STATEMENT OF
MARIO MARQUEZ, DIRECTOR
NATIONAL SECURITY DIVISION
THE AMERICAN LEGION

BEFORE THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

ON

"PENDING LEGISLATION"

MARCH 29, 2022

EXECUTIVE SUMMARY

LEGISLATION	POSITION
Citizenship for Honorable Military Service	
H.R. 1182 – Veteran Deportation Prevention and Reform Act, *page 6*	**Support**
H.R 1183 – Honoring the Oath Act of 2021, *page 7*	**Support**
Increasing Accessibility, Automation, and Financial Services	
H.R. 5916 – Wounded Warrior Access Act, *page 8*	**Support**
H.R. 6064 – To direct the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine for a review of examinations, furnished by the Secretary, to individuals who submit claims to the Secretary for compensation under chapter 11 of title 38, United States Code, for mental and physical conditions linked to military sexual trauma, *page 9*	**Support**
H.R. 6131 – Veterans Disability Claims Notification Improvement Act, *page 10*	**Support**
H.R. 6165 – Department of Veterans Affairs Post-Traumatic Stress Disorder Processing Claims Improvement Act of 2021, *page 11*	**Support**
Discussion Draft – To amend title 38, United States Code, to update specific terminology related to marriage under the laws administered by the Secretary of Veterans Affairs, *page 12*	**Support**
Discussion Draft – To direct the Secretary of Veterans Affairs to create fact sheets, for veterans and for survivors of veterans, that compare benefits and compensation, to such individuals under laws administered by the Secretary, to monthly insurance benefits under title II of the Social Security Act, and supplemental security income under title XVI of the Social Security Act, *page 13*	**No Position**
Discussion Draft – Department of Veterans Affairs Principles of Benefits Automation Act, *page 14*	**Support**
Discussion Draft – Modernizing Department of Veterans Affairs Disability Benefits Questionnaires Act, *page 15*	**Support**
Discussion Draft – Expediting Temporary Ratings for Veterans Act, *page 16*	**Support**

Survivor Benefits	
Discussion Draft – To amend title 38, United States Code, to ensure continued eligibility for dependency and indemnity compensation on a basis other than age for certain surviving spouses who remarry, and for other purposes, *page 17*	**Support**
Discussion Draft – "The Honoring our Promise Act" To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to improve equitable access to certain benefits of the Department of Veterans Affairs for the survivors of veterans, and for other purposes, *page 17*	**Support**
Discussion Draft – "The Survivor Solid Start Act" To amend title 38, United States Code, to improve outreach by the Secretary of Veterans Affairs to dependents of deceased veterans, and for other purposes, *page 18*	**Support**

TESTIMONY OF
MARIO MARQUEZ
DIRECTOR
NATIONAL SECURITY DIVISION
THE AMERICAN LEGION
BEFORE THE
HOUSE VETERANS AFFAIRS COMMITTEE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"PENDING LEGISLATION"

MARCH 29, 2022

Chairwoman Luria, Ranking Member Nehls, and distinguished members of the Subcommittee, on behalf of our National Commander, Paul E. Dillard, and our nearly two-million dues-paying members, we thank you for the opportunity to comment on the pending legislation being considered before this Subcommittee. The American Legion is directed by its members who dedicate their time and resources to continued service for veterans, servicemembers, and their families. As a resolution-based organization, The American Legion's positions are guided by more than 100 years of advocacy that originates at the grassroots level of our organization. Every time The American Legion testifies before Congress, the veteran community is given a direct voice in the legislative process.

CITIZENSHIP FOR HONORABLE MILITARY SERVICE

Immigrants have always made up a portion of the U.S. Armed Forces, and service in the military has been a pathway to U.S. citizenship for more than 760,000 immigrant servicemembers. In 2021, 8,800 servicemembers with permanent residency became American citizens[1]; however, obtaining citizenship is not automatic and requires a servicemember to begin the process upon initial entry into the military. Eligible veterans who do not complete the process are discharged with their resident alien status and remain non-U.S. citizens.

Over the last few years, various reports from citizenship organizations, national and local news sources, and firsthand accounts from members of Congress have confirmed the deportation of hundreds, possibly thousands, of veterans.[2] Many veterans have stated they believe their service automatically awarded citizenship. Furthermore, many believe the military did not do enough to inform non-citizen service-members that they qualified for an expedited citizenship process. The servicemember is typically left to pursue citizenship with little assistance or guidance. Recent

[1] "Military Naturalization Statistics." USCIS, November 9, 2021. https://www.uscis.gov/military/military-naturalization-statistics.
[2] "Thank You & Goodbye," The American Legion Magazine, June 2021. https://drive.google.com/file/d/12knzujMrNBRSx4J2mMYjuPDJ8F6ERZWA/view

Department of Defense (DoD) policy changes make it challenging to get their naturalization paperwork in order.

The American Legion believes all non-citizen immigrant veterans should be afforded every opportunity to complete the process toward citizenship before exiting the military. Post-service opportunities should also be bolstered for veterans and their family members.

In short, The American Legion believes in honoring the promise this nation makes to immigrants who seek naturalization through military service: if you enlist and serve honorably, this nation will make you a citizen.

