2) to read, "(2) by inserting before the period at the end of the following: ', and (3) a form that may be used to file a notice of disagreement of the decision'." the bill would more closely reflect the intent of providing a standardized notice of disagreement when the initial rating decision is provided to the veteran.

Mr. Chairman, this concludes my testimony and I will be happy to answer any questions you or the Committee 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 2013, nor has it received any federal grants in the two previous Fiscal Years.

Prepared Statement of Colonel Robert F. Norton, USA (Ret.)

Deputy Director, Government Relations

CHAIRMAN RUNYAN, RANKING MEMBER TITUS AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, on behalf of the over 380,000 members of The Military Officers Association of America (MOAA), I am pleased to present the Association's views on selected bills that are under consideration at today's hearing.

MOAA does not receive any grants or contracts from the federal government.

H.R. 679, the Honor America's Guard-Reserve Retirees Act of 2013.

H.R. 679 (Reps. Walz, D–MN and Runyan, R–NJ) would honor as a veteran any retired member of the National Guard or Reserves entitled to retired pay for non-regular (reserve) service in the Armed Forces of the United States.

National Guard and Reserve members who complete a full Guard or Reserve career and are receiving or entitled to a military pension, government health care and

certain earned veterans' benefits under Title 38 are not "veterans of the Armed Forces of the United States," in the absence of a qualifying period of active duty.

This strange situation exists because the definitions in Title 38 limit the term "veteran" only to servicemembers who have performed duty on active duty (Title 10) orders.

National Guard members who served on military duty orders (other than Title 10) at Ground Zero in New York City on Sept. 11, 2001, the Gulf Coast following Hurricane Katrina or Hurricane Sandy, the BP oil spill catastrophe off the Gulf Coast, or conducted security operations on our Southwest border, and subsequently retire from the National Guard or Reserve are not deemed to be veterans under the law unless at some point they had served on Title 10 orders.

Throughout the Cold War and continuing in practice today, Reservists may perform operational duty or support operational forces on 29 different sets of orders. Most of these duty order categories reflect Service funding and accounting protocols, but unless the orders purposely are issued under Title 10, they do not count towards recognition of career reservists as veterans of our Armed Forces.

Ironically, these career reservists earn specified veterans' benefits, but they can't claim that they are veterans.

For these career volunteers who have served and sacrificed for decades in uniform, it is deeply embarrassing that they are not authorized to stand and be recognized as veterans during Veterans Day and other patriotic celebrations.

MOAA is grateful to the House Veterans Affairs Committee and the full House of Representatives for twice passing enabling legislation on this issue.

H.R. 679 would establish that National Guard and Reserve members who are entitled to a non-regular retirement under Chapter 1223 of 10 USC and who were never called to active federal service during their careers are veterans of the Armed Forces. The legislation expressly prohibits the award of any new or unearned veterans' benefits and is cost-neutral.

A retired New York Army National Guard Master Sergeant recently responded to an article on this issue in *Military Update,* a syndicated column on military issues by Tom Philpott. The Master Sergeant wrote: "I served 35 years as a Guardsman and am told I am not a veteran. I did two weeks at Ground Zero and many tours in Germany doing logistics for the war in Iraq. Yet I am still not a veteran." On his behalf and on behalf of tens of thousands of other Guard and Reserve service members, MOAA urges passage of H.R. 679.

MOAA strongly supports H.R. 679 to establish that career Reservists eligible for or in receipt of military retired pay (at age 60), government health care and certain earned veterans benefits, but who never served under active duty orders are "veterans of the Armed Forces of the United States."

An Addendum to this Statement includes a Letter of support from The Military Coalition and Frequently Asked Questions about the Honor America's Guard-Reserve Retirees Act.

H.R. 569, Veterans' Compensation Cost-of-Living Adjustment Act of 2013. H.R. 569 (Reps. Runyan and Titus, D–NV) would adjust veterans' compensation, pension, survivors' Dependency and Indemnity compensation and related benefits by the same percentage as the annual adjustment of Social Security benefits. The adjusted rates would become effective on 1 December 2013 and reflected in payouts on 1 January 2014. **MOAA strongly supports H.R. 569.**

H.R. 570, The American Heroes COLA Act. H.R. 570 (Reps. Runyan and Titus) would authorize automatic annual cost-of-living adjustments each year in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. The bill would provide for an automatic adjustment to the benefits described here whenever there is an increase in benefits payable for Social Security annuitants. **MOAA supports H.R. 570.**

H.R. 602, Veterans 2d Amendment Protection Act. H.R. 602 (Rep. Jeff Miller, R–FL) would prohibit the VA from denying the right of a veteran deemed mentally incompetent or incapacitated from receiving or carrying firearms without a court order that such a person is a danger to himself / herself or others. MOAA has no position on H.R. 602.

H.R. 671, Ruth Moore Act of 2013. H.R. 671 (Rep. Pingree, D–ME) would revise policy for adjudicating service-connection for veterans with a mental health condition that was caused or aggravated by military sexual trauma during active duty. The bill would require the VA to accept as sufficient proof of service-connection a diagnosis by a mental health professional together with satisfactory lay or other evidence of military sexual trauma and an opinion by the mental health professional that such condition is related to such trauma, if consistent with the circumstances, conditions, or hardships of the veteran's service, event when there is no official

record of such incurrence or aggravation in such service, and for other purposes. **MOAA strongly supports H.R. 671.**

H.R. 733, Access to Veterans Benefits Improvement Act. H.R. 733 (Reps. Runyan and Walz) would authorize employees of Members of Congress or of a state or local governmental agency assisting veterans to have access to case-tracking information to assist them with their claims. Access would include access to medical records. The bill would prohibit the employee from modifying the data in the case-tracking system and require employees to complete certification training on privacy issues before gaining access to veterans' records. MOAA is not chartered by the VA to represent veterans' claims and therefore takes no position on the legislation.

H.R. 894, a bill to improve the supervision of fiduciaries of veterans. H.R. 894 (Rep. Bill Johnson, R–OH) would revise the laws governing the appointment, supervision, removal and re-appointment of fiduciaries by the VA to administer benefits for certain disabled veterans. The bill establishes procedures for the appointment of temporary fiduciaries and for the pre-designation of a fiduciary. Among other purposes, the legislation requires (under current law, permits) a fiduciary to file an annual accounting of the administration of beneficiary benefits; requires the VA to conduct annual random audits of fiduciaries who receive a commission for such service; and, requires fiduciary repayment of misused benefits.

The legislation grew out of the need to update VA fiduciary rules and regulations in the best interest of catastrophically disabled wounded warriors from the Iraq and Afghanistan conflicts. **MOAA supports H.R. 894.**

H.R. 1405, a bill to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought. H.R. 1405 (Reps. Titus and Runyan) would take effect on the date of enactment. At this time, MOAA is not chartered by the VA to represent veterans' claims and takes no position on the legislation.

Conclusion

The Military Officers Association of America is grateful to the leadership and members of the Subcommittee on Disability Assistance and Memorial Affairs Veterans for your commitment to our nation's veterans and their survivors.

Addenda: 1. Letter from The Military Coalition, 13 March 2013, re: H.R. 679. 2. Frequently Asked Questions re the Honor America's Guard-Reserve Retirees Act.

Letter From The Military Coalition

March 14, 2013

The Honorable Tim Walz
United States House of Representatives
Washington, DC 20515

Dear Congressman Walz:

The Military Coalition, a consortium of uniformed services and veterans associations representing more than 5.5 million current and former service members and their families and survivors, writes to thank you for your leadership in introducing HR 679, the "Honor America's Guard-Reserve Retirees Act" that would grant veteran status to members of the Reserve Components who served a career of 20 years or more and are military retirees, but who through no fault of their own are not recognized by our government as "veterans."

The individuals covered by your legislation have already earned most of the benefits granted to veterans by the Department of Veterans Affairs, and yet they do not have the right to call themselves veterans because their service did not include sufficient duty under Title 10 orders. Because of this they feel dishonored by their government. Your legislation simply authorizes them to be honored as "veterans of the Armed Forces" but prohibits the award of any new benefit.

The "Honor America's Guard-Reserve Retirees Act" is a practical way to honor the vital role members of the Reserve Components have had in defending our nation throughout long careers of service and sacrifice. And it can be done at no-cost to the American tax-payer because of your legislation.

We look forward to the early passage of your bill in the House of Representatives for the third time and we are hopeful both chambers of Congress will take favorable action so we can see it signed into law this year.

You have been the champion for this bill in the House and we are grateful. We know you understand the importance of the honor of being recognized as a veteran and we sincerely appreciate your steadfast support and leadership on this issue that is very important to so many members of the National Guard and Reserve.

The Military Coalition
TMC letter dated 14 March 2013 in support of H.R. 679

Honor America Guard-Reserve Retirees Act

Frequently Asked Questions

Q. What's the purpose of this legislation? A. To honor certain career Guard and Reserve service men and women as "veterans of the Armed Forces." Extract of the VFW's testimony before the Senate Veterans Affairs Committee on 8 June 2011: *"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 to make sure the unit is fully prepared when called upon. Unfortunately, some of these men and women serve 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. . .*

In recent years, Congress has enhanced material benefits to the members of the Guard and Reserve and this bill does not seek to build upon those provisions; **it simply seeks to bestow honor upon the men and women of the Guard and Reserve to whom it is due.**" [emphasis added]

Q. Who will this legislation cover? A. Career National Guard and Reserve service men and women who are entitled to a military retirement (at age 60) but never served on active duty orders during their careers. Under the law, only a member of the Armed Forces who has qualifying active duty service is a "veteran of the Armed Forces" as set out in Title 38.

Q. What qualifies a military member, including Reservists, as a "veteran"? A. A period of qualifying active duty service. In Title 38, a veteran is defined as a "person who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable." (Section 101(2), 38 USC). "Active military, naval, or air service" means "active duty"; or any period of active duty for training (ADT) or inactive duty for training (IDT) – often called "drill duty"—during which a service person was disabled or died from a disease or injury incurred or aggravated in the line of duty (Section 101(24)(A)(B)(C).

Q. Why is this legislation important?

A. For three reasons. First, honor. Honor is important to those who have volunteered to serve the nation in uniform. Second, for decades Guard and Reserve service men and women have performed military missions at home and overseas but because of accounting technicalities—funding sources and duty codes – their military missions were not considered valid active duty work; i.e., they performed the mission, but the orders did not credit the work as active duty. Thus, their very real contributions to the national security have been de-valued and dishonored leaving them in a no-man's land of "non-veteran" status. Third, the bill simply provides statutory and public recognition that a full career of service in uniform qualifies a person with recognition as a veteran. Career reservists have earned specific military retirement and veterans' benefits but technically are excluded from being recognized as veterans under the law.

Q. Do National Guard and Reserve service members qualify for any veterans' benefits even if they've never been called up? A. Yes. Reserve military service opens eligibility to certain benefits provided the member meets the specific criteria established in law. The reality is that reservists already can qualify for certain veterans' benefits, such as:

- Educational benefits under Chapter 1606, 10 USC for an initial enlistment of 6 years in the Selected Reserve
- VA-backed home mortgage loans upon completion of 6 years' reserve service
- Servicemembers Group Life Insurance (SGLI) managed by the Dept. of Veterans Affairs while serving in the National Guard or Reserve
- Burial in a national cemetery if qualified for a reserve retirement at age 60

Ironically, however, career reservists who have earned specified veterans' benefits but never served on active duty orders are not "veterans of the Armed Forces."

Q. Are there any new benefits conferred by this legislation? A. No. The bill confers no benefits. The Congressional Budget Office has scored the bill as cost-neutral.

Q. Could the bill become a "nose under the tent" to win unearned veterans' benefits?

A. The language of the bill specifically precludes new or unearned veterans' benefits. "Any person who is entitled under chapter 1223 of title 10 to retired pay for nonregular service or, but for age, would be entitled under such chapter to retired pay for nonregular service shall *be honored as a veteran but shall not be entitled to any benefit by reason of this section.* [emphasis added]

(2) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 107 the following new item:

'107A. Honoring as veterans certain persons who performed service in the reserve components.'.

(b) Clarification Regarding Benefits- *No person may receive any benefit under the laws administered by the Secretary of Veterans Affairs solely by reason of section 107A of title 38, United States Code, as added by subsection (a)".* [emphasis added]

Q. Why do military Reservists perform military missions on non-active duty orders?

A. During the Cold War (1945–1989), approximately 29 separate types of orders were created for the Guard and Reserve. These categories reflect funding sources and the types of duty performed, notwithstanding that some of these orders resulted in the performance of "real world" military missions. The DoD *Comprehensive Review of the Future Role of the Reserve Component* (April 2011) recommended a simpler framework of reserve duty orders and active duty orders, boiling down the 29 types of orders to about six. The point is that orders to carry out a military mission or in direct support of a mission should usually be accounted for as an active duty mission and credited accordingly. Unfortunately, some military missions are still conducted on ADT or IDT orders, denying some Reservists recognition as veterans.

Q. How can an individual serve for 20 years in the National Guard or Reserve without having served on active duty?

A. Since World War II, many Guard and Reserve service men and women have performed military missions – above and beyond their training – on military orders that do not specify Title 10 "active duty".

For example, Naval Reserve, Air National Guard and Air Force Reserve members often flew overseas missions on other-than-Title 10 orders. The Air National Guard had full responsibility for flying missions to Howard Air Force Base in Panama, but performed such missions on non-active duty orders.

National Guard units serving along the southern U.S. border performing a homeland security mission do not serve on Title 10 orders. National Guard units who rushed to New York City in response to the Sept. 11, 2001 attacks, or to New Orleans in response to Hurricane Katrina performed military missions on non-active duty orders.

Other Guard and Reserve members prepare Guard and Reserve formations for deployment but do not themselves deploy.

And finally, there are those who have served full careers who were never activated because of the particular military specialty they performed.

Over a 20 or more year career in traditional drill status a member of the Reserve Components serves at least two years and one month on military duty. But the classification of such duty as either ADT or IDT precludes veteran status.

Q. Don't National Guard and Reserve members become veterans after completing their initial active duty service commitment – basic training or "boot camp" – and military skill training? A. No. National Guard and Reserve initial entry training is performed under active duty training (ADT) orders. Only in the case of a disability incurred on ADT or IDT orders would a Reservist be declared a veteran.

Q. If this issue is so important to career Reservists, why hasn't it come up before?

A. Since World War II, with the exception of the Korean War, substantial numbers of reservists rarely were called up to Federal Active duty until Gulf War I (1990) and later. Most career reserve members were reluctant to challenge accepted wisdom on this issue. With the creation of the "Total Force Policy" (1972), the Guard and Reserve were gradually integrated into the operational force. The first large-scale test was Gulf War I followed by routine activations in that decade for stability operations in Kosovo and Bosnia. Today, Guard and Reserve members are a sustaining element of the operating force and participate in every major military mission at home and overseas. Yet, some of these missions continue to be conducted on non-active duty orders and reservists whose mission is to prepare other troops for deployment can never be credited as veterans. In short, the current policy shortchanges reservists' contribution to the national security and undermines the vision of the Guard and Reserve as an operational force.

Q. How many career Guard-Reserve members are affected by this legislation? A. Based on DoD data (2011), the Congressional Budget Office estimated that approximately 288,000 career reservists would become veterans (with no additional benefits) with enactment of the Honor America's Guard-Reserve Retirees Act.

Biography of Robert F. Norton, COL, USA (Ret.)

