STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017"

MAY 2, 2017

In May of 2016 we addressed this Committee on the importance of passing comprehensive appeals reform. Between then and now, over 125,000 veterans have started their multi-year journey into the appeals abyss – how do we explain to those veterans, their families, and the American taxpayers that we're still years away from implementing a better system because our Congress decided not to act?

In the 114th Congress, the House Committee on Veterans Affairs, with overwhelming support from the veterans' community, passed an appeals processing bill that would modernize and streamline the program that would bring relief to millions of veterans – but the Senate's inaction set the process back almost a year, so here we are again, a year later, no further along than we were this time last year.

Chairman Roe, Ranking Member Walz, and distinguished, dedicated, defenders of veterans who proudly serve on this committee; on behalf of Charles Schmidt, the National Commander of the largest Veteran Service Organization in the United States of America representing more than 2.2 million dues paying, voting members, and combined with our American Legion family whose numbers exceed 3 and a half million voters, living in every district in America; it is my duty and honor to present The American Legion's position on how to improve the Department of Veterans Affairs (VA) claims and appeals process.

The American Legion thanks this Committee, and your staff, for the many hours of hard work and critical thought that you have put into this project, and we specifically would like to thank your Chief of Staff John Towers and Subcommittee on Disability Assistance and Memorial Affairs Staff Director and Counsel, Maria Tripplaar, for their committed collaboration and dedication to making this proposed legislation as meaningful and impactful as possible.

The American Legion currently holds power of attorney on more than three quarters of a million claimants. We spend millions of dollars each year defending veterans through the claims and appeals process, and our success rate at the BVA continues to hover around 80 percent.

When VA invited stakeholders to the table to discuss appeals modernization, The American Legion knew that appeals modernization could not start with looking at the appellate process; the conversation needed to begin at the point of the initial adjudication; so the first things the group looked at was the VBA decision notice. As a negotiated component of this framework, VBA has promised to improve their decision notice which will better inform veterans and their advocates. More importantly, a better decision letter will not only help veterans better prepare if they need to appeal, but it will help prevent appeals from being introduced because the veterans were not properly informed about the basis for denial. After VA's commitment to improve the initial decision letter, stakeholders helped sort through barriers that slowed appeals processing, and highlighted another of The American Legion's primary concerns – centralized training.
VA further argued that if there were a process within the appeals system that allowed law judges to review disputed decisions that were adjudicated at the regional offices, based only on the same information that the regional office had at the time the claim was originally decided, then BVA would be able to provide a "feedback loop" they could use to help train and educate VBA's regional offices, and additionally help identify regional offices where the decisions uniformly fail to address specific legal issues, and improve initial decisions.

It was with these two foundational underpinnings that the big six VSOs, in addition to state and county service officers, veteran advocate attorneys, and other interested groups worked with senior VA officials from VBA and BVA to design the framework of the legislation being discussed again here today.

The guiding principle leading all of our discussions was ensuring that we preserved all of the claimant's due process rights while ensuring that they did not lose any claims effective date time, which we were not only able to do successfully, but we were able to increase protections for veterans through this new process.

As you are aware, the design of the proposed appeals process allows for multiple options for claimants, as well as options for additional claim development, the option to have the decision reviewed by another adjudicator (difference of opinion) and the chance to take your case straight to the court to have a law judge review the decision and make a ruling on your claim.

The proposed bill provides veterans additional options while maintaining the effective dates of original claims. Veterans can elect to have an original decision reviewed at the ROs through a Difference of Opinion Review (DOOR) which is similar to the current functions of the Decision Review Officers (DROs). A DOOR provides an opportunity for a claimant to discuss concerns regarding the original adjudication of a particular issue, or the entire claim, prior to appealing to the BVA. Additionally, the administrative actions removes the need for a Notice of Disagreement (NOD), a process that took 412.8 days, according to a report released to The American Legion following the end of last fiscal year. The April 24, 2017 VA Monday Morning Workload Report indicates the delay has increased over two weeks, to 429.4 days VA Monday Morning Workload Report, April 24, 2017.

Beyond improvements in administrative functions, the proposed bill enables claimants to select a process other than the standard multi-year long backlog, if they want to have an appeal addressed more expediently if they believe they have already provided all relevant and supporting evidence. Similar to the Fully Developed Claims program, veterans will be able to elect to have their appeals reviewed more expeditiously by attesting that all information is included within the claim, VA's records, or submitted with VA Form 9 indicating the intent to have their claims expeditiously forwarded to BVA for review.

Veterans indicating that they may need additional evidence or time, could elect to have their claim reviewed in BVA's current format of allowing additional evidence entered. For veterans requiring additional evidence, such as lay statements from friends and families or a private medical examination rebutting VA's medical examinations, this is a viable alternative to allow the time and opportunity to prove a veterans case and secure the benefits they have earned.

Recognizing that an increased burden is being placed upon veterans, VA will ensure veterans maintain their effective dates, even if BVA denies the claim. If a veteran's appeal is denied by BVA, the veteran can submit new and minimally relevant evidence to reopen the claim at the RO while holding the original effective date that may have been established long before the second filing for benefits.

Similar to FDC, The American Legion will work tirelessly to ensure this program is successful and appreciates the Committee's support by including stakeholders in the certification process as this program is officially launched. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the veterans and claimants we represent. Throughout the year we will continue to work with our representatives, our members, and most importantly our veterans to understand the changes in law, and how they will be able to succeed with these new changes.

The American Legion recognizes that this is a huge undertaking and that as with any contract, the agreement is only as good as the people who sign it. We agree that there is a lot that is not going to be included in statutory language, and that this initiative places a lot of trust and responsibility on VA to do the right thing. The American Legion believes that the Secretary needs this flexibility in order to set this program up effectively, and that VA will continue to work with stakeholders and congress as we move forward. Any deviation from that plan will upset overseers and stakeholders alike, and will surely result in veterans being cheated as we all will ending up right back here in this hearing room to fix it.

In order to come to an agreement, stakeholders needed to trust VA to do the things they promised to do, and do them in good faith. There are a lot of nuances that aren't able to be legislated, and the VSOs are going to be providing constant feedback as we move forward with appeals modernization. We believe that the architects of this proposal have acted in good faith, and we support their efforts to modernize the appeals process for the good of veterans, for the good of the process, and for the good of the American taxpayer.

As always, The American Legion thanks the Committee for the opportunity to present the position of our 2.2 million veteran members. For additional information regarding this testimony, please contact Mr. Jeff Steele at The American Legion's Legislative Division at (202) 263-2987 or jsteele@legion.org.