Naturalization Problems and Veteran Deportation

At its root, the problem is that immigrant servicemembers who served honorably are at risk of deportation if they did not receive citizenship prior to leaving service. It is a failure of all those involved that servicemembers do not receive citizenship, unless they specifically do not desire citizenship or had done something during their service which resulted in a dishonorable discharge. Facilitating naturalization in service will go a long way to preventing issues related to deported veterans.

New policies have made naturalization more difficult for immigrant recruits.[3] By extending the amount of time the DoD is required to wait before servicemembers can begin the process, they are no longer able to begin applying during basic training. This Basic Training Initiative, administered by U.S. Citizenship and Immigration Services (USCIS), provided on site resources so enlistees could begin naturalization during basic training was terminated in 2018.[4] Prior to its elimination, the Basic Training Initiative allowed a single controlled point where all immigrant soldiers could learn about and begin the naturalization process.

Difficulties in accessing naturalization resources to continue the naturalization process after basic training has caused problems as well. Deployments abroad, lost applications, unit transfers, lack of access to facilities and other factors affect how quickly servicemembers can apply for naturalization. For example, in 2019 USCIS reduced the number of locations overseas where non-citizen servicemembers can be naturalized from 23 to four. Those deployed may not have any ability to continue the naturalization process at all until they return from their deployment. This could delay their application for months or years through no fault of their own as they serve in the U.S. military.

Some immigrants, particularly those who entered the U.S. Armed Forces in the Military Accessions Vital to the National Interest (MAVNI) program, have had the rules change on them.[5]

---

[3] Statement of Margaret D. Stock. Senate Committee on the Judiciary Subcommittee on Immigration, Citizenship, and Border Safety, June 23, 2021. https://www.judiciary.senate.gov/imo/media/doc/3a.%20Margaret%20Stock%20Testimony.pdf.

[4] "Immigrants in the Military: 5 Things to Know." FWD.us, May 27, 2021. https://www.fwd.us/news/immigrants-in-the-military/.

[5] Lolita C. Baldor, The Associated Press. "How Trump Administration Policies Stymie the Pentagon's Immigrant Recruit Program." Military Times. Military Times, September 30, 2018.

Not only does this cause confusion in the process but leaves them in danger of losing their legal status and subsequent deportation while they wait for their application and security clearances to receive final approval.

There is also a fundamental misunderstanding among immigrant servicemembers on how the naturalization process operates. Many servicemembers and veterans did not receive appropriate information about the application process such as misunderstanding that their oath of enlistment constituted them becoming citizens.

Roughly 200,000 servicemembers transition from the military each year. Transitioning veterans can face multi-layered challenges, including unemployment, poor mental health, and other factors which could result in criminal charges. The process is exacerbated when a non-citizen immigrant veteran transitions from the military, has encounters with law enforcement agencies, and faces deportation. Many veterans are deported due to non-felony crimes. Some of these crimes may even result in being barred from naturalization for life, despite meeting all the other criteria.

Those deported face significant hurdles applying for citizenship or having their cases appealed. Some crimes permanently bar deported veterans from ever returning to the United States. Those not permanently barred must go through the already complicated immigration process to remedy their status. Very few of those deported are allowed to return and receive their citizenship. The toll on these veterans and their families can be severe.[6]

Recommended Solutions

Men and women who served honorably should not face barriers to citizenship or face deportation from the country they served or fought to defend. That is why The American Legion has passed many resolutions as part of our advocacy on the issue of immigrant and deported veterans. Most recently, these include: Resolution No. 15: *Expedited Citizenship Through Military Service*;[7] Resolution No. 10: *Expedited Citizenship Applications For Deported Veterans*;[8] Resolution No. 19: *Oppose Deportation of Non-Citizen Immigrant Veterans*;[9] and Resolution No. 20*: Oppose Deportation of Immediate Family Members of Non-Citizen Immigrant Veterans*.[10] Together these resolutions urge Congress to pass legislation to stop deporting veterans, ensure immigrant servicemembers can expeditiously become citizens, and bring deported veterans home.

Based on these resolutions, The American Legion recommends the following changes:

---

https://www.militarytimes.com/news/pentagon-congress/2018/09/30/how-trump-administration-policies-stymie-the-pentagons-immigrant-recruit-program/.

[6] "Thank You & Goodbye," The American Legion Magazine, June 2021. https://drive.google.com/file/d/12knzujMrNBRSx4J2mMYjuPDJ8F6ERZWA/view?usp=sharing.

[7] The American Legion Resolution No. 15 (2018): *Expedited Citizenship Through Military Service*

[8] The American Legion Resolution No. 10 (2018): *Expedited Citizenship Applications for Deported Veterans*

[9] The American Legion Resolution No. 19 (2021): *Oppose Deportation of Non-Citizen Immigrant Veterans*

[10] The American Legion Resolution No. 20 (2021): *Oppose Deportation of Immediate Family Members of Non-Citizen Immigrant Veterans*