Deputy Director, Government Relations

Bob Norton joined the MOAA Government Relations team in 1997, specializing in National Guard / Reserve, veterans' benefits and VA health care issues. He co-chairs The Military Coalition's (TMC) Veterans' Committee and is MOAA's representative to TMC's Guard and Reserve Committee. In 2000, Bob helped found the Partnership for Veterans Education, a consortium of TMC, higher education associations, and other veterans groups that advocates for the GI Bill. Bob served on the statutory Veterans Advisory Committee on Education from 2004–2008.

Bob entered the Army in 1966 and was commissioned a second lieutenant of infantry in August 1967. He served in South Vietnam (1968–1969) as a civil affairs platoon leader. He transferred to the U.S. Army Reserve in 1969.

Colonel Norton volunteered for full-time active duty in 1978. He served in various assignments on the Army Staff and the office of the Secretary of the Army specializing in Reserve manpower and personnel policy matters.

Bob served two tours in the Office of the Assistant Secretary of Defense for Reserve Affairs, first as a personnel policy officer (1982–1985) and then as the Senior Military Assistant to the Assistant Secretary (1989–1994). Reserve Affairs oversaw the call-up of more than 250,000 members of the Guard / Reserve in the first Gulf War. Colonel Norton retired in 1995 and joined the MOAA Government Relations staff in 1997.

Colonel Norton holds a B.A. from Niagara University and an M.S.Ed. from Canisius College. He is a graduate of the U.S. Army Command and General Staff College, the Army War College, and the Harvard Kennedy School of Government senior officials in national security course.

His military awards include the Legion of Merit, Defense Superior Service Medal, Bronze Star, Vietnam Service Medal, and the Armed Forces Reserve Medal.

Executive Summary

HR 671, Ruth Moore Act of 2013

Related Bill(s): S.294

Sponsor: Congresswoman Chellie Pingree, (D- ME -01)

SUMMARY AS OF:
2/13/2013—Introduced.

Ruth Moore Act of 2013 - Directs the Secretary of Veterans Affairs (VA), in any case in which a veteran claims that a covered mental health condition was incurred in or aggravated by military sexual trauma during active duty, to accept as sufficient proof of service-connection a diagnosis by a mental health professional together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such condition is related to such trauma, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and to resolve every reasonable doubt in favor of the veteran. Allows such service-connection to be rebutted by clear and convincing evidence to the contrary.

Includes as a "covered mental health condition" post-traumatic stress disorder, anxiety, depression, or any other mental health diagnosis that the Secretary determines to be related to military sexual trauma.

Requires the Secretary to report annually to Congress in each of 2014 through 2018 on covered claims submitted.

Current Sponsors (*Original): Blumenauer*, Brownley*, Capps*, Connolly, DeFazio, DelBene, Ellison, Grijalva*, Honda*, Jones, Kuster, Larsen*, Lewis*, McGovern*, Michaud*, McLeod, Murphy, O'Rourke, Payne, Polis, Rush*, Shea-Porter*, Titus, Tsongas*

Supported by: American Legion, Disabled American Veterans, Fleet Reserve Association, Iraq and Afghanistan Veterans of America, Military Officers Association of American, Service Womens Action Network, Veterans of Foreign Wars, Vietnam Veterans of America.

Prepared Statement of Heather L. Ansley

Chairman Runyan, Ranking Member Titus, and other distinguished members of the subcommittee, thank you for the opportunity to testify regarding VetsFirst's views on the bills under consideration today.

VetsFirst, a program of United Spinal Association, represents the culmination of over 60 years of service to veterans and their families. We provide representation for veterans, their dependents and survivors in their pursuit of Department of Veterans Affairs (VA) benefits and health care before VA and in the federal courts. Today, we are not only a VA-recognized national veterans service organization, but also a leader in advocacy for all people with disabilities.

Veterans' Compensation Cost-of-Living Adjustment Act of 2013 (H.R. 569)

Disabled veterans and their survivors depend on VA benefits to provide for themselves and their families. Cost of living adjustments (COLAs) are an important aspect of ensuring that these benefits are able to meet beneficiaries' basic needs.

This legislation will ensure that the disabled veterans and their survivors who receive these benefits are eligible for a COLA on December 1, 2013. Although the COLA received in 2012 was only 1.7 percent, this small increase is critical for disabled veterans and their survivors. We would request, however, that any increase not be rounded down to the next whole dollar amount.

We urge swift passage of this legislation which would ensure that disabled veterans and their survivors are able to benefit from any COLA increase. We also hope that Congress will ensure that this COLA is not reduced through adoption of the chained consumer price index to calculate any COLA.

American Heroes COLA Act (H.R. 570)

Disabled veterans and their survivors depend on COLAs to their benefits to meet rising costs of goods and services. These VA beneficiaries should be automatically eligible for any COLAs. Social Security beneficiaries are already automatically eligible for these adjustments.

This legislation will ensure that disabled veterans and their survivors will be automatically eligible for COLAs. The certainty of knowing that they are eligible for any potential COLA increase will provide stability and equality with other government benefits. Veterans and their survivors should not have to face the uncertainty of knowing whether or not their benefits will be adjusted.

We urge swift passage of this legislation.

Veterans 2nd Amendment Protection Act (H.R. 602)

When VA proposes to find veterans financially unable to manage their VA compensation or pension benefits, they are informed that such adjudication will prohibit them from purchasing, possessing, receiving, or transporting a firearm or ammunition. However, VA's authority to adjudicate a veteran or other beneficiary unable to manage his or her benefits does not grant VA the authority to take away that veteran's constitutional rights, including his or her rights under the second amendment. This authority should be in the purview of the legal system.

For veterans with mental health concerns, fears about loss of second amendment rights could be a barrier to accessing needed care. We believe that veterans needing assistance should not be forced to weigh accessing care with the potential loss of their second amendment rights without proper legal protections.

This legislation will ensure needed judicial protections. Thus, we support this legislation.

Ruth Moore Act of 2013 (H.R. 671)

Many incidents of sexual trauma are never reported and too many of those that are reported do not result in justice for the victim. For veterans who acquired mental health conditions as the result of military sexual trauma (MST), the VA's claims process does not fully recognize the unique difficulty in proving that the trauma occurred. According to data obtain by the Service Women's Action Network (SWAN), 32 percent of claims for Post Traumatic Stress Disorder (PTSD) related to MST are approved for benefits while 54 percent of non-MST related PTSD claims are approved for benefits.

The Ruth Moore Act would ease the burden on veterans who are applying for benefits for an MST related mental health condition to prove the occurrence of sexual trauma during military service. Specifically, VA would be required to accept as sufficient proof of MST satisfactory lay or other evidence and an opinion of a mental health professional that a currently diagnosed mental health condition is related to

the trauma as long the evidence is consistent with the circumstances, conditions, or hardships of such service. To ensure the integrity of the benefits process, the legislation provides that service-connection can be rebutted but only by clear and convincing evidence to the contrary.

Reporting requirements included in the legislation will help to ensure that VA properly implements the provision. This legislation requires VA to submit an annual report to Congress regarding the number of covered claims, the number and percentage approved, the number and percentage denied, and the ratings assigned for approved claims, by gender. The report will also include information about the three most common reasons provided for denials and the number of denials that resulted from the failure of the veteran to attend a required medical examination.

We support this legislation. We also urge VA to immediately take any and all actions currently available to expedite implementation.

Honor America's Guard-Reserve Retirees Act (H.R. 679)

Lacking sufficient duty under Title 10 orders, some retired members of the Reserve Components who served 20 years and receive retiree pay are not considered veterans. This legislation would allow these men and women who have sacrificed through long careers of service and who already receive many of the benefits of veterans the honor of being formally recognized as veterans. We fully support this legislation and urge its quick passage.

Access to Veterans Benefits Improvement Act (H.R. 733)

Veterans who have filed claims for benefits deserve to have ready access to information about the status of their claims. When a veteran is not easily able to obtain timely and accurate information from VA regarding their claim, they may contact their member of Congress or the office of a veterans representative who is affiliated with a state or county department of veterans affairs. To facilitate access for these individuals to information about the status of a veteran's claim, this legislation would allow congressional staff and employees of state or local governmental agencies to access a claimant's information regardless of whether the covered employees are acting under a power of attorney.

While we support the goal of ensuring that veterans receive timely information regarding the status of their claims, we are concerned that providing access to sensitive claimant information without regard to the designation of a power of attorney or written request for release of information may jeopardize the veterans' private information. We appreciate the requirement for the covered employee to certify that each access attempt is for official purposes only and that employees complete a certification course on privacy issues. However, we feel that access to information should be limited to those for whom the covered employee has power of attorney or express written consent to review.

With proper safeguards, the ability to access information through VA's case-tracking system could be of benefit to veterans and those who are assisting them. We also believe, however, that VA should take steps to better assist and provide accurate status information to claimants, which might limit the need for other users to access VA's case tracking system to provide updates.

To improve the supervision of fiduciaries of veterans under the law administered by the Secretary of Veterans Affairs (H.R. 894)

VA may appoint a fiduciary for a veteran or other beneficiary when VA determines that it would be in his or her best interest. As defined by Title 38 United States Code Section 5506, a VA fiduciary is "a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary."

In a hearing before the Subcommittee on Oversight and Investigation on February 9, 2012, witnesses testified about numerous problems and concerns involving VA's fiduciary program. Some of these problems included the inability of veterans to receive needed medications due to the inaction of a VA appointed fiduciary and demands that veterans and their families provide information on all of a veteran's finances, not just his or her VA benefits. VA has also appointed paid-fiduciaries despite the availability of competent family members and in disregard of valid powers of attorney. For other family members who serve as their veterans' fiduciaries, the specter of the appointment of a paid-fiduciary is raised in a manner that feels threatening to these otherwise compliant fiduciaries.

Although VA has taken some steps to address concerns about the VA fiduciary program, much more must be done to ensure that the program fully meets the needs

of veterans and other beneficiaries. Specifically, we believe that VA's fiduciary program must be more veteran-centric and tailored to address only those veterans who truly need assistance due to a determination of financial incompetence. It is important to remember that these VA benefits have been earned by the veteran and that the funds belong to the veteran, even if he or she needs assistance with managing them. The program must also provide an appropriate balance between protecting the needs of veterans and placing undue burden on family members who serve as fiduciaries.

This legislation takes important steps toward ensuring that VA's fiduciary program is more transparent and focused on the needs of veterans. For example, if VA determines that a beneficiary is incompetent then he or she must be provided with a written statement detailing the reasons for such a determination. We would like, however, specific language about the criteria VA should use in making the determination. We would also suggest that the legislation's use of the term "mentally incompetent" does not accurately reflect the limits of VA's role, however, which is to determine financial incompetence. Thus, we suggest that references in the legislation to mental incompetence be replaced with the term financially incompetent.

Also included in this legislation are statutory protections to ensure that beneficiaries have the ability to request the removal and replacement of a fiduciary. While the ability to request a new fiduciary is critical to ensuring that the program is veteran-centric, a request to replace a fiduciary must be carefully considered to ensure that it was made in good faith. We are also pleased that the legislation requires that any removal or new appointment of a fiduciary not delay or interrupt the beneficiary's receipt of benefits. While matters of fiduciary appointment are being resolved, veterans must continue to have access to their benefits. Access to benefits, including retroactive benefits, while appealing a determination or completing the process for appointment of a fiduciary remains a problem for too many veterans.

We also appreciate efforts to ensure that veterans have an opportunity to play a role in determining who may serve as their fiduciary. The opportunity to designate a fiduciary in the event that one is later needed is an intriguing effort to provide veterans with the opportunity to have their preferences considered. We think it is important to note, however, that the need for a fiduciary may arise many years after designation and that this individual may no longer represent the veteran's preference.

This legislation also makes significant changes in the commissions that fiduciaries are able to receive for their services. We believe that a commission should only be authorized where absolutely necessary to ensure that the best possible fiduciary serves a veteran or other beneficiary. Regardless of whether the percent authorized is the current four percent or the proposed lesser of three percent or $35, our only concern is that a paid-fiduciary be available to veterans if there are no other alternatives. As long as highly qualified fiduciaries are available when needed, we support the lower commission.

To expand the availability of fiduciaries, this legislation also broadens the definition of a fiduciary to include state or local government agencies and nonprofit social service agencies. Expanding the statutory definition of a VA fiduciary will open up avenues for individuals who need fiduciaries but lack family members or other individuals who can serve in that capacity. Requiring VA to maintain a list of entities that can serve as fiduciaries will ensure that this option may be easily exercised.

This legislation also significantly strengthens the inquiry and investigation into and qualifications required for fiduciaries. Although the legislation removes the ability to waive aspects of the inquiry and investigation, we are pleased that the legislation allows for priority in conducting the required review for parents, spouses, and court appointed fiduciaries. We are hopeful that the requirement for an interview to be conducted within 30 days for all fiduciaries will ensure family members receive an especially prompt review. The legislation also adds to this list any person who is authorized to act on behalf of the beneficiary under a durable power of attorney. Adding individuals who hold viable durable powers of attorney to the expedited list of approval will hopefully ensure that VA will fully consider these individuals when appointing fiduciaries.

We continue to have concerns about whether efforts to tighten the review of potential fiduciaries will be unduly burdensome on family members seeking to serve as fiduciaries. Family members must be fully reviewed prior to appointment, but we hope VA will make every effort to exercise discretion where appropriate. This also extends to required annual accountings and the need to secure a bond.

It is also important to remember that VA's authority to appoint a fiduciary only extends to VA benefits. This duty does not extend, for instance, to Social Security benefits unless that agency appoints that fiduciary as a representative payee for

those benefits. Thus, we believe that a fiduciary's annual accounting should be limited to VA benefits and not include other benefits or income that he or she might also oversee.

We appreciate the efforts of the subcommittee to address concerns in the VA's fiduciary program. We pledge to continue serving as a resource to the committee and urge swift passage of legislation addressing VA's fiduciary program.

To require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought (H.R. 1405)

Veterans wishing to file a notice of disagreement with any aspect of a VA decision for benefits are not required to use a specific form. To simplify the process of appealing an initial denial of VA benefits, this legislation would require VA to include a form with each decision that may be used to file an appeal of the decision. We support this legislation but propose that the language be clarified to state that VA must provide "a form that may be used to file a notice of disagreement with the decision." This clarification would eliminate any potential confusion with VA's Form 9, Appeal to the Board of Veterans' Appeals.

Thank you for the opportunity to testify concerning VetsFirst's views on these important pieces of legislation. We remain committed to working in partnership to ensure that all veterans are able to reintegrate in to their communities and remain valued, contributing members of society.

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

Written testimony submitted by Heather L. Ansley, Vice President of Veterans Policy; VetsFirst, a program of United Spinal Association; 1660 L Street, NW, Suite 504; Washington, D.C. 20036. (202) 556–2076, ext. 7702.

This testimony is being submitted on behalf of VetsFirst, a program of United Spinal Association.

In fiscal year 2012, United Spinal Association served as a subcontractor to Easter Seals for an amount not to exceed $5000 through funding Easter Seals received from the U.S. Department of Transportation. This is the only federal contract or grant, other than the routine use of office space and associated resources in VA Regional Offices for Veterans Service Officers that United Spinal Association has received in the current or previous two fiscal years.

Executive Summary

Veterans' Compensation Cost-of-Living Adjustment Act of 2013 (H.R. 569)

We urge swift passage of this legislation which would ensure these beneficiaries are eligible for a cost of living adjustment (COLA) to their benefits on December 1, 2013.

American Heroes COLA Act (H.R. 570)

Disabled veterans and their survivors should be automatically eligible for COLAs. We strongly support this legislation.

Veterans 2nd Amendment Protection Act (H.R. 602)

Veterans should not be forced to accept the loss of their second amendment rights without proper legal protections. We support this legislation which would ensure those protections.

Ruth Moore Act of 2013 (H.R. 671)

We support this legislation which would ease the burden on military sexual trauma survivors to receive needed compensation benefits and access to health care.

Honor America's Guard-Reserve Retirees Act (H.R. 679)

This legislation would allow these men and women the right to call themselves veterans of the Armed Forces and we urge its quick passage.

Access to Veterans Benefits Improvement Act (H.R. 733)

While we support the goal of ensuring that veterans receive timely information regarding the status of their claims, we believe access to case-tracking information should be limited to those who hold a claimant's power of attorney or have express written consent to receive status information.

To improve the supervision of fiduciaries of veterans under the law administered by the Secretary of Veterans Affairs (H.R. 894)

This legislation takes important steps toward ensuring that VA's fiduciary program is more transparent and focused on the needs of beneficiaries. We believe that

the process should be veteran-centered and appreciate the efforts to ensure accountability to veterans concerning their benefits. Modifications that would strengthen the legislation include ensuring that family fiduciaries are not unduly burden and that veterans have access to benefits when appealing a determination of financial incompetence or while awaiting appointment of a fiduciary.

To require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought (H.R. 1405)

We support this legislation but propose that the language be clarified to state that VA must provide "a form that may be used to file a notice of disagreement with the decision."

Prepared Statement of Michael D. Murphy

Good morning Mr. Chairman, members of the committee, and staff, it is truly my honor to be here for this hearing. As Executive Director of the National Association of County Veterans Service Officers, I am here today, to comment on the:

✔ The proposed bill, HR 733, to grant access of Veterans Administration information to Governmental Veterans Service Officers

The National Association of County Veterans Service Officers is an organization made up of local government employees. Local government employees that believe we can help the Department of Veterans Affairs reduce the number of backlogged benefits claims that veterans are currently waiting to have adjudicated by the Department of Veterans Affairs.

Our members work in local government offices, an "arm of government" if you will, in 37 States and currently are comprised of 2,400 full time employees in 700 communities. We are not like the Veterans Service Organizations. We are not dues driven or membership driven. Every veteran, their dependents and their survivors who live in our respective jurisdictions are all our clients. We serve them at no cost to the client. We are equipped to handle and ready to assist veterans one on one, with every Department of Veterans Affairs benefit, state and local benefits, and the reason we are here today, to assist them in tracking their claim.

There are over 22 million honorably discharged veterans of the armed forces of the United States. During the course of their life after the military they may have occasion to file a benefits claim for pension or compensation. Most veterans are not members of a Veterans Service Organization, but chances are that they live within one of our communities served by a State, County or City Veterans Service Officer. To the citizens of our communities, we are the Veterans Administration.

The main issue we are here to talk about today is the lack of cooperation by the Department of Veterans Affairs in recognizing our members as an arm of government. We are treated as if we are a Veterans Service Organization rather than what we are. As governmental employees we are not unlike the VA itself. There is just a failure to recognize us in that light.

Let's say that a veteran comes into my office to file a claim for a knee injury that occurred while the veteran was on active duty in the Army. We first have to determine eligibility based on war time/peace time service and a number of factors established by the VA. Let's say this veteran appears to be eligible. We then put together a claim for compensation, gather up medical evidence, service medical records, service records, buddy statements, and other pertinent information and submit the claim to one of a number of Veterans Service Organizations. We help the veteran select a Veterans Service Organizations to represent the veteran through a Power of Attorney. This is done so that the veteran may have representation at the VA Regional Office and for any subsequent appeals that may occur. Our local Governmental Veterans Service Officers may hold the Power of Attorney but many are just too far away from the Regional Offices to adequately represent their client.

Then after about 3 months the veteran comes back into my office and asks what the status of his claim is as he has heard nothing. I have no way to gain this knowledge even though the claim originated in my office. I have to refer him to the VA's 1–800 number and hope he can ask the right questions or to the Veterans Service Organization who holds his Power of Attorney and who he does not know and probably won't call. Hopefully he won't go to another jurisdiction and file another claim which adds to the backlog.

What we are asking in this bill under consideration is to allow the Governmental Veterans Service Officers to have "read only" access to their client's information. This will allow the local Governmental Veterans Service Officer to properly track

and provide follow-up for their clients. Sometimes a veteran will file an appeal on a denied claim and go to another Veterans Service Officer in another jurisdiction and file another claim for the same thing. This ultimately adds to the backlog and unnecessarily bogs down the system. If enacted, this bill will avoid duplication of claims which in turn, will assist in reducing the current backlog of claims.

We know there is much consternation on the part of the Veterans Administration regarding this issue. They have had some problems, in the past, in keeping secure, that information that veterans must give to the government to obtain the benefits that they earned. We understand this and are held to the same standards as the VA already. Remember that a majority of claims for compensation and pension originate in local Governmental Veterans Service Offices. We are required to keep secure that information that we supplied to the Veterans Service Organization and ultimately to the Veterans Administration. As a prerequisite to receive access to the VA databases, the government employee must be accredited with the Veterans Administration, must have attended and successfully completed Training, Responsibility, Involvement and Preparation of Claims (TRIP) training and must have had a background check performed on them as a condition of employment.

There has been much cooperation between the Federal, State and Local Government over many years. There are cooperative Memorandums of Understanding (MOU) the Department of Agriculture, Department of Justice and other Federal arms of government routinely sign every year. The United States Forest Service cooperatively works with local jurisdictions to safeguard the resources on the National Forest. The FBI and Homeland Security work closely with local law enforcement jurisdictions in an effort to safeguard local residents. A local law enforcement officer can run a records check on a subject and get most everything the FBI has on the subject in a few minutes. There are safeguards in place to make sure the information is not released improperly and it works very well. If the FBI treated local law enforcement like the VA treats our members there would be anarchy in the streets.

In this day and age of our great nation it is unthinkable that a young man or woman enters the military service, serves honorably and upon discharge finds difficulties in obtaining the rights and benefits that they earned through service and sacrifice. It is our responsibility, the people of the United States, to live up to that promise of a better and brighter future. That promise that includes a myriad of veterans benefits should the service member becomes injured in defense of freedom; but also an underlying promise that says that if you serve your country with honor your country will be there to serve you, not with a hand out, but a hand up. Together we must develop a mechanism for solutions, so that veterans are able to return and find their part of the American Dream.

The National Association of County Veterans Service Officers has been in existence since 1990, primarily as a vehicle to provide continuing education and accreditation training in Department of Veterans Affairs' procedures and regulations governing veterans' benefits. The Association provides basic and advanced training for County Veterans Service Offices and also serves as a vehicle for them to obtain national accreditation with the Department of Veterans Affairs.

The National Association of County Veterans Service Officers is grateful for this opportunity to testify to this Committee. If we work together, I believe that we can reverse the growing backlog of veterans benefit claims and get our heroes what they earned and truly deserve.

In Closing, the National Association of County Veterans Service Officers recommends that this committee move this bill along in the legislative process. We believe that this bill has the potential to make a significant difference in the lives of returning veterans and will afford them a better opportunity to obtain their earned benefits. Thank you for your time and attention.

Executive Summary

RECOMMENDATIONS:

That the full House Veterans Affairs Committee hold hearings on a proposed bill to grant Governmental Veterans Service Officers limited access to Department of Veterans Affairs data bases.

That the House Veterans Affairs Committee enact legislation to grant Governmental Veterans Service Officers limited access to Department of Veterans Affairs data bases.

This is a no cost issue for congress. The National Association of County Veterans Service Officers is an organization made up of local government employees. Local government employees that believe we can help the Department of Veterans Affairs reduce the number of backlogged benefits claims that veterans are currently waiting to have adjudicated by the Department of Veterans Affairs.

Our members work in local government offices, an "arm of government" if you will, in 37 States and currently are comprised of 2,400 full time employees in 700 communities. We are not like the Veterans Service Organizations. We are not dues driven or membership driven. Every veteran, their dependents and their survivors who live in our respective jurisdictions are all our clients. We serve them at no cost to the client. We are equipped to handle and ready to assist veterans one on one, with every Department of Veterans Affairs benefit, state and local benefits, and the reason we are here today, to assist them in tracking their claim.

What we are asking in this bill under consideration is to allow the Governmental Veterans Service Officers to have "read only" access to their client's information. This will allow the local Governmental Veterans Service Officer to properly track and provide follow-up for their clients. Sometimes a veteran will file an appeal on a denied claim and go to another Veterans Service Officer in another jurisdiction and file another claim for the same thing. This ultimately adds to the backlog and unnecessarily bogs down the system. If enacted, this bill will avoid duplication of claims which in turn, will assist in reducing the current backlog of claims.

Prepared Statement of David R. McLenachen

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present the views of the Department of Veterans Affairs (VA) on several bills of interest to Veterans and VA. Joining me today are Mary Ann Flynn, Deputy Director, Policy and Procedures, Compensation Service, and Richard Hipolit, Assistant General Counsel.

VA has not had time to develop cost estimates on H.R. 671, H.R. 733, and H.R. 894 and will provide costs on these bills for the record.

H.R. 569

H.R. 569, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2013," would require the Secretary of Veterans Affairs to increase, effective December 1, 2013, the rates of disability compensation for service-disabled Veterans and the rates of dependency and indemnity compensation (DIC) for survivors of Veterans. This bill would increase these rates by the same percentage as the percentage by which Social Security benefits are increased effective December 1, 2013. Each dollar amount increased, if not a whole dollar amount, would be rounded to the next lower whole dollar amount. The bill would also require VA to publish the resulting increased rates in the Federal Register.

VA strongly supports this bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children and would ensure that the value of their well-deserved benefits will keep pace with increases in consumer prices.

The cost of the cost-of-living adjustment (COLA) is included in VA's baseline budget because we assume a COLA will be enacted by Congress each year. Therefore, enactment of H.R. 569, which would extend the COLA adjustment through November 30, 2014, would not result in costs. The round-down in increased rates would result in savings of approximately $41.6 million in fiscal year (FY) 2014, $262.0 million over five years, and $573.8 million over ten years.

H.R. 570

H.R. 570, the "American Heroes COLA Act," would amend 38 U.S.C. § 5312 to permanently authorize the Secretary of Veterans Affairs to implement cost-of-living increases to the rates of disability compensation for service-disabled Veterans and the rates of DIC for survivors of Veterans. This bill would direct the Secretary to increase the rates of those benefits whenever a cost-of-living increase is made to benefits under title II of the Social Security Act. The rates of compensation and DIC would be increased by the same percentage as Social Security benefits. This bill would also make permanent the round-down requirement for compensation cost-of-living adjustments. The amendments made by the bill would take effect on December 1, 2014.

VA supports this bill because it would be consistent with Congress' long-standing practice of enacting regular cost-of-living increases for compensation and DIC benefits in order to maintain the value of these important benefits, but would eliminate the need for additional legislation to implement such increases in the future. It would also be consistent with current 38 U.S.C. §§ 1104(a) and 1303(a), which provide that cost-of-living adjustments to compensation and DIC amounts, if they are

made, will be at a uniform percentage not exceeding the percentage increase to Social Security benefits.

The cost of the COLA is included in VA's baseline budget because we assume Congress will enact a COLA each year. Therefore, making the annual COLA automatic would not result in costs. However, making permanent the provision to round down the COLA would result in savings of approximately $41.6 million in FY 2014, $712.5 million over five years, and $2.6 billion over ten years.

H.R. 602

H.R. 602, 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 Prevention Act in the absence of an order or finding by a judge, 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. 602 would not impose any costs on VA.

H.R. 671

VA is committed to serving our Nation's Veterans by accurately adjudicating claims based on military sexual trauma (MST) in a thoughtful and caring manner, while fully recognizing the unique evidentiary considerations involved in such an event. Before addressing the specific provisions of H.R. 671, it would be useful to outline those efforts, which we believe achieve the intent behind the bill. The Under Secretary for Benefits has spearheaded the efforts of the Veterans Benefits Administration (VBA) to ensure that these claims are adjudicated compassionately and fairly, with sensitivity to the unique circumstances presented by each individual claim.

VA is aware that, because of the personal and sensitive nature of the MST stressors in these cases, it is often difficult for the victim to report or document the event when it occurs. To remedy this, VA developed regulations and procedures specific to MST claims that appropriately assist the claimant in developing evidence necessary to support the claim. As with other posttraumatic stress disorder (PTSD) claims, VA initially reviews the Veteran's military service records for evidence of the claimed stressor. VA's regulation also provides that evidence from sources other than a Veteran's service records may corroborate the Veteran's account of the stressor incident, such as evidence from mental health counseling centers or statements from family members and fellow Servicemembers. Evidence of behavior changes, such as a request for transfer to another military duty assignment, is another type of relevant evidence that may indicate occurrence of an assault. VA notifies Veterans regarding the types of evidence that may corroborate occurrence of an

in-service personal assault and asks them to submit or identify any such evidence. The actual stressor need not be documented. If minimal circumstantial evidence of a stressor is obtained, VA will schedule an examination with an appropriate mental health professional and request an opinion as to whether the examination indicates that an in-service stressor occurred. The Veteran's lay statement during this examination can establish occurrence of the claimed stressor.

With respect to claims for other disabilities based on MST, VA has a duty to assist in obtaining evidence to substantiate a claim for disability compensation. When a Veteran files a claim for mental or physical disabilities other than PTSD based on MST, VBA will obtain a Veteran's service medical records, VA treatment records, relevant Federal records identified by the Veteran, and any other relevant records, including private records, identified by the Veteran that the Veteran authorizes VA to obtain. VA must also provide a medical examination or obtain a medical opinion when necessary to decide a disability claim. VA will request that the medical examiner provide an opinion as to whether it is at least as likely as not that the current symptoms or disability are related to the in-service event. This opinion will be considered as evidence in deciding whether the Veteran's disability is service connected.

VBA has also placed a primary emphasis on informing VA regional office (RO) personnel of the issues related to MST and providing training in proper claims development and adjudication. VBA developed and issued Training Letter 11–05, Adjudicating Posttraumatic Stress Disorder Claims Based on Military Sexual Trauma, in December 2011. This was followed by a nationwide Microsoft Live Meeting broadcast on MST claims adjudication. The broadcast focused on describing the range of potential markers that could indicate occurrence of an MST stressor and the importance of a thorough and open-minded approach to seeking such markers in the evidentiary record. In addition, the VBA Challenge Training Program, which all newly hired claims processors are required to attend, now includes a module on MST within the course on PTSD claims processing. VBA also provided its designated Women Veterans Coordinators with updated specialized training. These employees are located in every VA RO and are available to assist both female and male Veterans with their claims resulting from MST.

VBA worked closely with the Veterans Health Administration (VHA) Office of Disability Examination and Medical Assessment to ensure that specific training was developed for clinicians conducting PTSD compensation examinations for MST-related claims. VBA and VHA further collaborated to provide a training broadcast targeted to VHA clinicians and VBA raters on this very important topic, which aired initially in April 2012 and has been rebroadcast numerous times.

Prior to these training initiatives, the grant rate for PTSD claims based on MST was about 38 percent. Following the training, the grant rate rose and at the end of February 2013 stood at about 52 percent, which is roughly comparable to the approximate 59-percent grant rate for all PTSD claims.