- Implement measures within the DoD to ensure the process of naturalization through honorable military service is completed prior to discharge.
- Maintain the requirement that immigrants must have a completed background check prior to going to basic training but reinstitute the USCIS Naturalization at Basic Training Initiative to provide onsite immigration resources and staff to support recruits beginning the naturalization process.
- Reopen the 19 field offices abroad to support the naturalization process for deployed service members.
- Permit the reopening of naturalization applications that were denied or abandoned when an applicant was unable to follow the naturalization process through to completion.
- Provide training to military recruiters and military chain of command about the naturalization process for servicemembers and veterans.
- Provide expedited citizenship applications and the resources to complete the applications to deported veterans if their discharge is honorable and they do not have a felony conviction.
- On an annual basis, mandate the DoD and the Department of Homeland Security (DHS) to report to Congress the number of non-citizens serving at that time in the U.S. Armed Forces, including in each branch of the military, the numbers of naturalization applications filed by U.S. servicemembers, and the status and results of those applications.
- Cease the deportation of immediate family members of non-citizen servicemembers and veterans who have not been convicted of a felony.
- Allow immediate family members of noncitizen servicemembers and veterans who are at risk of deportation to apply for military "Parole in Place" and "Deferred Action" while in removal proceedings.
- Establish a pathway to lawful permanent residence for immediate family members of noncitizen servicemembers and veterans and strengthen the pathway to citizenship.

H.R. 1182 - Veteran Deportation Prevention and Reform Act

To provide benefits for noncitizen members of the Armed Forces, and for other purposes.

This legislation is a comprehensive reform package that would implement significant reforms across agencies for non-citizen veterans and their families to prevent their deportation. It contains both preventative and remedial measures.

The bill would direct the Department of Homeland Security (DHS) to create a program and application process to allow eligible deported veterans residing outside of the U.S. to return to the country as non-citizens lawfully admitted for permanent residence. The package also calls for the Department of Defense (DoD) and DHS to jointly establish a program to ensure servicemembers and their families have a pathway to citizenship.

Currently, the U.S. lacks consistent statistics on the scope and magnitude of the deportation of U.S. military veterans. In June 2019, the Government Accountability Office found that the U.S. Immigration and Customs Enforcement (ICE) has not tracked the number of veterans who have

been deported or adhering to internal policies regarding potentially removable veterans.[11] Under this bill, the DoD, DHS, and the Department of Veteran Affairs (VA) would be mandated to conduct a joint study and report on all veterans that have been deported in the past two decades. This study would allow Congress to understand better how many veterans have been forcibly removed. In addition, it directs DHS to establish a Military Family Immigration Advisory Committee that would provide recommendations on whether an individual should be granted a stay of removal, deferred action, parole, or be removed from the country.

Through Resolution No. 19: *Oppose Deportation of Non-Citizen Immigrant Veterans*, The American Legion supports legislation allowing a non-citizen veteran who either separated or retired and was honorably discharged not be deported for any non-felony, or if they were deported for a non-felony, that they are allowed to return to the United States; and that non-citizen immigrant veterans should be permitted to complete the process, as if they were still in the military toward lawful permanent residence and citizenship.[12] Too many immigrant veterans who have proudly served our country have been pitilessly deported. We owe it to them to fix this injustice. This legislation will help prevent these deportations from happening.

The American Legion supports H.R. 1182 *as currently written*.

H.R. 1183 - Honoring the Oath Act of 2021

To establish a military family immigration advisory committee, and for other purposes.

This bill protects undocumented members of the Armed Forces and veterans, as well as their families, from deportation proceedings until a Military Family Immigration Advisory Committee assesses each individual case and makes a recommendation to the Department of Homeland Security (DHS) and the Department of Justice (DoJ) on whether the removal proceedings of any of these individuals should continue.

It also mandates that DHS and the Department of Defense (DoD) to jointly carry out a program allowing a non-citizen active duty servicemember (and any non-citizen spouse or minor children of the individual) to become a U.S. citizen if the individual is not otherwise ineligible. The servicemember shall be given the opportunity to apply for citizenship during the accession process into the Armed Forces. DHS shall adjudicate such an individual's application by the last day of the individual's active service in the Armed Forces.

The American Legion notes that the Military Family Immigration Advisory Committee model contained in H.R. 1183 should be seen as an analog to the successful Veterans Treatment Court model employed in criminal justice reforms. Because a veterans treatment court judge handles numerous veterans' cases, he or she is in a much better position to exercise discretion and effectively respond than a judge who only occasionally hears a case involving a veteran defendant.

[11] "Gao-19-416, Immigration Enforcement: Actions Needed to..." Accessed March 21, 2022. https://www.gao.gov/pdf/product/699549.
[12] The American Legion Resolution No. 19 (2021): *Oppose Deportation of Non-Citizen Immigrant Veterans*

A veterans treatment court judge better understands the issues that a veteran may be struggling with, such as substance addiction, PTSD, traumatic brain injury, or military sexual trauma.[13]

Due to the unique stressors of military service, veterans have earned special consideration of the post-service struggles they may encounter. Establishing a Military Family Immigration Advisory Committee model would better ensure that such special consideration is undertaken properly.

Through Resolution No. 15: *Expedited Citizenship Through Military Service*, The American Legion supports legislation that would implement measures within the DoD to ensure the process of naturalization through honorable military service is completed prior to discharge.[14] By strengthening the pathway to citizenship for servicemembers and family members of non-citizen immigrant veterans and servicemembers, this legislation would help ensure this nation honors its promise of citizenship for service and that deportations are minimized as much as possible.

The American Legion supports H.R. 1183 *as currently written*.

INCREASING ACCESSIBILITY, AUTOMATION, AND FINANCIAL SERVICES

H.R. 5916 – Wounded Warrior Access Act

To amend title 38, United States Code, to allow for the electronic request of certain records, and for other purposes.

Currently, veterans are unable to request electronic copies of certain records. The Department of Veterans Affairs (VA) creates a claims folder that contains forms like DD-214s, service treatment records, and nexus letters during the claims process.[15] When veterans want to access these forms, they must physically go to a VA Regional Office or request it by fax and wait for a compact disc to be delivered.[16] These documents are essential to veterans, yet it can take months to receive them.[17] Exacerbating this issue are technology issues. Compact disks are an outdated source of storage for these documents as most personal computers no longer include optical disk drives.

Veterans need access to these forms to file for disability claims and receive VA healthcare and compensation. The American Legion supports VA efforts to adjust its claims process so veterans can quickly request and access these essential documents. This bill would facilitate these efforts by requiring VA to establish and maintain a secure, internet-based website to allow a claimant or their representative to make records requested related to their VA claim. Requests for records must

---

[13] "What Is a Veterans Treatment Court?" Justice for Vets, April 20, 2017. https://justiceforvets.org/what-is-a-veterans-treatment-court/.
[14] The American Legion Resolution No. 15 (2018): *Expedited Citizenship Through Military Service*
[15] Reese, Brian. "*What is a VA C File?*" VA Claims Insider (January 21, 2022), https://vaclaimsinsider.com/how-to-get-your-va-c-file-fast/#2-what-documents-are-in-my-c-file-va.
[16] Department of Veterans Affairs, Veterans Benefits Administration. "Va.gov: Veterans Affairs.*" Request Your Military Service Records (Including DD214)*, 14 Mar. 2022, https://www.va.gov/records/get-military-service-records/.
[17] Department of Veterans Affairs, Veterans Benefits Administration. "Va.gov: Veterans Affairs." *Claims Backlog*, 14 Mar. 2022, https://www.benefits.va.gov/reports/mmwr_va_claims_backlog.asp.

specify in which format the copy is desired. It would be required for VA to notify a requester within ten days that their request has been received and must fulfill the request within 120 days.

The American Legion supports VA efforts to amend the process of requesting access to their disability claims. Inadequate virtual electronic record capacities are often directly linked to delays in a veterans' VA benefits. Veterans have made the ultimate sacrifice and deserve efficient and modern access to their information when filing disability claims.

Through Resolution No. 83: *Virtual Lifetime Electronic Record*, The American Legion supports legislation that mandates Congress to provide oversight to the Department of Defense and VA to ensure the Virtual Lifetime Electronic Record is available for veterans and their families' claims.[18] We support legislative action that ensures veterans have safe, secure, and reliable access to their documents.

The American Legion supports H.R. 5916 *as currently written*.

H.R. 6064

To direct the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine for a review of examinations, furnished by the Secretary, to individuals who submit claims to the Secretary for compensation under chapter 11 of title 38, United States Code, for mental and physical conditions linked to military sexual trauma.

Military sexual trauma (MST) refers to sexual assault or sexual harassment experienced by veterans during military service. The Department of Veteran Affairs (VA) estimates approximately one in three female veterans and one in 50 male veterans have experienced military sexual trauma.[19] According to findings released by the VA Office of Inspector General in 2018, 1,300 claims were denied during five months without due diligence by VA. In 740 cases, the VA incorrectly denied claims before requesting a medical examination.[20] Currently, veterans are being denied access to care and benefits due to insufficient training by VA and their lack of understanding of the complex and sensitive nature of the MST claims process.[21] The American Legion is committed to supporting and standing with survivors of MST as research has shown this can have a long-lasting negative impact on a person's mental and physical health for many years after the veteran leaves the armed services.[22]

---

[18] The American Legion Resolution No. 83 (2016): *Virtual Lifetime Electronic Record*

[19] "Bost Introduces Bill to Improve MST Disability Exam Process," Congressman Mike Bost, November 23, 2021, https://bost.house.gov/press-releases?ID=C7E85790-2756-4FDC-BF54-2FA2624E5071.

[20] Veteran Affairs Office of Inspector General, "Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma, Report No. 17-05248-241, August 21, 2018, https://www.va.gov/oig/pubs/VAOIG-17-05248-241.pdf.

[21] The American Legion. "The American Legion Takes Aim at Inequity in Claims Approvals for MST Survivors." The American Legion, November 18, 2021. https://www.legion.org/veteransbenefits/254331/american-legion-takes-aim-inequity-claims-approvals-mst-survivors.

[22] The American Legion. "Military Sexual Trauma." The American Legion. Accessed March 19, 2022. https://www.legion.org/veteranshealthcare/sexualtrauma.

This legislation would require VA to partner with the National Academies of Sciences, Engineering, and Medicine (NASEM) to review examinations for individuals who submit compensation claims for conditions related to military sexual trauma. The review would determine:

- The adequacy of Disability Benefits Questionnaires and the schedule of rating disabilities
- Whether certain conditions linked to MST should require a mental health and physical health examination referral.
- What credentialing and training are necessary for disability examiners to complete exams related to mental and physical health conditions linked to MST, such as sexual and pelvic dysfunction, musculoskeletal disabilities (e.g., neck injury), and cardiovascular conditions.
- The necessity of internal pelvic exams and alternatives if the veteran does not wish or cannot complete such an exam.

Furthermore, this legislation would require VA to provide a report to the Veteran Affairs Committees with a report on any actions they plan to take because of findings and recommendations in the NASEM study.