In December 2012, VBA's Systematic Technical Accuracy Review team, VBA's national quality assurance office, completed a second review of approximately 300 PTSD claims based on MST. These claims were denials that followed a medical examination. The review showed an overall accuracy rate of 86 percent, which is roughly the same as the current national benefit entitlement accuracy level for all rating-related end products.

In addition, VBA's new standardized organizational model has now been implemented at all of our ROs. It incorporates a case-management approach to claims processing. VBA reorganized its workforce into cross-functional teams that give employees visibility of the entire processing cycle of a Veteran's claim. These cross-functional teams work together on one of three segmented lanes: express, special operations, or core. Claims that predictably can take less time flow through an express lane (30 percent); those taking more time or requiring special handling flow through a special operations lane (10 percent); and the rest of the claims flow through the core lane (60 percent). All MST-related claims are now processed in the special operations lane, ensuring that our most experienced and skilled employees are assigned to manage these complex claims.

Under Secretary Hickey's efforts have dramatically improved VA's overall sensitivity to MST-related PTSD claims and have led to higher current grant rates. However, she recognized that some Veterans' MST-related claims were decided before her efforts began. To assist those Veterans and provide them with the same evidentiary considerations as Veterans who file claims today, VBA is planning to advise Veterans of the opportunity to request that VA review their previously denied PTSD claims based on MST. Those Veterans who respond will receive reconsideration of their claims based on VA's heightened sensitivity to MST and a more complete awareness of evidence development. VBA will also continue to work with VHA

medical professionals to ensure they are aware of their critical role in processing these claims.

Turning to the specifics of H.R. 671, the "Ruth Moore Act of 2013," section 2(a) would add to 38 U.S.C. § 1154 a new subsection (c) to provide that, if a Veteran alleges that a "covered mental health condition" was incurred or aggravated by MST during active service, VA must "accept as sufficient proof of service-connection" a mental health professional's diagnosis of the condition together with satisfactory lay or other evidence of such trauma and the professional's opinion that the condition is related to such trauma, provided that the trauma is consistent with the circumstances, conditions, or hardships of such service, irrespective of whether there is an official record of incurrence or aggravation in service. Service connection could be rebutted by "clear and convincing evidence to the contrary." In the absence of clear and convincing evidence to the contrary, and provided the claimed MST is consistent with the circumstances, conditions, and hardships of service, the Veteran's lay testimony alone would be sufficient to establish the occurrence of the claimed MST. The provision would define the term "covered mental health condition" to mean PTSD, anxiety, depression, "or other mental health diagnosis described in the current version" of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders that VA "determines to be related to military sexual trauma." The bill would define MST to mean "psychological trauma, which in the judgment of a mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred during active military, naval, or air service."

Section 2(a) of the bill would require VA to accept as proven the occurrence of MST or a PTSD stressor without what we consider the minimal threshold evidence that is needed to maintain the integrity of the claims process. It would permit a Veteran's lay testimony alone to establish the occurrence of claimed MST, and service connection for a covered mental health condition would be established if a mental health professional diagnoses a covered mental health condition and opines that the such condition is related to the MST. This would occur whether or not the mental health professional had access to the Veteran's service records or was otherwise able to evaluate the claimant's statements regarding the occurrence of the claimed in-service stressor or event.

Through VA's extensive, recent, and ongoing actions, we are ensuring that MST claimants are given a full and fair opportunity to have their claim considered, with a practical and sensitive approach based on the nature of MST. As noted above, VA has recognized the sensitive nature of MST-related PTSD claims and claims based on other covered mental health conditions, as well as the difficulty inherent in obtaining evidence of an in-service MST event. Current regulations provide multiple means to establish an occurrence, and VA has initiated additional training efforts and specialized handling procedures to ensure thorough, accurate, and timely processing of these claims.

VA's regulations reflect the special nature of PTSD. Section 3.304(f) of title 38 Code of Federal Regulations, currently provides particularized rules for establishing stressors related to personal assault, combat, former prisoner-of-war status, and fear of hostile military or terrorist activity. These particularized rules are based on an acknowledgement that certain circumstances of service may make the claimed stressor more difficult to corroborate. Nevertheless, they require threshold evidentiary showings designed to ensure accuracy and fairness in determinations as to whether the claimed stressor occurred. Evidence of a Veteran's service in combat or as a prisoner of war generally provides an objective basis for concluding that claimed stressors related to such service occurred. Evidence that a Veteran served in an area of potential military or terrorist activity may provide a basis for concluding that stressors related to fears of such activity occurred. In such cases, VA also requires the opinion of a VA or VA-contracted mental health professional, which enables VA to ensure that such opinions are properly based on consideration of relevant facts, including service records, as needed. For PTSD claims based on a personal assault, lay evidence from sources outside the Veteran's service records may corroborate the Veteran's account of the in-service stressor, such as statements from law enforcement authorities, mental health counseling centers, family members, or former Servicemembers, as well as other evidence of behavioral changes following the claimed assault. Minimal circumstantial evidence of a stressor is sufficient to schedule a VA examination and request that the examiner provide an opinion as to whether the stressor occurred.

The regulatory provisions at 38 C.F.R. §§ 3.303 and 3.304(f) have established equitable standards of proof and of evidence for corroboration of an in-service injury, disease, or event for purposes of service connection. Further, 38 U.S.C. § 1154 requires consideration of the places, types, and circumstances of service when evalu-

ating disability claims and provides for acceptance of lay statements concerning combat-related injuries, provided evidence establishes that the Veteran engaged in combat. H.R. 671 would expand section 1154 to require VA to accept lay statements as sufficient proof of in-service events in all MST claims involving covered mental health conditions, based solely on the nature of the claim and without requiring the objective markers, such as combat service, that are essential to the effective operation of section 1154. Without the requirement of any evidentiary threshold for the mandatory acceptance of a lay statement as sufficient proof of an occurrence in service, this bill would eliminate, for discrete groups of Veterans, generally applicable requirements that ensure the fairness and accuracy of claim adjudications.

In summary, while we appreciate the intent behind this legislation, we would prefer to continue pursuing non-legislative actions to address the special nature of claims based upon MST.

Section 2(b) would require VA, for a 5-year period beginning December 1, 2014, to submit to Congress an annual report on claims covered by new section 1154(c) that were submitted during the previous fiscal year. Section 2(b) would also require VA to report on the: (1) number and percentage of covered claims submitted by each sex that were approved and denied; (2) rating percentage assigned for each claim based on the sex of the claimant; (3) three most common reasons for denying such claims; and (4) number of claims denied based on a Veteran's failure to report for a medical examination; (5) number of claims pending at the end of each fiscal year; (6) number of claims on appeal; (7) average number of days from submission to completion of the claims; and (8) training provided to VBA employees with respect to covered claims.

VA does not oppose section 2(b).

Section 2(c) would make proposed section 1154(c) applicable to disability claims "for which no final decision has been made before the date of the enactment" of the bill. H.R. 671 does not define the term "final decision." As a result, it is unclear whether the new law would be applicable to an appealed claim in which no final decision has been issued by VA or, pursuant to 38 U.S.C. § 7291, by a court.

Benefit costs associated with H.R. 671 are estimated to be $135.9 million in FY 2014, $2.0 billion over five years, and $7.1 billion over ten years. Costs for information technology and general operating expenses will be provided for the record.

H.R. 679

H.R. 679, the "Honor America's Guard-Reserve Retirees Act," would add to chapter 1, title 38, United States Code, a provision to honor as Veterans, based on retirement status, certain persons who performed service in reserve components of the Armed Forces but who do not have service qualifying for Veteran status under 38 U.S.C. § 101(2). The bill provides that such persons would be "honored" as Veterans, but would not be entitled to any benefit by reason of the amendment.

Under 38 U.S.C. § 101(2), 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 from a disease or injury incurred or aggravated in line of duty during active duty for training, or was disabled or died from any injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident during inactive duty training. H.R. 679 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 even greater 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. 733

H.R. 733, the "Access to Veterans Benefits Improvement Act," would add a new section 5906 to chapter 59 of title 38, United States Code. Proposed section 5906(a)(1) would require VA to provide a "covered employee" with access to the "case-tracking system" to provide a Veteran with information regarding the status

of the Veteran's claim, regardless of whether the covered employee is acting under a power of attorney executed by the Veteran. Proposed section 5906(d) would define the term "covered employee" to mean an employee of a Member of Congress or an employee of a State or local government agency who, in the course of carrying out the responsibilities of such employment, assists Veterans with VA benefit claims and would define the term "case-tracking system" to mean "the system of [VA] that provides information regarding the status of a claim submitted by a veteran."

Proposed section 5906(a)(2) would require VA to ensure that such access would not allow the covered employee to modify the data in the case-tracking system and would not include access to medical records. Proposed section 5906(b) would prohibit VA from providing case-tracking system access to a covered employee unless the employee has successfully completed a certification course on privacy issues provided by VA. Proposed section 5906(c) would essentially create a new exception to the Privacy Act and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) by deeming such access to be a covered disclosure under 5 U.S.C. § 552a(b) and a permitted disclosure under regulations promulgated under section 264(c) of HIPAA.

VA does not support this bill. It would significantly lessen the personal privacy protections currently enjoyed by our Nation's Veterans. In addition, the purpose of the bill is already satisfied through existing means by which Veterans may secure assistance for their claims. The measure would create conflicts with other statutory provisions that would be unchanged by the bill. Finally, it would impose on VA a substantial burden to accommodate the access contemplated by the bill through its current operating systems.

National Veterans service organizations are already an integral part of VA's efforts to assist Veterans. VA provides the individual members of these organizations with special training and certification to ensure familiarization with VA claim processing and VA computer systems. Training and certification are also available for state and county employees representing Veterans. Additionally, Members of Congress and their employees are already provided access to claim status information when authorized by a Veteran constituent or when they have proper authority to conduct oversight. Each VA RO has a congressional liaison who may be contacted for claim information. Finally, any qualified representative authorized by a Veteran has access to the status of that Veteran's claim information, within statutory guidelines.

With the exception of medical records, the bill would not limit the type of information in the case-tracking system to which the Secretary would be required to provide access. VA tracking systems contain a wide variety of information, some of it confidential and imbued with a high degree of personal privacy. Providing access to VA's case-tracking system would compromise the privacy of Veterans' personal information.

Proposed section 5906(a)(2)(A)(ii) would require VA to ensure that access is not provided to medical records, yet proposed section 5906(c)(2) would provide that access to such information shall be deemed to be a permitted disclosure under HIPAA. If the Secretary is precluded from providing access to protected health information, the provision concerning a permitted disclosure pursuant to the HIPAA Privacy Rule promulgated by the Department of Health and Human Services is superfluous. Furthermore, VA claims are inextricably intertwined with medical information, so it would be very difficult to allow access to claims information without access to the information concerning medical conditions involved in a claim.

Case-tracking information is also protected by 38 U.S.C. § 5701 (the statute protecting the confidentiality of Veterans' records and the records of their dependents). Section 5701 provides no exception for disclosure of names and addresses to covered employees without consent or a power of attorney. The bill contains no exception for disclosure of information protected by section 5701 to covered employees without consent or a power of attorney. Thus, the bill would be inconsistent with the longstanding protections provided by section 5701.

This bill also appears to be inconsistent with 38 U.S.C. § 7332, which protects from unauthorized disclosure records of drug abuse, alcoholism or alcohol abuse, sickle cell anemia, and infection with HIV. For example, if a Veteran has established service connection for one of these conditions, then records of treatment for the condition would appear in a case-tracking system.

The definition of the term "covered employee" in proposed section 5906(d)(2) is quite broad, including a widespread universe of individuals, employees of Members of Congress and State and local government employees, including Veterans service officers (an undefined term), who have, as one of their responsibilities, the provision of assistance to Veterans with claims for VA benefits. VA's release of Veterans' information outside of VA always removes to some degree the protections afforded

under Federal privacy laws and regulations and has the potential to undermine Veterans' trust of VA.

This bill would also impose on VA a substantial administrative burden. Under 38 U.S.C. § 5723(f), users of VA information and information systems already must comply with all VA information security program policies, procedures, and practices. They must attend security awareness training at least annually, immediately report all security incidents to the Information Security Officer of the system, comply with orders from the Assistant Secretary for Information and Technology when a security incident occurs, and annually sign an acknowledgement that they have read, understand, and agree to abide by the VA National Rules of Behavior. Under the bill, "covered employees" would fall within the scope of section 5723(f) as users of VA information and information systems. Considering the potentially vast number of covered employees that could be granted access by the bill, training and oversight by VA would be extremely burdensome and time consuming. Monitoring changes in duties among covered employees would be another burden. These administrative burdens are not justified when VA prefers to direct its resources to providing more timely and accurate claims decisions and eliminating the claims backlog.

The goal of H.R. 733 is to provide Veterans with status updates on the processing of their claims. Processing claims involves gathering and evaluating evidence and providing VA medical examinations when needed. VA currently informs Veteran claimants of these steps in writing as they occur. Additionally, the self-service features of eBenefits allow claimants and their representatives to determine the status of their claims at any time, day or night. VBA is also implementing the Stakeholder Enterprise Portal, a secure web-based access point for VA's authorized business partners. This portal provides the ability for Veterans service officers and other approved external VA business partners to represent Veterans quickly, efficiently, and electronically. Providing covered employees with access to the same information for duplicative communication with Veteran claimants would result in an unjustified drain on VA resources that could result in reduced timeliness in claim processing.

H.R. 894

H.R. 894, a bill to improve the supervision of fiduciaries of Veterans under laws administered by VA, would make several changes to VA's administration of its fiduciary program for beneficiaries who cannot manage their own VA benefits. VA appreciates the interest in improving VA's fiduciary program, but finds several provisions of the bill problematic, as set out in detail below. Although VA does not support those measures, VA shares the desire to improve oversight of fiduciaries and has already taken steps to clarify VA's and fiduciaries' roles in the program and improve oversight. Among other things, VA consolidated its fiduciary activities to six regionally-aligned hubs to increase efficiency of operations and improve quality of service, rewrote all of its fiduciary regulations, implemented a new field examiner training program, and designed a new information technology system for the program. VA welcomes the opportunity to discuss these improvements and the goals of, and intent behind, this bill with you or your staff. VA has just proposed a measure through last week's budget submission that would allow more effective oversight of fiduciaries through enhanced access to financial records. We would welcome discussion of that idea as well.

Section 1(a) of the bill would amend 38 U.S.C. § 5502 governing payments to and supervision of fiduciaries. Section 1(a) would permit a beneficiary whom VA has determined is mentally incompetent for purposes of appointing a fiduciary to appeal VA's determination and would permit a beneficiary for whom VA has appointed a fiduciary to request, at any time, that VA remove the fiduciary and appoint a new fiduciary. VA would have to comply with the request unless VA determines that "the request is not made in good faith." VA would have to ensure that removal of a fiduciary or appointment of a new fiduciary does not delay or interrupt the beneficiary's receipt of benefits. Section 1(a) would specify that a VA-appointed fiduciary must operate independently of VA to determine the actions that are in the beneficiary's interest.

The provisions concerning appeals of incompetence determinations and replacement of fiduciaries generally codify current VA policy. Under current VA policy, a beneficiary may appeal an incompetency determination and may at any time for good cause shown request the appointment of a successor fiduciary. Accordingly, VA does not oppose these provisions, except for the "not made in good faith" provision, which could disrupt the fiduciary program by requiring VA to frequently replace fiduciaries for Veterans who are dissatisfied with oversight of funds under the program.