Through Resolution No. 18: *Veteran Military Sexual Trauma (MST) Claims Training*, The American Legion supports legislation that mandates VA analyze MST claims volume, assess the consistency of how these claims are adjudicated, and determine the need for additional training on the processing of these claims.[23] We support legislative action that seeks to improve the MST claims process for veterans and mandate MST training for individuals reviewing claims submitted by all veterans who have suffered MST.

The American Legion supports H.R. 6064 *as currently written*.

H.R. 6131 - Veterans Disability Claims Notification Improvement Act of 2021

To amend title 38, United States Code, authorize the Secretary of Veterans Affairs to send an electronic notice to claimants under laws administered by the Secretary.

The Department of Veteran Affairs (VA) continues to adapt and modernize its disability benefits claims programs by using electronic communications. However, current law mandates certain communications be physically mailed, which is less secure and timely than alternative forms of communication. This reliance on paper mail as a means of communication was found unreliable in the wake of the COVID-19 pandemic, with veterans and claimants frequently failing to receive timely communication from VA that delayed their ability to respond to claims decisions and provide necessary evidence in support of their claims.

H.R. 6131 would give VA the authority to provide electronic notice for communications related to a veteran's disability benefits claims, expands the statutory definition of "notice" to include communications issued through electronic and paper means, give veterans the option of receiving

[23] The American Legion Resolution No. 18 (2021): *Veteran Military Sexual Trauma (MST) Claims Training*

notices either electronically or through the mail regarding their disability benefits claims, and reduce the cost of paper mailings resulting in cost savings to VA.

The American Legion believes VA should be efficient in communicating while adjudicating veterans benefits claims. Electronic notifications have more security and reliability so veterans and VA can identify precisely when a message was sent, received, and acknowledged. This legislation will improve the notification process by significantly reducing a large amount of paper correspondence and switching over to electronic notices that will be received instantaneously, increasing the total amount of claims processed. The COVID-19 pandemic presented many challenges for veterans and VA, but improvements with the claim's notification process will help VA reduce the backlog of claims and appeals.[24]

Through Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claim Processing*, The American Legion supports legislation that requires VA to be held accountable for achieving the VA Secretary's stated goal to achieve an operational state for VA in which no claim is pending over 125 days.[25] We support legislative action that seeks to reduce the backlog and ensure veterans can receive VA healthcare promptly.

The American Legion supports H.R. 6131 *as currently written*.

H.R. 6165 - Department of Veterans Affairs Post-Traumatic Stress Disorder Processing Claims Improvement Act of 2021

To require the Secretary of Veterans Affairs to take certain actions to improve the processing by the Department of Veterans Affairs of claims for disability compensation for post-traumatic stress disorder and for other purposes.

The Veteran Benefits Administration's (VBA) compensation program currently distributes disability compensation to more than 1.1 million veterans for post-traumatic stress disorder (PTSD).[26] In their August 2018 report, the VA Office of Inspector General (OIG) focused on the denial rate for PTSD claims connected to military sexual trauma (MST) and found almost half of the claims had been improperly processed.[27] Ultimately, the report concluded the claims processors did not have enough training or understanding of the process to conduct proper protocol in processing the PTSD claims being submitted. The December 2020 OIG report covered claims processed which included roughly 118,000 claims.[28] In reviewing a statistically random sample of

[24] Department of Veterans Affairs, Veterans Benefits Administration. "Va.gov: Veterans Affairs." Claims Backlog. Accessed March 16, 2022. https://www.benefits.va.gov/reports/mmwr_va_claims_backlog.asp.
[25] The American Legion Resolution No. 123 (2021) *Increase the Transparency of the Veterans Benefits Administration's Claim Processing*
[26] Veteran Affairs Office of Inspector General, "Posttraumatic Stress Disorder Claims Processing Training and Guidance Need Improvement," Department of Veteran Affairs, Report No. 20-00608-29, December 9, 2020, https://www.va.gov/oig/pubs/VAOIG-20-00608-29.pdf.
[27] Veteran Affairs Office of Inspector General, "Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma, Report No. 17-05248-241, August 21, 2018, https://www.va.gov/oig/pubs/VAOIG-17-05248-241.pdf.
[28] Veteran Affairs Office of Inspector General, "Posttraumatic Stress Disorder Claims Processing Training and Guidance Need Improvement," Department of Veteran Affairs, Report No. 20-00608-29, December 9, 2020, https://www.va.gov/oig/pubs/VAOIG-20-00608-29.pdf.

150 claims, OIG found 24 of those, about 16 percent, were improperly processed by VBA. Though the evidentiary requirements for a PTSD claim have been relaxed over the years, there is still a high denial rate for this claim.

According to the December 2020 OIG report, VBA needs to increase and improve its training for PTSD claims processors to meet this goal. This legislation addresses the recommendations made in the report by requiring a more robust and standardized training protocol. The bill also calls for establishing a formal review and update process for claims training on an annual basis. Improved training for claims processors would mean VBA is taking the recommendations and implementing the necessary steps to help ensure veterans are receiving the appropriate benefits when filing for PTSD claims.[29]

Through Resolution No. 67: *Military Sexual Trauma,* The American Legion supports legislation that would improve VA's processing of MST claims.[30] The American Legion supports veterans promptly receiving the proper compensation and benefits they are entitled to. We also encourage legislation for VBA to move forward in advancing their training requirements to better care for veterans.