However, VA opposes the provision that would require VA to ensure that any removal or appointment of a new fiduciary does not delay or interrupt the beneficiary's receipt of benefits. If a fiduciary is removed and a successor fiduciary is being appointed, VA's objective is to ensure the continuation of benefits to the beneficiary. However, in some cases, benefit payments get delayed or interrupted when a fiduciary is being replaced, for reasons beyond VA's control. Under current law, VA must conduct the inquiry or investigation prescribed by Congress in 38 U.S.C. § 5507 when it replaces a fiduciary, and sometimes VA encounters an uncooperative beneficiary or beneficiary's representative. Some delay may be unavoidable in these cases. Consequently, VA opposes this provision to the extent that it would prohibit, without exception or qualification, any delay in the delivery of benefits upon removal of a fiduciary.

Section 1(a) would permit a Veteran to "predesignate a fiduciary" by providing VA with written notice of the predesignated fiduciary or submitting a VA form for such purpose and would require VA, if VA appoints a fiduciary other than the one designated by the beneficiary, to notify the beneficiary of the reason for not appointing the designated individual and of the beneficiary's ability to request a change in the appointed fiduciary. In appointing a fiduciary for a beneficiary who has not designated one, VA would, to the extent possible, have to appoint the beneficiary's relative, a court-appointed guardian, or a person authorized to act on the beneficiary's behalf under a durable power of attorney.

VA opposes the provision that would permit predesignation of a fiduciary. As a result of VA's increased outreach and collaboration with the Department of Defense, many individuals complete their initial benefit application early in their lifetime when they have no need for fiduciary services. Designating a fiduciary decades before any actual need for a fiduciary would likely render the initial designation stale. Also, 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 stale information.

VA also opposes the provision that would give priority in appointment consideration to individuals holding a beneficiary's durable power of attorney (POA). Based upon experience, VA does not favor giving a person holding a beneficiary's POA priority over other candidates based only on the existence of the 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 assessment 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. Although VA might conclude that appointment of an individual who holds the beneficiary's POA is in the beneficiary's interest, VA strongly opposes statutory imposition of a preference to an individual named in a POA. Under current law, VA appoints the person or entity who will provide the least restrictive fiduciary relationship. Thus, VA first considers the beneficiary's preference, followed by a spouse, another family member, or a friend or other individual who is willing to serve as fiduciary without a fee. Such appointments constitute the overwhelming majority of VA's fiduciary appointments. Nonetheless, under this provision of the bill, if a beneficiary has not designated a fiduciary and a relative is not available, VA would be required to consider the beneficiary's court-appointed guardian or an individual who holds the beneficiary's durable POA. It would require priority consideration for more restrictive arrangements, contrary to current VA policy.

VA also opposes the provision mandating preference for the beneficiary's court-appointed guardian because of possible effects on VA's most vulnerable beneficiaries. Court appointment of a guardian often is the most restrictive method of payment and the most costly. Under current law, a VA-appointed fiduciary may collect a maximum fee of 4 percent of the VA benefits paid to the beneficiary each year. Further, under VA's interpretation of the law, a fee may not be based upon retroactive, lump-sum, or other one-time payments or upon 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. Addition-

ally, 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 as much as thousands to tens of thousands of dollars per year and are paid from the beneficiary's VA benefits. Also, because the fee structure varies from State to State, VA cannot conduct consistent and effective oversight of guardians appointed by courts, resulting in undesirable disparate treatment for vulnerable beneficiaries depending upon the beneficiaries' State of residence. VA believes that Congress established the fiduciary program for the express purpose of ensuring a nation-wide, Federal standard for beneficiaries who cannot manage their own benefits.

Section 1(b) of the bill would make several changes with respect to the commission payable for fiduciary services. It would: (1) limit a monthly commission to the lesser of 3 percent of the monthly monetary benefits paid or $35; (2) prohibit a commission based on any beneficiary award regarding "back pay or retroactive benefits payments"; (3) prohibit a commission if VA determines that the fiduciary misused a benefit payment; and (4) permit VA to revoke the appointment if VA determines that a fiduciary has misused any benefit payment.

VA opposes the provision limiting monthly commissions to a maximum of 3 percent of benefits paid or $35. Payment of a suitable fee is necessary if there is no other person who is qualified and willing to serve as a fiduciary without a fee. In some instances, a beneficiary's interests can be served only by the appointment of a qualified paid fiduciary. As of March 31, 2012, VA had identified and appointed fiduciaries willing to serve without a fee for more than 92 percent of its beneficiaries needing fiduciaries.

Under current VA policy, fiduciaries are more than mere bill payers. VA's emerging view is that fiduciaries should remain in contact with the beneficiaries they serve and assess those beneficiaries' 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 overwhelming majority of beneficiaries needing fiduciaries, 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 suitable fee. Reducing the allowable fee 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 suitable fee in some of VA's most difficult cases. However, VA supports the prohibition on deriving commissions from back pay or retroactive payments, which would codify VA's current policy regarding limitations on fees, and VA has no objection to the remaining fee and revocation provisions because they essentially restate current law.

Section 1(c) of the bill would clarify the statutory definition of "fiduciary" in 38 U.S.C. § 5506. It would clarify that the term "person" in that definition includes a State or local government agency whose mission is to carry out income maintenance, social service, or healthcare-related activities; any State or local government agency with fiduciary responsibilities; or any nonprofit social service agency that VA determines regularly provides fiduciary services concurrently to five or more individuals and is not a creditor of any such individual. It would also require VA to maintain a list of State or local agencies and nonprofit social service agencies that are qualified to act as a fiduciary.

VA opposes this provision because it is unnecessary and could cause confusion regarding the applicability of other statutes. Current 38 U.S.C. § 5507 requires VA to conduct an inquiry or investigation of any "person" to be appointed as a fiduciary to determine the person's fitness to serve as a fiduciary. Defining the term "person" to include State and local government and nonprofit social service agencies would imply that VA must conduct the inquiry or investigation required by section 5507 to determine such agency's fitness to serve as a fiduciary. However, some provisions of section 5507, such as those requiring VA to obtain a credit report and to request information concerning criminal convictions, cannot be made applicable to agencies. VA already appoints such agencies under current law if VA determines that it is in a beneficiary's interest. However, VA does not consider such agencies "persons" for purposes of completing the inquiry and investigation requirements of section 5507.

VA also opposes the provision that would require VA to compile and maintain a list of State or local and nonprofit agencies qualified to serve as a fiduciary for beneficiaries because it would divert limited resources away from the primary program

mission. 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 Nation. The resources needed to compile 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. Rarely does VA need to appoint a State, local, or nonprofit agency as a fiduciary for a beneficiary.

Section 1(d) of the bill would revise 38 U.S.C. § 5507, the statute governing qualification of fiduciaries. It would add to the list of items required to form the basis of a fiduciary appointment adequate evidence that the person protects the beneficiary's "private information." VA supports this provision because VA agrees that information security is important and that a VA-appointed fiduciary must safeguard such information. With respect to face-to-face interviews of proposed fiduciaries, section 1(d) would strike the phrase "to the extent practicable" from current statutory language requiring such interviews and would require VA to conduct an interview not later than 30 days after beginning the inquiry or investigation. VA opposes requiring a face-to-face interview with every proposed fiduciary because it does not account for the circumstances actually encountered by VA in the administration of the program, would needlessly delay some initial fiduciary appointments, and thus could harm affected beneficiaries. In some cases, a face-to-face interview of a proposed fiduciary is not practicable and should be waivable. For example, a face-to-face interview would not be practicable for natural parents of minor children or certain persons who already manage funds for multiple beneficiaries. VA has not been able to discern a need for a face-to-face interview to be conducted within 30 days after beginning a fitness inquiry or investigation. Therefore, VA does not support this provision.

Section 1(d) would require a background check of a proposed fiduciary to determine whether the proposed fiduciary has been convicted of any offense under Federal or State law, without regard to the length of resulting imprisonment. VA supports this provision. Section 1(d) would also require VA to determine whether the proposed fiduciary will serve the beneficiary's best interest, including by conducting a credit check and by checking records VA would be required to maintain of persons who have previously served as fiduciaries and had their fiduciary status revoked by VA. It would require VA to conduct the criminal history and credit history background check at no cost to the beneficiary and each time a person is proposed as a fiduciary, regardless of whether he or she is serving or has served as a fiduciary.

Section 1(d) of the bill would also 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 power of attorney 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 does not oppose permitting VA to expedite the inquiry or investigation regarding any proposed fiduciary, including a person holding a beneficiary's durable POA.

Section 1(d) would require VA, in requiring the furnishing of a bond, to ensure that the bond is not paid using any beneficiary funds and to consider the care a proposed fiduciary has taken to protect the beneficiary's interests and the proposed fiduciary's capacity to meet the financial requirements of a bond without sustaining hardship. Section 1(d) would also require each RO to maintain a list of the name and contact information for each fiduciary, the date of each fiduciary's most recent VA background check and credit check, the date any bond was paid, the name and contact information of each beneficiary for whom the fiduciary acts, and the amount that the fiduciary controls for each beneficiary.

VA strongly opposes the provisions that would require fiduciaries to pay annual surety bond premiums. Requiring the fiduciary to pay the annual premium would be a disincentive for both volunteer and paid fiduciaries and would significantly impair VA's ability to find qualified fiduciaries in some of its most difficult cases. Most fiduciaries are family members or friends who may not have the funds needed to meet the cost of the bond premium. With respect to paid fiduciaries who agree to take some of VA's most difficult cases, the cost of a bond premium might consume

the entire nominal fee authorized by Congress. It is standard practice in the guardianship industry to allow for payment of surety bond premiums out of estate funds. If this provision is enacted, VA anticipates a dramatic increase in the number of fiduciaries who are also court appointed. Courts will allow the deduction of the cost of the bond and a substantial fee, in many cases between 5 and 15 percent of estate value, from the beneficiary's funds. VA cannot support the inequitable treatment of, and significant harm to, beneficiaries that would likely result from the enactment of this provision.

Section 1(e) would mandate that VA require a fiduciary to file an annual report or accounting and that VA transmit the report or accounting to the beneficiary and any legal guardian of the beneficiary. It would also require that a report or accounting include for each beneficiary the amount of benefits that accrued during the year, the amount spent, and the amount remaining and an accounting of all sources of benefits or other income other than VA benefits that are overseen by the fiduciary.

VA opposes these provisions because they would burden fiduciaries, most of whom are volunteer family members or friends, but would not significantly improve VA's oversight of fiduciaries. Under current policy, which is based upon VA's experience in administering the program, VA generally requires fiduciaries to submit an annual accounting in cases in which: (1) the beneficiary's annual VA benefit amount equals or exceeds the compensation payable to a single Veteran with service-connected disability rated totally disabling; (2) the beneficiary's accumulated VA funds under management by the fiduciary equals $10,000 or more; (3) the fiduciary was appointed by a court; or (4) 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 more than 30,000 accountings each year.

VA currently pays benefits to more than 17,000 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. Many other beneficiaries are cared for by family members who, due to the beneficiaries' recurring needs, expend all available VA benefits each month for the beneficiaries' care. The additional burden of 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 does not otherwise oppose the provisions, which restate current law or codify current VA policy regarding the information that must be included in an accounting.

VA opposes the provision 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. This provision would add to VA's administrative burden by also requiring a random, annual audit of each paid fiduciary. 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 which would require VA to ensure that the bill's requirements do not interfere with the care provided to a beneficiary by a VA fiduciary who is also the beneficiary's care-giver. This provision is vague with regard to the definition of "care" and other matters. It would require VA personnel to conduct additional burdensome oversight to somehow determine whether fiduciary requirements affect care. It is unclear how VA would implement this provision.

As it is unclear how this bill would be implemented, VA cannot estimate the cost associated with enactment of H.R. 894.

H.R. 1405

H.R. 1405 would require VA to provide, with notice of each decision on a claim for benefits, a form that may be used to appeal the decision. VA supports this bill as it would improve the timeliness and quality of processing notices of disagreement (NODs), which initiate the VA appellate process.

Currently, VA accepts as an NOD any "written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction [(AOJ)] and a desire to contest the result." If an AOJ receives a timely filed written communication expressing disagreement, but cannot clearly identify that communication as expressing an intent to appeal, or cannot identify which claims the claimant wants to appeal, then the AOJ will contact the claimant orally or in writing to request clarification of his or her intent. If the claimant is contacted in writing, then he or she must respond to the clarification request within the later of 60 days from the date of the contact

or the remainder of the one year period from the date of mailing of the notice of the AOJ decision. This clarification process can consume substantial time.

Providing claimants with a standardized appeal form would reduce the time it takes an AOJ to recognize or clarify the nature of a claimant's response to an AOJ decision. In addition, it would simplify the VA appellate process for claimants. Also, an appeal form would reduce errors in identifying NODs that can delay resolution of claims. For example, in Fiscal Year 2011, the Board of Veterans' Appeals (Board) remanded 1,554 issues to AOJs because the Board identified timely filed NODs for which the AOJs had not issued a statement of the case.

Providing claimants with a form on which to submit their initial disagreement with an AOJ decision would clarify what action claimants must take to initiate an appeal of an AOJ decision. This in turn would improve VA's ability to identify NODs when they are received and would eliminate the need to contact a claimant to clarify whether he or she intended to initiate an appeal and, if so, of exactly which decisions. This would help speed up the early steps of the appellate process.

VA estimates that enactment of H.R. 1405 would not result in significant benefit or administrative costs.

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

Statements For The Record

AMERICAN LEGION

Chairman Runyan, Ranking Member Titus and distinguished Members of the Subcommittee, on behalf of Commander Koutz and the 2.4 million members of The American Legion, we thank you and your colleagues for the work you do in support of our service members and veterans as well as their families. The hard work of this Subcommittee in creating significant legislation has left a positive impact on our military and veterans' community.

Nationwide, The American Legion has over 2,600 accredited service officers to ensure veterans receive the benefits to which they are entitled at no cost to those veterans. Not only do we advocate for the 2.4 million members in our organization but also the millions of veterans who do not hold membership; in short, we live by the motto "a veteran is a veteran" and is deserving of representation when seeking VA benefits. We recognize the necessity to adequately compensate veterans and veterans' families for disabilities incurred during service to our nation.

As a grassroots organization, The American Legion draws upon the strength of its membership to provide guidance on policies in the form of resolutions passed in national assembly during annual national convention or at meetings of the National Executive Committee. The will of the membership of the Legion is expressed through these resolutions, which support or oppose policy decisions on topics of concern, whether for veterans, the children and youth of America, the strong national defense or the principles of Americanism. The support and positions of The American Legion on any legislation naturally derives from the guidance of these resolutions and the founding documents of our organization.

H.R. 569: Veterans' Compensation Cost-of-Living Adjustment Act of 2013

H.R. 570: American Heroes COLA Act

H.R. 569: To increase, effective as of December 1, 2013, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

H.R. 570: To amend title 38, United States Code, to provide for annual cost-of-living adjustments to be made automatically by law each year in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans.

The American Legion strongly supports a periodic cost-of-living adjustment (COLA) for veterans reflective of increased expenses due to inflation and other factors. However, there are many factors currently being considered regarding the calculation of COLA that merit discussion.