The American Legion supports H.R. 6165 *as currently written*.

Discussion Draft

To amend title 38, United States Code, to update specific terminology related to marriage under the laws administered by the Secretary of Veterans Affairs.

Across the U.S., an estimated one million veterans identify as LGBTQ+; four percent of U.S. adults identify as gay or lesbian. Many of these LGBTQ+ individuals gained equal rights under the landmark *Obergefell v. Hodges* case, which ruled the 14th Amendment required all states to license marriages between same-sex couples and recognize all marriages lawfully performed out of state.[1] This was an extraordinary step for many LGBTQ+ people; however, it created an unforeseen hardship for veterans. This is because a veteran's marital status has a bearing on receiving VA services and benefits.[2] Under current veterans' law, a spouse is defined as a person of the opposite sex.[3]

This has led to many married LGBTQ+ veterans not receiving their earned benefits. Efforts must be made to update VA's terminology to reflect the lawfulness of same-sex marriages, legal since

---

[29] Joe Neguse, "Neguse Introduces Bipartisan, Bicameral Legislative Package to Help Low-income Veterans Pursuing VA Compensation'" Neguse.house.gov, December 1, 2021, https://neguse.house.gov/media/press-releases/neguse-introduces-bipartisan-bicameral-legislative-package-to-help-low-income-veterans-pursuing-va-compensation.

[30] The American Legion Resolution No. 67 (2014): *Military Sexual Trauma*

[1] "Obergefell v. Hodges." Oyez. Accessed March 16, 2022. https://www.oyez.org/cases/2014/14-556

[2] Office, VA Web Solutions. "Veterans Affairs." Go to VA.gov. Accessed March 17, 2022. https://www.va.gov/opa/marriage/.

[3] Office of the Federal Register, National Archives and Records Administration. "38 CFR § 3.1 - Definitions.". Government. Office of the Federal Register, National Archives and Records Administration, June 30, 2014. https://www.govinfo.gov/app/details/CFR-2014-title38-vol1/CFR-2014-title38-vol1-sec3-1

October 2015. The American Legion supports this draft legislation updating VA's marriage terminology by removing the term opposite sex. Since VA has continually promised to foster a more diverse and inclusive environment, moving this legislation through the legislative process would align with this promise. Our nation, and VA, should be safe and inclusive for all veterans – including LGBTQ+ veterans.

Regardless of sexual orientation or gender identity, all veterans are veterans, and they should be treated with the honor and respect they displayed while in service. The American Legion embraces the diversity of veterans who served side-by-side with servicemembers from all walks of life. Resolution No. 5: *Vision, Mission, Values, and Motto of The American Legion* resolves that The American Legion adopts the principle, "A VETERAN IS A VETERAN – which means The American Legion embraces all current and former members of the military." Furthermore, through this resolution, The American Legion has committed itself to being an advocate, "for upholding and defending the United States Constitution, equal justice and opportunity for everyone and discrimination against no one." Ensuring LGBTQ+ veterans' marriages are respected at VA will help to reduce inequalities in the delivery of benefits and ensure they are treated as peers with their fellow veterans.

The American Legion supports this draft legislation *as currently written*.

Discussion Draft

To direct the Secretary of Veterans Affairs to create fact sheets, for veterans and for survivors of veterans, that compare benefits and compensation, to such individuals under laws administered by the Secretary, to monthly insurance benefits under title II of the Social Security Act, and supplemental security income under title XVI of the Social Security Act.

The provisions of this bill fall outside the scope of established resolutions of The American Legion. As a large grassroots organization, The American Legion takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

The American Legion has no position on this discussion draft.

Discussion Draft – Department of Veterans Affairs Principles of Benefits Automation Act

To direct the Secretary of Veterans Affairs to submit to Congress a plan to modernize the information technology systems of the Veterans Benefits Administration, and for other purposes.

The Department of Veterans Affairs (VA) is exploring automation programs to expedite its backlog of disability claims.[31] Through its new office of Automated Benefit Delivery, VA is developing algorithms to analyze veterans' medical evidence to render draft disability rating decisions.

This discussion draft would require the Secretary of Veterans Affairs to submit a plan to Congress on benefits automation based on seven principles:

1) Increasing the speed and accuracy of claims processing decisions.
2) Conducted to enhance the productivity of VA employees.
3) Be carried out to achieve greater consistency in the processing and rating claims by relying on patterns of similar evidence in claims files.
4) By drawing from information in possession of the Department, other Government agencies, and applicants for benefits.
5) Should not be end-to-end or lack intermediation.
6) Employees of the Department should continue to make decisions with respect to the approval of claims and the granting of benefits.
7) Should not be carried out in a matter that reduces or infringes upon the due process rights of applicants for benefits or the duties of the Secretary to assist and notify claimants.

Research suggests that the inevitability of automation by government agencies will improve efficiency and effectiveness.[32] The American Legion believes VA must continue to adapt and be on the cutting edge of this technological innovation to address the rising claims backlog. However, the "human element" must not be removed from the claims adjudication process.[33] This discussion draft would safeguard against the improper use of automation that could infringe upon veterans' right to due process or the VA's duty to assist veterans and their dependents. The American Legion is especially encouraged that the bill includes language that mandates the Secretary's duty to assist and notify claimants.