Within The American Legion's Code of Procedures, accredited representatives are advised under no circumstances should they cause harm to veterans' claims for ben-

efits. Current proposals in the President's proposed budget, as well as in amendments to other bills that have been floated from time to time, would replace the current Consumer Price Index (CPI) used to calculate increases to Social Security COLA with a so-called Chained CPI (C–CPI). Through chaining VA benefits to the new C–CPI and COLA for Social Security benefits, the veteran community would indeed be harmed. On December 19, 2012, Dean Stoline, Deputy Director, The American Legion Legislative Division, stated that a chained CPI is misguided policy and "would have significant deleterious effect on the benefits of millions of veterans".

Senator Bernie Sanders (VT) has provided evidence that displays the long term negative effect upon the veteran community should Congress mandate a C–CPI approach to determining COLA increases. According to a press release from Sen. Sanders' office, the proposal would cut VA disability benefits for a 30-year-old veteran by more than $13,000 a year by age 45, $1,800 a year by age 55, and $2,260 a year by age 65. Senior citizens who retire by age 65 would see their Social Security benefits reduced by about $650 a year by the time they reach 75, and more than $1,000 a year when they turn 85. These cuts would certainly place many veterans and their families' economic security in peril.

By resolution[1] "The American Legion support[s] legislation to amend title 38, United States Code, section 1114, to provide a periodic COLA increase and to increase the monthly rates of disability compensation; and . . . oppose[s] any legislative effort to automatically index such [COLA] adjustments to the [COLA] adjustment for Social Security recipients, non-service connected disability recipients and death pension beneficiaries." The opposition to direct connection to the Social Security policies reflects the understanding that veterans and specifically disabled veterans represent a unique subsection of the American community, and their unique concerns should receive individual consideration when determining the need for periodic increases for cost of living.

We do not support either bill. In fact, we encourage Congress to separate VA benefits from Social Security benefits altogether regarding COLA adjustments. The long-term negative effects created through permitting C–CPI for VA benefits could prove disastrous to millions of veterans.

The American Legion supports an increased Cost-of-Living Adjustment for veterans, but is unable to support these bills at this time until they reflect assurances that veterans' needs will be adequately reflected and not subject to whims of overzealous cost cutting measures.

H.R. 602: Veterans 2nd Amendment Protection Act

H.R. 602: 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.

It is both sad and ironic that the veterans' community, a community in which each and every member swore to uphold the Constitution of the United States to include the 2nd Amendment, requires advocacy to maintain its constitutional right to bear arms. Unless deemed unfit to possess weapons by a judicial authority with the full benefit of due process, each veteran regardless of disability should maintain the right to possess a firearm. Any constitutional right should engender this same expectation of careful scrutiny to ensure no right is removed without due process.

On December 2, 2012, NBC News published an article regarding veteran hunting trips as a form of therapy for combat hardened veterans[2]. Throughout the nation, numerous organizations organize hunting trips for veterans. Even the Department of Veterans Affairs (VA) acknowledges the positive effects of shooting firearms for some veterans. Jose Llamas, community and public affairs officer for VA's National Veterans Sports Program, stated that hunting is included in a veteran's health-life plan. At various adaptive sports summits throughout the nation, veterans can enjoy target shooting. Additionally, a recent $25,000 grant was made to the Grand Junction, Colorado, VA Medical Center, to purchase the necessary equipment for veterans to hunt.

Furthermore, there are concerns that the threat of being placed on a list that might deny them of their 2nd Amendment rights could act as a deterrent for veterans who might otherwise seek treatment. When the positive effects of therapy for conditions such as Posttraumatic Stress Disorder (PTSD) are so important, driving

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[1] Resolution No. 178: Department of Veterans Affairs (VA) Disability Compensation, AUG 2012

[2] *http://usnews.nbcnews.com/—news/2012/12/02/15575983-florida-guide-uses-hunting-as-rustic-therapy-for-combat-veterans?lite.*

veterans away for fear of repercussions such as confiscation of firearms could only exacerbate existing stigmas.

During the 94th National Convention of The American Legion, Resolution 68 was passed. According to the resolution, "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, be it finally resolved, 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."

The American Legion supports this bill.

H.R. 671: "Ruth Moore Act of 2013"

H.R. 671: To amend title 28, United States Code, to improve the disability compensation evaluation procedure of the Secretary of Veterans Affairs for veterans with mental health conditions related to military sexual trauma, and for other purposes.

The American Legion's accredited representatives located in VA Regional Offices, state and county offices, and the Board of Veterans' Appeals have acknowledged a unique situation exists for victims of military sexual trauma (MST). MST is often an unreported crime, or even in the best cases poorly documented. Even when MST is reported, it is not uncommon for a lackluster investigation to occur and the perpetrator of the crime to be brought to justice.

On March 26, 2013, the Institute of Medicine (IOM) released a study: *Returning Home from Iraq and Afghanistan: Assessment of Readjustment Needs of Veterans, Service Members, and Their Families.* According to the study, "[M]ilitary sexual trauma has been occurring in high rates throughout the U.S. armed forces, including the Iraq and Afghanistan theaters. Sexual harassment and assaults disproportionately affect women; they have both mental and physical ramifications, and in many cases these victims have a difficult time readjusting." It is evident by the study that a staggering number of veterans reported suffering MST; over 48,000 women and 43,000 men reported experiencing MST.

H.R. 671 addresses the concerns raised repeatedly by The American Legion regarding MST. In testimony provided by The American Legion before this subcommittee on July 18, 2012, Lori Perkio, Assistant Director, The American Legion Veterans Affairs and Rehabilitation Division, pointed to changes regarding combat zones made by VA regarding posttraumatic stress disorder in 2010 and asserted that equal treatment should be applied to MST victims. Both combat zones and MST related claims are similar in that both types of claims reflect situations where there is a known and acknowledged lack of record keeping. Regulations have allowed for extra latitude on behalf of combat veterans to reflect the lack of record keeping, but the same consideration is not extended to rape and assault survivors, though their trauma is no less devastating.

The American Legion believes that VA should review "military personnel files in all MST claims and apply reduced criteria to MST-related PTSD to match that of combat-related PTSD[3]." H.R. 671 adequately addresses this resolution by setting up similar criteria for MST victims as those in effect for combat victims.

The American Legion supports this bill.

H.R. 679: "Honor America's Guard-Reserve Retirees Act"

H.R. 679: 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.

[3] Resolution No. 295: Military Sexual Trauma (MST), AUG 2012.

The American Legion has no position on this legislation.

H.R. 733: "Access to Veterans Benefit Improvement Act"

H.R. 733: To amend title 38, United States Code, to provide certain employees of Members of Congress and certain employees of State or local governmental agencies with access to case-tracking information of the Department of Veterans Affairs.

This legislation would entitle governmental employees in Congress as well as state and local governments to access case tracking information through the VA claims process.

The American Legion has no position on this legislation.

H.R. 894: Improvement of Fiduciaries for Veterans

H.R. 894: 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.

Attention to the VA Fiduciary program came before congressional subcommittees in 2010 and again in 2012. Veterans who have been deemed as mentally incompetent by VA standards deserve every effort to protect them from any possible injustice.

Ensuring background checks are completed on all fiduciaries as well as providing the veterans their choice of family member before any other fiduciary is appointed should never be optional and must be completed in an expedited manner. Requiring the VA to create a database of all appointed fiduciaries would reduce the time to appoint needed fiduciaries and not over burden those already being utilized with more beneficiaries than is appropriate. The beneficiary needs to be able to utilize their VA monetary benefits beyond the payment of daily living expenses. When large amounts of monetary " savings" are created by the fiduciary that were in some cases turned back over to the VA after the death of the beneficiary needs to be provided to the surviving family members of the beneficiary as it is with all other VA monetary benefits. Veterans who have been deemed incompetent by VA deserve the same respect and quality of life as those who have not been deemed incompetent.

The VA created fiduciary "hubs" to streamline and better utilize their resources. The emphasis now needs to be focused on serving and protecting the same veterans who selflessly served their country. The myriad provisions of this bill serve to strengthen protections for veterans and their families, and address many of the concerns which have been raised by this committee and concerned veterans groups over the course of the past several years through hearings addressing the topic. As those veterans deemed to need a fiduciary are often among the most vulnerable veterans, special care must be taken to ensure any legislation on their behalf is fully protective of the veteran first. The American Legion is willing to work with the committee to ensure the technical language of this bill is consistent with the veteran first protective mindset.

The American Legion supports this legislation.

H.R. 1405

H.R. 1405: To amend title 38, United States Code, to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought.

The American Legion understands that H.R. 1405 will require the Secretary of VA to provide an appeals form with any notice of decision denying the veteran benefits. The bill fails to consider if the same letter would be mailed to a veteran where a full granting of the benefit does not occur. A veteran could be granted a 30 percent disability rating; however, after review of the veteran's case, it could be argued that a 70 percent disability rating is warranted. Through VA's failure to include this letter, the veteran may not realize the existence of appellate review for the claim.

The American Legion believes in protecting the appellate rights of veterans, and ensuring the process gives clear and understandable information to help them make proper decisions about when they should appeal the decisions rendered regarding their claims. Although The American Legion does not currently have a resolution to address this issue, we do welcome the opportunity to work with Congress regarding this bill to further investigate the process and ensure the appellate rights of veterans are being served in the most beneficial manner possible. We encourage the Committee to consider all veterans' appellate rights with regard to this bill.

The American Legion has no position on this legislation.

For any questions regarding this testimony please contact Ian de Planque, Deputy Legislative Director of The American Legion at (202) 863–2700 or *ideplanque@legion.org*.

IRAQ AND AFGHANISTAN VETERANS OF AMERICA

Bill #	Bill Name	Sponsor	Position
H.R. 569	Veterans' Compensation Cost of Living adjustment Act of 2013	Runyan	Support.
H.R 570	American Heroes COLA Act	Runyan	Support.
H.R. 602	Veterans 2nd Amendment Protection Act	Miller	Support.
H.R. 671	Ruth Moore Act of 2013	Pingree	Support.
H.R. 679	Honor America's Guard-Reserve Retirees Act	Walz	Support.
H.R. 733	Access to Veterans Benefits Improvement Act	Runyan	Support.
H.R. 894	..to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs	Johnson	Support.
H.R. 1405	. . . to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought.	Titus	Support.

Chairman Runyan, Ranking Member Titus and distinguished members of the subcommittee, on behalf of Iraq and Afghanistan Veterans of America (IAVA) I would like to extend our gratitude for being given the opportunity to share with you our views and recommendations regarding H.R. 569, H.R. 570, H.R. 602, H.R. 671, H.R. 679, H.R. 733, H.R. 894 and H.R. 1405.

IAVA is the nation's first and largest nonprofit, nonpartisan organization for veterans of the wars in Iraq and Afghanistan and their supporters. Founded in 2004, our mission is critically important but simple – to improve the lives of Iraq and Afghanistan veterans and their families. With a steadily growing base of over 200,000 members and supporters, we strive to help create a society that honors and supports veterans of all generations.

H.R. 569

IAVA is pleased to offer our support for H.R. 569, the "Veterans' Compensation Cost of Living Adjustment Act of 2013." This bill will give qualified disabled veterans and their dependents annual Cost of Living Adjustments (COLA) starting in December 2013. Tough economic times have placed a heavy burden on our wounded veterans and the limited resources they are afforded. As the cost of living increases, wounded veterans are forced to make difficult financial decisions with resources that may be insufficient to address economic realities particular to their needs. In order to receive an increase in benefits, veterans must rely on legislation authorizing an increase in annual COLA. HR 569 increases the rates for qualified disabled veterans and their dependents starting in December 2013. This legislation will help protect the financial stability of our disabled veterans and their families. H.R. 569 helps to ensure that the deserved benefits earned by our veterans remain protected.

H.R. 570

IAVA supports H.R. 570, the "American Heroes COLA Act," which will make veterans' Cost of Living Adjustments (COLA) permanent, similar to Social Security benefits. Cost of Living Adjustments in veterans' benefits, like Social Security benefits, are based on the Consumer Price Index-Urban Wage Earners and Clerical Workers (CPIW). However, unlike Social Security benefit increases, veterans' benefit increases rely on Congress to pass legislation authorizing an increase each year. Financial planning by our veterans requires them to take into account COLA rates

that may or may not increase. H.R. 570 authorizes the Secretary of Veterans Affairs (VA) to automatically increase COLA benefits annually based upon the CPIW rate. This legislation will help protect the financial stability of our disabled veterans and their families, as well as eliminating an extra redundant step in the annual COLA process.

H.R.602

IAVA supports H.R. 602, the "Veterans 2nd Amendment Protection Act." Inaccurate information on mental health and gun ownership rights feeds the false rhetoric and misinformation of veterans and mental health, thus adding to the stigmas attached to seeking mental health care. IAVA believes this bill will help reduce the stigma surrounding PTSD by creating a fair appeals process for veterans who may have been wrongly or automatically categorized as unfit to own or purchase firearms. IAVA strongly supports this bill.

H.R. 671

IAVA supports H.R. 671, the "Ruth Moore Act of 2013." This bill will improve the VA claims disability process for victims of military sexual assault who suffer from Post Traumatic Stress Disorder (PTSD) and other mental health conditions. Current VBA policy requires a diagnosis of PTSD, medical link to diagnosis, and evidence verifying the occurrence of sexual assault in order to receive a service connected disability rating for Military Sexual Trauma (MST). Furthermore, vast inconsistencies remain among VA offices when considering secondary evidence. Under H.R. 671 a veteran will be granted service connection for PTSD if the veteran states he or she was sexually assaulted in the military, is diagnosed with PTSD or related mental health condition and has a medical nexus between the two. This will give MST victims who suffer from PTSD the same standard of proof that other veterans with PTSD have. IAVA supports this important piece of legislation.

H.R. 679

IAVA supports H.R. 679, the "Honor America's Guard-Reserve Retirees Act." Any man or women who chooses to enlist and serve their country deserves, at minimum, to be called a veteran. If a veteran devotes years of their life to being ready to serve at a moment's notice is admirable and selfless. These men and women served honorably and should not be penalized simply because their country did not call upon them to actively serve.

H.R. 733

IAVA supports H.R. 733, the "Access to Veterans Benefits Improvement Act." This bill is another step in the right direction to ending the VA claims backlog. This bill provides certain employees of members of Congress and certain employees of state or local governmental agencies access to VA case-tracking information, while still protecting veteran's privacy. This bill will help provide stricter oversight on the actions of VA and the steps that they are taking to eliminate the claims backlog.

H.R. 894

IAVA supports H.R. 894, 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. A fiduciary is a person appointed by VA to determine what is in the best interest of a veteran. However, in recent years there have been numerous problems identified within this program. The VSO community, including IAVA, has voiced concerns that many fiduciaries have moved away from the original intent of the program (protecting the best financial interest of disabled veterans) to more of an investment banking style and not veteran-centric at all. This is not, nor will it ever be in the best interest of a veteran. We believe this legislation is a step in the right direction in addressing many current problems. This bill will add transparency, redesign the fiduciary commission model and help protect the best interest of the veterans using this program. Again, while IAVA supports this bill we caution that there is still much to be done in correcting the fiduciary program and sincerely hope this committee will continue to correct these issues through additional pieces of good legislation, like HR 894.

H.R. 894

Finally, IAVA strongly supports H.R. 1405, to amend title 38, United States Code, to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought. Currently, when veterans receive a rating decision and they wish to appeal it, they must request an appeals form from the VA and then wait for the VA to send them the form. This unnecessary and burdensome process typically takes 60 days. HR 1405 is expected to reduce

the need for the VA to mail more than 100,000 unnecessary letters annually to veterans appealing their decision and will save the VA approximately 50,000 man hours. The VA is working to reduce the disability claims backlog, and this legislation provides an opportunity for Congress to assist. By passing this bill, Congress will instantly reduce the appeals process for veterans by 60 days. A similar provision was passed with bipartisan support by the House Veterans Affairs Subcommittee on Disability Assistance and Memorial Affairs during the 112th Congress.

We again appreciate the opportunity to offer our views on these important pieces of legislation, and we look forward to continuing to work with each of you, your staff, and this subcommittee to improve the lives of veterans and their families. Thank you for your time and attention.

NATIONAL ORGANIZATION OF VETERANS' ADVOCATES

The National Organization of Veterans' Advocates, Inc. (NOVA) thanks Committee Chairman Runyan and Ranking Member Titus for the opportunity to testify on H.R. 671, to amend title 38, United States Code, to improve the disability compensation evaluation procedure of the Secretary of Veterans Affairs for veterans with mental health conditions related to military sexual trauma (MST), and for other purposes. NOVA is honored to share our views on H.R. 671, cited as the Ruth Moore Act of 2013, for this hearing.

NOVA is a not for profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents nearly 500 attorneys and agents assisting tens of thousands of our nation's military Veterans, their widows, and their families obtain benefits from VA. NOVA members represent Veterans before all levels of VA's disability claim process. This includes the Veterans Benefits Administration (VBA), the Board of Veterans' Appeals (BVA or Board), the U.S. Court of Appeals for Veterans Claims (Veterans Court or CAVC), and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). In 2000, the CAVC recognized NOVA's work on behalf of Veterans when the CAVC awarded the Hart T. Mankin Distinguished Service Award.

1.Necessity of the legislation

Post-traumatic stress disorder (PTSD) cases have posed significant problems for the Department of Veterans Affairs (VA) because this disability, by its nature, often has a delayed onset. Consequently, the precipitating events are often unrecorded in a service member's medical records or in-service department records. This is particularly true for incidents of sexual assault while on active duty. In 2011, the Pentagon estimated that about 19,000 male and female service members were sexually assaulted, yet less than 14 percent of these crimes were reported.

As with any assault case, the victims of in-service personal assaults are afraid to report the crime. This fear is especially likely when the assailant is a superior: the person to whom the victim is instructed to report in these situations. Reporting an assault while on active duty, however, is problematic for many reasons, even when the assailant is not the victim's superior. The nature of military service discourages reporting both implicitly as well as explicitly. Even when the service member does make a report of the assault, these reports are rarely documented or associated with the veteran's service records.

The number of veterans who have experienced an in-service personal assault is high. Among the veterans who use VA health care, over 20 percent of female veterans report being sexually assaulted while in service. See *http://www.ptsd.va.gov/public/pages/how-common-is-ptsd.asp.* Additionally, over 50 percent of female veterans and over 35 percent of male veterans report experiencing sexual harassment in the military. Id.

Effectiveness of Current Regulation

The current PTSD regulation, as it pertains to in-service personal assault cases, is not effective. 38 C.F.R. 3.303(f) (5) purports to reduce the burden for these veterans to prove their claims. In practice, this has not happened. From 2008 to 2010, VA approved over 50 percent of PTSD claims related to combat, but approved barely 35 percent of PTSD claims related to in-service personal assault. Ironically, VA concluded that it had made it too difficult for combat veterans to prove that their PTSD was related to service and, as a result, reduced the burden on them to show that their PTSD should be service connected. Unfortunately, VA has not attempted to help in-service personal assault victims in a similar manner, even though the ap-

provals for in-service personal assault are significantly lower than those for combat veterans.

Recently, two significant changes have occurred: first, the acceptance of a resulting psychiatric disability from trauma; second, the adoption of VA regulations which impose an often insurmountable burden on the victims of sexual assault. The taboo and misgivings that accompanied PTSD and other mental disabilities that result from trauma have disappeared. Turning to the burden created by VA regulation, the proposed amendment to 38 U.S.C. § 1154 removes that impediment. Victims of sexual assault should not have the burden of corroborating their in-service sexual assaults. Proving that these events occurred is not merely painful, it is often impossible. The proposed amendment correctly makes the determination of entitlement to service-connected compensation for the resulting disability from the in-service trauma a medical question, not a factual one. This legislation further makes the appropriate public policy determination that victims of sexual assault should be entitled to compensation when a competent mental health professional confirms the existence of a current disability from PTSD. The legislation also confirms the relationship of that disability to the reported in-service sexual assault. Importantly, this legislation relieves the victims of sexual assault from being victimized further by an adjudication process which implicitly questions the veracity of the reported in-service assault.

2.Alleviating the VA's backlog

Processing in-service personal assault claims is a slow and time-consuming process. These claims require VA to make extra efforts to contact the veteran and fulfill the VA's duty to assist. Before one of these claims can be decided, VA has to contact the veteran multiple times to make sure that the veteran understands the special rules that apply to these claims and the different types of evidence that the veteran can supply. Furthermore, the adjudicator must request and attempt to obtain not just the veteran's service medical records, but also the veteran's full service record jacket. This can require multiple requests to the National Personnel Records Center. Still, 65 percent of these claims are denied.

Ruth Moore's case is the quintessence of how these claims drag on and slow down the system. Moore had to fight VA for 23 years over her benefits –23 years of claims that did not go anywhere. All the while, she was suffering from depression and a sexually transmitted disease that she contracted from her attacker. Moore even had the benefit of the relaxed requirements of 38 C.F.R. 3.304(f) (5), yet it was not until 2009 that VA finally awarded her claim.

With the proposed legislation, these cases would be streamlined. The fulcrum would shift from wasting time and effort to navigate a paper chase to obtaining a medical opinion to determine whether the veteran's disabilities are related to military sexual trauma (MST). At a time when the VA's resources are scarce, this legislation would alleviate some of the backlog.

Conclusion

The vast majority of sexual assaults in the military are not reported, and even those that are reported are often not prosecuted. As a result, many survivors of MST have found it hard to prove that an assault—the stressor—occurred. Furthermore, current VA policy allows so-called "secondary markers" to be considered as evidence of an assault, although VA has been very inconsistent in applying that policy. Secondary markers can include evidence from rape kits, statements from family members citing a change in behavior since military service, and drug and alcohol abuse. In 2010, VA policy for combat veterans applying for disability payments was changed in a similar fashion, allowing lay testimony as evidence that a trauma such as exposure to a roadside bomb or mortar attack had occurred.

H.R. 671 would allow as sufficient proof of service-connection a diagnosis of a mental health condition by a mental health professional together with satisfactory lay or other evidence of MST and an opinion by the mental health professional that the covered mental health condition and the MST are indeed related. By allowing the veteran's lay testimony alone to establish the occurrence of the claimed MST, this Act brings affected veterans one step closer to receiving the benefits they deserve for a covered mental health condition incurred or aggravated by military sexual assault. By further resolving every reasonable doubt in favor of the Veteran, H.R. 671 effectively serves to eliminate further victimization of those who have already suffered enough.

As always, NOVA stands ready to assist the Committee or VA in whatever way possible to further eliminate the systemic issues that negatively affect the lives of our Veterans and their families.

We thank you for this opportunity to provide our testimony.

WOUNDED WARRIOR PROJECT

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

Wounded Warrior Project (WWP) welcomes the opportunity to share views on two of the bills before the Subcommittee today, H.R. 894, the Veterans Fiduciary Reform Act of 2013, and H.R. 602, the Ruth Moore Act of 2013. Each raises issues of concern that we have addressed in our Policy Agenda this year.

Caregiver-Fiduciaries: H.R. 894

WWP works closely with family members of severely wounded warriors who are both full-time caregivers and fiduciaries for those warriors. Almost three years ago, recognizing the sacrifices these family members have made to care for their loved ones as well as the emotional and financial toll associated with sustained caregiving, Congress established the Comprehensive Caregiver-Assistance Program in Public Law 111–163 to provide them needed supports. The Veterans Benefits Administration (VBA), however, fails—in administering the fiduciary program—to recognize the extensive and regularly-ongoing oversight the Veterans Health Administration (VHA) mounts in determining initial and continuing eligibility for caregiver-assistance services. As a result, while the Caregiver-Assistance law was aimed at lightening the family caregiver's burden, the additional, ongoing VBA scrutiny makes the caregiver-fiduciary's situation even more stressful.

For example, WWP has seen all too clearly that VBA's intensely detailed reporting requirements can be overwhelming to an already emotionally drained family member who is shouldering a young veteran's total-care needs and yet is left to feel that VA deems her suspect and distrusted. As one mother described it, "we are probed yearly by a forensic accounting that seemingly investigates for 'murderous' infractions," even requiring fiduciaries to "line-item Walmart receipts."

As an organization dedicated to the well-being of wounded warriors, we appreciate the importance of assuring responsible stewardship of veterans' benefits and the protection of vulnerable beneficiaries and welcome the focus in H.R. 894 on adding safeguards to strengthen the program. But it is important to appreciate the unique circumstance of family members who have given up careers and depleted savings to care for their loved ones. These individuals are not unknown to VA. In fact, to qualify and win formal approval for support under the Caregiver-Assistance program, the family member of a seriously wounded warrior must undergo VA review, training, home-inspection, and a determination that the proposed arrangement is in the veteran's best interest. The caregiver must also undergo regular quarterly home-inspections and monitoring of the veteran's well-being to continue to receive VA assistance. Any "red flags" that might arise in the course of these home-inspections can result in revocation of approved caregiver-status. In short, Veterans Health Administration staff assist and work closely with family caregivers – who in many instances are also fiduciaries and who have not only been screened before qualifying for the program, but whose care of the veteran is closely monitored. Surely that process and ongoing oversight provide ample evidence that these individuals are trustworthy, and do not pose a risk of misusing the veteran's benefits.

WWP applauds the effort in H.R. 894 to tighten the fiduciary program, and we are not proposing that caregiver-fiduciaries have no accountability for management of the beneficiary's funds. But we do see a need to make provision in law for more balanced accountability and far less intrusive oversight under circumstances where caregiver-fiduciaries have demonstrated that they do not pose significant risk and have earned VA's trust. Dedicated caregiving, as evidenced through unblemished participation in VA's comprehensive caregiver assistance program, should be recognized as establishing that trust.

In that regard, we appreciate that H.R. 894 includes language relating to caregiver-fiduciaries.[1] Unfortunately, that language—directing the Secretary to ensure that care provided by a fiduciary is not worsened by the fiduciary complying with bill's reporting requirements—falls short of resolving the underlying problem. First, the provision relates only to reporting, and not audits and other oversight. But even at that, these self-sacrificing loved ones will not allow the veteran's care to diminish

[1] As amended, section 5509(f) of title 38, U.S. Code would provide that "In prescribing regulations to carry out this section [relating to reporting requirements], the Secretary, in consultation with the Under Secretary for Benefits and the Under Secretary for Health, shall ensure that the care provided by a fiduciary . . . [who also provides care to the beneficiary pursuant to this title (including such care provided under section 1720G of this title] is not diminished or otherwise worsened by the fiduciary complying with this section."

under any circumstances; as such a "do-no-harm-to-care" provision fails to provide real protection. In our view, where VHA has already screened and approved a family member as a caregiver, and has carried out home visits that demonstrate that care is being well maintained, a level of trustworthiness has surely been established. Under those circumstances, that – at a minimum – should warrant much less detailed and more "user-friendly" reporting, and more balanced, much less intrusive oversight. Unfortunately, the bill does not yet achieve that. At the same time, its reporting requirements are actually more demanding than under current law – requiring annual reporting in place of the discretion afforded under existing law – and expanding the scope of such reporting to include an accounting of benefits and income from sources other than VA. Consistent with the bill's recognition that caregiver-fiduciaries merit special consideration, we ask that the Subcommittee refine the language to more effectively accommodate family caregivers. We would be happy to work with the Subcommittee to develop language to address these concerns.

H.R. 671

H.R. 671, the Ruth Moore Act, highlights another important issue, military sexual assaults. As the Department of Defense has stated unequivocably, military sexual assault is a crime that may forever change the live of its victims.[2] Yet it is also a significantly underreported crime.[3]

Victims of military sexual trauma (MST) often not only do not readily disclose these traumatic events, but delay seeking treatment for conditions relating to that experience.[4] Yet in-service sexual assaults have long-term health implications, including post-traumatic stress disorder, increased suicide risk, major depression and alcohol or drug abuse.[5] A comprehensive review of individuals seeking VA care found that those who experienced MST were three times more likely to receive a mental health diagnosis of some type, almost nine times more likely to be diagnosed with PTSD, and twice as likely to be diagnosed with a substance abuse issue.[6] Researchers report that the effects of sexual assault on health are similar to those for combat.[7]

VA reports that some 1 in 5 women and 1 in 100 men seen in its medical system responded "yes" when screened for military sexual trauma (MST).[8] Though rates of MST are higher among women, there are almost as many men seen in VA that have experienced MST as there are women.[9] While researchers cite the importance of screening for military sexual trauma and associated referral for mental health care, many victims do not seek VA care. Indeed researchers have noted frequent lack of knowledge on the part of women veterans regarding eligibility for and access to VA care, with many mistakenly believing eligibility is linked to establishing service-connection for a condition.[10] Compounding this misperception is the difficulty individuals experience in attempting to establish service-connection for mental health conditions resulting from in-service sexual trauma.

VA's regulation governing service-connection for PTSD does reflect an attempt to address some of the difficulties veterans face in light of the general requirement that there be "credible supporting evidence that the claimed stressor occurred."[11] The regulation specifies that, in the case of a claim based on in-service personal assault, evidence from sources other than the veteran's service records may corroborate the veteran's account, and it provides examples of such evidence, to include evidence of behavior changes following the claimed assault.

But with the overwhelming percentage of military assault-incidents going unreported, the unique circumstances of the military experience heighten the likelihood

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[2] Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2011 (April 2012), 1.

[3] *Id.,* 7.

[4] Rachel Kimerling, et al., "Military-Related Sexual Trauma Among Veterans Health Administration Patients Returning From Afghanistan and Iraq," Am J Public Health, 100(8), (August 2010), 1409–1412.

[5] M. Murdoch, et al., "Women at War," Journal of General Internal Medicine, vol. 21, Issue S3 (March 2006) accessed at *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1513175/*.

[6] Rachel Kimerling, Kristian Gima, Mark Smith, et al. "The Veterans Administration and Military Sexual Trauma," *American Journal of Public Health 97,* no. 12 (2007) 2163.

[7] *Id.*

[8] Department of Veterans Affairs National Center for PTSD, "Military Sexual Trauma" fact sheet, accessed at *http://www.ptsd.va.gov/public/pages/military-sexual-trauma-general.asp.*

[9] *Id.*

[10] See Donna Washington, et al., "Women Veterans' Perceptions and Decision-Making about Veterans Affairs Health Care," *Military Medicine* 172, no. 8 (2007): 813–815.