Through Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claims Processing*, The American Legion supports legislation to assist VA in achieving an operational state in which no claim is pending over 125 days. All claims have an accuracy rate of

[31]Heckman, Jory. *"VA launches automation pilot to process veteran disability claims faster."* Federal News Network. January 18, 2022. Last accessed Mar. 21, 2022. https://federalnewsnetwork.com/veterans-affairs/2022/01/va-launches-automation-pilot-to-process-disability-claims-faster/.

[32] West, Darrell M. "*How robotic process and intelligent automation are altering government performance*." Brookings Institute. November 16, 2021. Last accessed March 21, 2021. https://www.brookings.edu/research/how-robotic-process-and-intelligent-automation-are-altering-government-performance/.

[33] Microsoft Teams meeting with Robert Reynolds and Paul Shute, VBA Office of Automated Benefit Delivery, March 11, 2022

98 percent or higher.[34] The prudent use of automation in the processing of veterans' claims for benefits should help reduce the claims backlog and deliver benefits to veterans more quickly.

The American Legion supports this discussion draft *as currently written*.

Discussion Draft – Modernizing Department of Veterans Affairs Disability Benefits Questionnaires Act

To direct the Secretary of Veterans Affairs to submit to Congress a plan to modernize the information technology systems of the Veterans Benefits Administration, and for other purposes.

Disability Benefits Questionnaires (DBQs) provide clinicians with a standardized form to perform both disability examinations and Compensation and Pension (C&P) exams. This discussion draft would require VA-contracted healthcare providers to transmit DBQ data in machine-readable format to ensure the compatibility of their documents with Veterans Benefits Administration (VBA) systems. Documents commonly scanned and sent in a PDF (Portable Document Format) cannot be "read" by machines and present compatibility, analytics, and data extraction challenges.

To leverage the utility of machine-readable documents, uniformity and standardization in data formats and processing are needed.[35] Requiring VA-contracted healthcare providers to transmit DBQ data in machine-readable format would ensure the compatibility of their documents with VBA systems. The use of machine-readable documents by VA contractors should help to improve the quality and timeliness of C&P Examinations and contribute to an overall reduction in the claims backlog.

The American Legion applauds the Committee's focus on automating VBA processes but encourages a deeper technical review of this discussion draft's language. To accommodate all VA contracted clinicians, The American Legion recommends adding "assigned to or" before "selected" on Page 3, Line 2. In most cases, veterans are assigned to VA-contracted medical staff for Compensation & Pension Exams.

Through Resolution No. 14: *Quality Assurance for Department of Veterans Affairs (VA)*, The American Legion urges Congress to pass legislation that will ensure the quality and timeliness of C&P examinations performed by VA contractors and provide veterans with professional, high-quality service.[36]

The American Legion supports this discussion draft *with changes*.

[34] The American Legion Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claim Processing.*

[35] U.S. General Services Administration. "A Primer on Machine Readability for Online Documents and Data." Data.gov. Sept. 24, 2012. Accessed March 21, 2022. https://data.gov/developers/blog/primer-machine-readability-online-documents-and-data/.

[36] The American Legion Resolution No. 14 (2021): *Quality Assurance for Department of Veterans Affairs*

Discussion Draft – Expediting Temporary Ratings for Veterans Act

To direct the Secretary of Veterans Affairs to modify the information technology systems of the Department of Veterans Affairs to provide for the automatic processing of claims for certain temporary disability ratings, and for other purposes.

This discussion draft would mandate the Secretary of Veterans Affairs to provide automatic processing of claims for temporary disability ratings no later than one year after the legislation's enactment. Unique inefficiencies impacting the Veterans Benefits Administration's (VBA) processing of temporary disability ratings have been identified as a backlog barrier for more than nine years. In February 2013, Department of Veteran Affairs (VA) Inspector General Linda Halliday reported that Office of Inspector General (OIG) inspections at VA Regional Offices "have continued to report systemic problems in VBA's processing of temporary 100 percent disability ratings. We found inaccuracies in 66 percent of the cases we reviewed. These errors resulted in over $15.5 million in overpayments and almost $293,000 in underpayments."[37]

Inspector General Halliday noted further in her 2013 testimony that "VBA agreed to review temporary 100 percent evaluations to ensure proper controls existed to process these evaluations correctly; however, VBA's efforts have not been aggressive enough to address this issue effectively."[38] Processing problems caused substantial financial errors and contributed to unreasonable delays in processing and deciding such claims. According to VBA's Office of Automated Benefit Delivery, the average wait time once stood at 1,000 days.[39]

The time it takes for VA to grant a temporary disability rating ranges from a couple of weeks to several months – there is no consistency. Veterans should receive their benefits in a consistent and timely manner. Increased automation can help to reduce the claims backlog and deliver benefits more efficiently. Additionally, automation could help reduce the variability in the time it takes to make rating decisions for temporary disability claims.

Through Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claim Processing*, the American Legion urges Congress to pass legislation requiring VA to be held accountable for achieving an operational state of no claims over 125 days with an accuracy rate of 98% or higher.[40]

The American Legion supports this discussion draft *as currently written*.

---

[37] "*The 100% Temporary Disability Rating: An Examination of Its Effective Use."* Hearing before the Subcommittee on Disability Assistance and Memorial Affairs of the Committee on Veterans' Affairs, U.S. House of Representatives. Last accessed March 21, 2022. https://www.govinfo.gov/content/pkg/CHRG-113hhrg78764/html/CHRG-113hhrg78764.htm.