[11] 38 C.F.R. sec. 3.304(f)

of such an incident going undetected, and subsequently eluding efforts to provide corroborating evidence. Military training and culture foster a spirit of comradeship, teamwork, and loyalty that is critical to success in battle. A sexual assault is a profound violation of those principles. In the experience of many MST victims, being sexually assaulted by a fellow servicemember creates intense feelings of betrayal, confusion and shame. Military culture strongly values servicemembers' keeping their pain and distress to themselves. As described in one journal report, "unit cohesion may create environments where victims are strongly encouraged to keep silent about their experiences, have their reports ignored, or are blamed by others for the sexual assault."[12] Given all these circumstances, it is very common for victims to experience such profound fear or shame regarding a military sexual assault that they remain silent and cover up or hide the attack for years. As one report noted, despite the pervasiveness of military sexual trauma, many clinicians fail to recognize as many as 95% of cases among veterans and active duty personnel.[13]

For veterans who file claims for service connection for PTSD based on MST,[14] the challenges both of providing or identifying evidence to support the claim and of meeting the inherently subjective requirement that that evidence be deemed "credible" can be monumental. WWP warriors and benefits' staff tell us that most victims of MST have no hard evidence on which to rely. The VA's regulation invites consideration of corroborative evidence of behavioral changes in service, but "markers" of such changes may be subtle or nonexistent. Moreover, it has been observed that many adjudicators handling these cases look for obvious, blatant, concrete evidence that is more likely to be in the claims file, rather than subtle, nuanced evidence.[15] As other commentators have observed, even cases with strong corroborating evidence may still be denied (citing YR v. West, 11 Vet. App. 393 (1998), where evidence included detailed testimony from the victim's sister reporting observable physical injuries just two days after a reported in-service assault).[16]

WWP believes that the uniquely troubling circumstances associated with MST, the health risks it holds, and the heavy burden on the victim of corroborating a widely-unreported traumatic experience, merits easing that evidentiary burden. H.R. 671 sets the right evidentiary standard, in our view, in providing that the veteran's lay statement may establish the occurrence of the claimed military sexual trauma, absent clear, convincing evidence to the contrary and if consistent with the circumstances of the veteran's service. (Acceptance of the lay statement as establishing in-service trauma is, of course, only one element in establishing service-connection for PTSD.)

As commentators have aptly noted, VA has the authority to ease the evidentiary burden of establishing service-connection for PTSD,[17] and has exercised that authority as recently as 2010. In that most recent rulemaking, VA established a framework under which the evidentiary requirement for corroboration of a stressor would be eliminated in claims for PTSD due to fear of hostile military activity,[18] just as in claims involving a combat stressor.[19] Despite marked differences, the trauma associated with combat, exposure to hostile military activity, and military sexual assault are all strong predictors of PTSD. And each presents great difficulties for the veteran to provide corroborative evidence of that trauma.

Since VA has the requisite authority to remedy this problem administratively and there are compelling policy reasons, in our view, to exercise that authority, we urge

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[12] Kimerling R, Gima K, Smith M, Street A, Frayne S; *The Veterans Health Administration and Military Sexual Trauma,* American Journal of Public Health, vol. 97, no. 12 (December 2007), 2160.

[13] Sharon Valente and Callie Wight, "Military Sexual Trauma: Violence and Sexual Abuse," Military Medicine, vol. 172, no. 3 (March 2007), pp. 259–265.

[14] In WWP's experience, some warriors are unwilling to relive the trauma and simply elect not to initiate claims of service connection for PTSD based on sexual trauma.

[15] Jennifer C. Schingle, "A Disparate Impact on Female Veterans: The Unintended Consequences of Veterans Affairs Regulations Governing the Burdens of Proof for Post-traumatic Stress Disorder Due to Combat and Military Sexual Trauma," William & Mary Journal of Women and the Law, vol. 16: 155 (2009), 170.

[16] *Id.,*172.

[17] See Schingle, ibid; Moomey, ibid; Brianne Ogilvie and Emily Tamlyn, "Coming Full Circle: How VBA Can Complement Recent Changes in DoD and VHA Policy Regarding Military Sexual Trauma," *Veterans Law Review,* vol 4 (2012).

[18] Stressor Determinations for Posttraumatic Stress Disorder, 75 Fed. Reg. 39,843, 39, 846 (July 13, 2010). With that rulemaking, VA provided that where a VA psychiatrist or psychologist confirms (1) that a claimed stressor related to fear of hostile military or terrorist activity is adequate to support a PTSD diagnosis, and (2) the veteran's symptoms are related to that stressor, the claimant's lay testimony alone may establish the stressor's occurrence (provided the stressor is consistent with the places, types, and circumstances of the veteran's service).

[19] 38 C.F.R. sec. 3.304(f)(5).

the Committee to press the Department to do so. That course would be preferable, in our view, to the Committee's having to find savings to offset any direct spending deemed to be associated with enactment of H.R. 671. Ultimately, such regulatory reform would be an important step toward healing a deep wound many have suffered.

Thank you for your consideration of our views.

AMERICAN CIVIL LIBERTIES UNION

On behalf of the American Civil Liberties Union (ACLU) and its more than a half million members, countless additional supporters and activists, and 53 affiliates nationwide, we commend the House Veterans Affairs DAMA Subcommittee for its continued commitment to addressing the problems survivors of military sexual trauma face when applying for disability benefits from the Department of Veterans Affairs (VA).

For decades, the ACLU has worked not only to end discriminatory treatment within our military,[1] but also to prevent and respond to gender-based violence and harassment in the workplace and to ensure women's full equality. The ACLU also works to hold governments, employers and other institutional actors accountable so as to ensure that women and men can lead lives free from violence.

Over the last several years, Congress, the Department of Defense and the VA have grappled with the scourge of sexual harassment, sexual assault and rape within the military. Although a variety of proposals have been implemented and some progress has been made to prevent and respond to sexual assault, sexual harassment and rape in the military, the problem is deeply-rooted and persists. More than 3,100 reports of sexual assault were made in FY 2011,[2] but we know that the incidence of sexual assault is significantly underreported. The Pentagon estimated that more than 19,000 incidents of sexual assault occurred in 2010 alone,[3] and that one in three women serving in the military has been sexually assaulted.[4] While such statistics alone are alarming, the problem of military sexual assault is compounded by the fact that service members who leave the service find that the trauma they experienced as a result of sexual assault is not adequately recognized by the VA.

The ACLU supports the Ruth Moore Act of 2013 (H.R. 671), which would remove current barriers that far too often prove insurmountable for sexual assault survivors who apply for disability compensation for post-traumatic stress disorder (PTSD) and other mental health conditions. Congress should act quickly to enact this legislation.

I. Congressional action is needed to ease the evidentiary burden of proof survivors of sexual assault must meet when seeking disability benefits.

Veterans who were sexually assaulted during their service in our armed forces, and who now seek disability benefits, for conditions such as PTSD and depression, face enormous barriers. Data obtained through a FOIA lawsuit, filed in 2010 by the ACLU and the Service Women's Action Network (SWAN) against the VA and the Department of Defense, shows that only 32 percent of PTSD disability claims based on military sexual trauma were approved by the Veterans Benefits Administration (VBA), compared to an approval rate of 54 percent of all other PTSD claims from 2008–2010. Moreover, of those sexual assault survivors who were approved for benefits, women were more likely to receive a lower disability rating than men, therefore qualifying for less compensation.

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[1] Most recently, In November 2012, the ACLU initiated a lawsuit, on behalf of the Service Women Action Network and other plaintiffs, against the Department of Defense challenging the ground combat exclusion. Over the years, we have also successfully challenged military recruitment standards and military academy admissions policies that discriminated against women; fought for servicewomen to receive the same military benefits as their male counterparts; and defended the rights of pregnant servicewomen; and advocated for servicewomen's access to reproductive health care.

[2] DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2011, 33 (2012), *available at http://www.sapr.mil/media/pdf/reports/Department—of—Defense—Fiscal—Year—2011—Annual—Report—on—Sexual—Assault—in—the—Military.pdf.*

[3] DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2010, 90 (2011), *available at http://www.sapr.mil/media/pdf/reports/DoD—Fiscal—Year—2010—Annual—Report—on—Sexual—Assault—in—the—Military.pdf.*

[4] James Risen, *Military Has Not Solved Problem of Sexual Assault, Women Say,* N.Y. TIMES, Nov. 2, 2012 at A15, *available at http://www.nytimes.com/2012/11/02/us/women-in-air-force-say-sexual-misconduct-still-rampant.html?pagewanted=all&—r=0.*

Despite the disparity in approved claims uncovered by the FOIA lawsuit, the VA has indicated that it is unwilling to amend 38 C.F.R. § 3.304(f), the current regulation governing the claims process for PTSD.[5] In 2011, the VA issued a "fast letter" to all VA Regional Offices (VAROs) reiterating the current policy while also emphasizing that the regulation should be interpreted liberally to give a veteran's claim the benefit of the doubt.[6] The letter provided further guidance for what secondary markers—evidentiary signs, events or circumstances—a claims officer should seek out and review in determining the validity of a disability claim. While we commend the VA for providing such guidance, it fails to address the problem. Although the VA specifically "developed regulations and procedures that provide for a liberal approach to evidentiary development and adjudication of [] claims,"[7] the subjective nature of the current policy actually works against survivors of sexual assault.

The VA's regulations explicitly treat veterans who suffer from PTSD based on sexual trauma differently from all other PTSD claims, including those related to combat and hostile military activity. Even when a veteran can establish a diagnosis of PTSD and his or her mental health provider connects PTSD to sexual assault during service, the VA "is not required to accept doctors' opinions that the alleged PTSD had its origins"[8] in the claimant's military service. The VA reasoned that while such a diagnosis may constitute credible evidence, it is not always probative.[9] As a result, the VA requires additional evidence, such as records from law enforcement authorities, hospitals, or mental health facilities, that generally does not exist. As the Department of Defense itself acknowledges, the vast majority of service members who are assaulted do not report that assault because of the retaliation they are likely to face.

Another problem faced by veterans is that until recently, the Department of Defense retained restricted reports of sexual assault for only 5 years; after that time the records were destroyed.[10] On average, a veteran who was assaulted waits 15 years after leaving the service to file a disability claim with the VA.[11] Because of this delay and the Pentagon's former record retention policy, veterans who were sexually assaulted are effectively cut off from accessing critical evidence substantiating their disability claim to the VA. Likewise, as more time passes before a veteran seeks disability benefits, the harder it becomes for that individual to later prove a claim of sexual assault through secondary markers, such as statements from fellow service members or deterioration in work performance. People move away, while documents are lost or discarded.

Even when a veteran is able to present evidence to a claims examiner, whether the claim is approved is ultimately determined by a subjective standard that differs from examiner to examiner leading to inconsistent outcomes.[12] Moreover, VAROs have seen high workforce turnover and the time period over which new employees receive training on adjudicating claims has been significantly reduced from one year to just eight weeks.[13] As the VA grapples with the overwhelming number of out-

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[5] *See Invisible Wounds: Examining the Disability Compensation Benefits Process for Victims of Military Sexual Trauma: Hearing Before the Subcomm. on Disability Assistance & Mem'l Affairs of the H. Comm. on Veterans' Affairs,* 112th Cong. (2012) (statement of Anu Bhagwati, Executive Director, Service Women's Action Network).

[6] *See* Training Letter 11–05 from Thomas J. Murphy, Director, Compensation & Pension Services, to all VA Regional Offices (Dec. 2, 2011).

[7] *Id.*

[8] Godfrey v. Brown, 8 Vet. App. 113, 121 (1995).

[9] Post-Traumatic Stress Disorder Claims Based on Personal Attacks, 67 Fed. Reg. 10330 (Mar. 7, 2002) (codified in 38 C.F.R. pt. 3).

[10] The National Defense Authorization Act for FY13 changed this policy so that now DoD must retain these documents for 50 years, but only at the request of the service member. Pub. L. No. 112–239, § 577, 126 Stat. 1632, 1762.

[11] DEP'T OF VETERANS AFFAIRS, VETERANS HEALTH INITIATIVE: MILITARY SEXUAL TRAUMA 58 (2004), *available at http://www.publichealth.va.gov/docs/vhi/military—sexual—trauma.pdf.*

[12] A study commissioned by the VA reported that "rating decisions often call for subjective judgments." INST. FOR DEF. ANALYSES, ANALYSIS OF DIFFERENCES IN DISABILITY COMPENSATION IN THE DEPARTMENT OF VETERANS AFFAIRS, VOLUME 1: FINAL REPORT, S–3 (2006), *available at http://www.va.gov/VETDATA/docs/SurveysAndStudies/State—Variance—Study-Volumes—1—2.pdf. See also Title Redacted by Agency,* Bd. Vet. App. 0318972 (2003) (veteran's claim was denied despite presenting substantial evidence corroborating his sexual assault, including documentation of erratic behavior, sworn statements attesting to military performance issues, and records of mental counseling and treatment for sexual transmitted diseases.).

[13] *Focusing on People: A Review of VA's Plans for Employee Training, Accountability, and Workload Management to Improve Disability Claims Processing: Hearing Before H. Comm. on*

Continued

standing benefits claims, which now total almost 900,000,[14] unprepared and overburdened employees may not have the time or the skill set needed to properly investigate and adjudicate complex sexual assault disability claims.

While the VA stands by its current policy, it is clear that the Department is not achieving its mission to "treat all veterans and their families with the utmost dignity and compassion."[15] Instead the VA has created an unfair standard that sets sexual assault survivors up to fail in claiming the disability benefits they deserve.

The Ruth Moore Act would rectify the current policy and bring fairness to the claims process. Under H.R. 671, the VA would be required to treat PTSD claims related to sexual assault the same way it treats all other PTSD claims: by accepting the veteran's lay testimony as sufficient proof that the trauma occurred "in the absence of clear and convincing evidence to the contrary."[16] This standard will help reduce the number of inconsistent and arbitrary adjudication decisions that result from applying a subjective standard and will decrease the risk of veterans experiencing further trauma as they navigate the claims process.

II. H.R. 671's reporting requirement helps ensure government accountability.

The ACLU works to hold our government accountable for responding to and taking proactive measures to end the cycle of violence in our country. For this reason, in 2010 we filed a federal lawsuit against the Department of Defense and the VA for their failure to respond to our FOIA requests seeking records documenting incidents of sexual assault, sexual harassment, and domestic violence in the military and how the government addresses this violence. The goal of the lawsuit was to "obtain the release of records on a matter of public concern, namely, the prevalence of [military sexual trauma] (MST) within the armed services, the policies of DoD and the VA regarding MST and other related disabilities, and the nature of each agency's response to MST."[17]

Given our past work in advancing government accountability, we strongly support the provision in the bill that requires the VA to submit an annual report to Congress that includes statistics, such as the number sexual assault-related claims that were approved or denied, and the average time it took the VA to adjudicate a claim.

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Should you have any questions, please don't hesitate to contact Senior Legislative Counsel Vania Leveille at 202–715–0806 or *vleveille@dcaclu.org*.

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Veterans' Affairs, 113th Cong. (2013) (submission for the record of The American Federation of Government Employees).

[14] Rick Maze, *VFW defends VA official, despite continued backlog,* FED. TIMES (Mar. 20, 2013, 4:19 PM), http://www.federaltimes.com/article/20130320/DEPARTMENTS04/303200003/VFW-defends-VA-official-despite-continued-backlog.

[15] U.S. DEP'T OF VETERANS AFFAIRS, ABOUT VA: MISSION, CORE VALUES & GOALS, *available at http://www.va.gov/about—va/mission.asp* (last visited Apr. 15, 2013).

[16] Ruth Moore Act of 2013, H.R. 671, 113th Cong. § 2(a) (2013).

[17] Complaint at 2, Serv. Women's Action Network v. U.S. Dep't of Def., No. 3:2010cv01953 (D. Conn. Feb. 23, 2011).