[38] Ibid.

[39] Microsoft Teams meeting with Robert Reynolds and Paul Shute, VBA Office of Automated Benefit Delivery, March 11, 2022.

[40] The American Legion Resolution No. 123 (2016): *Increase the Transparency of the Veterans Benefits Administration's Claim Processing*

SURVIVOR BENEFITS

Discussion Draft

To amend title 38, United States Code, to ensure continued eligibility for dependency and indemnity compensation on a basis other than age for certain surviving spouses who remarry and for other purposes.

The Department of Veteran Affairs (VA) mission statement clearly states that caring for surviving spouses and children will always be a vital mission for VA. Surviving spouses face the unfair burden and loss of granted survivor benefits if they remarry before a federal government-imposed age limit. Under current law, a veteran's surviving spouse who remarries after the veteran's death will remain eligible for the Dependency and Indemnity Compensation (DIC) after the veteran's death only if the spouse is at least 55 years old. This arbitrary age limit harms the surviving spouse and breaks the sacred oath of taking care of the families of the fallen.[41] The loss of DIC benefits through remarriage puts an unfair burden upon grieving spouses where the widow must wait to remarry and begin new families.

The American Legion believes surviving spouses should not lose benefits when remarrying. We support survivors throughout their lives, and this burden of an arbitrarily set age limit should never be a factor when deciding to remarry. The widow's age is an irrelevant factor when determining eligibility for DIC. This legislation would ensure the continued eligibility for dependency and indemnity compensation would not be on the basis of age. Through Resolution No. 36 *Prevent Gold Star Spouses Loss of Benefits,* the American Legion supports legislation that spouses should not lose benefits when remarrying.[42]

The American Legion supports this discussion draft *as currently written*.

Discussion Draft – The Honoring Our Promise Act

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to improve equitable access to certain Department of Veterans Affairs benefits for veterans' survivors and other purposes.

The Department of Veterans Affairs (VA) collects information for demographics for the veteran population. Still, VA does not collect any demographic data on the surviving family members who remain eligible for VA benefits after the veteran passes away. Surviving family members are tasked to navigate VA's benefits system with no prior experience with VA. Many survivors feel abandoned by VA after a veteran's death by the same system that promised to support them. Underserved veteran populations, such as rural and minority veterans and their surviving spouses, often face barriers when seeking earned benefits due to their geographic location and access to VA health centers. There is a significant lack of outreach programs available to these underserved and

[41] The Department of Veterans Affairs., "The Department of Veteran Affairs," Go to VA.gov, January 1, 2005, https://www.va.gov/about_va/mission.asp.
[42] The American Legion Resolution No. 36 (2021): *Prevent Gold Star Spouses Loss of Benefits*

minority populations. VA must take steps to raise awareness and educate every surviving spouse on their available benefits.

The American Legion believes in supporting surviving family members. These families should never feel abandoned by VA after the veteran's death in the grieving process. The entire nation is responsible for easing the grief of surviving spouses, especially the underserved population. The significance should not be forgotten when allocating resources annually to survivors as the very mission statement of VA is "To fulfill President Lincoln's promise 'To care for him who shall have borne the battle, and for his widow, and his orphan' by serving and honoring the men and women who are America's Veterans."[43] This legislation fulfills that promise by mandating VA to consult with Advisory Committees for veteran minority groups, spouses and dependents, caregivers, survivors, and VSOs to develop a method for collecting demographic data of each covered survivor in receipt of survivor benefits.

Through Resolution No. 6 *Minority Veterans,* the American Legion supports legislation that mandates VA to increase outreach programs and services to minority veterans through awareness campaigns, benefits education, and community organizations.[44] We support legislative action to ensure VA meets the healthcare needs of all current and future minority veterans.

The American Legion supports this discussion draft *as currently written*.

Discussion Draft– The Survivor Solid Start Act

To amend title 38, United States Code, to improve outreach by the Secretary of Veterans Affairs to dependents of deceased veterans, and for other purposes.

U.S. military service is a life of sacrifice, long days away from home, and countless stressors borne by the military family. One of those stressors is the threat of their loved one passing during service. The military family is an integral part of the U.S. military support system. In cases where service members die, surviving family members are forced to navigate through VA's bureaucracy with little experience dealing directly with VA. After losing a loved one, they are often overwhelmed with grief and unaware of available resources. These resources include funeral and burial benefits, death gratuity, survivor benefit plan, dependency and indemnity compensation, and VA home loans, to name a few.[45]

Unfortunately, surviving spouses and children have reported to The American Legion about feeling as though VA abandoned them after the death of a loved one as they struggled to navigate the VA system and access these benefits. In some cases, family members have described dealing with VA customer service representatives who lacked tact when communicating about their benefits and the death of a loved one. Legislation that strengthens education and outreach on family survivor benefits should be enacted to address this issue.

[43] "Mission, Vision, Core Values & Goals." VA.gov, January 1, 2005. https://www.va.gov/about_va/mission.asp.
[44] The American Legion Resolution No 6 (2020): *Minority Veterans*
[45] Office of Public and Intergovernmental Affairs, "Veterans Affairs," Go to VA.gov (US Department of Veteran Affairs, September 1, 2016), https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5744.

This legislation would require VA to provide outreach services by telephone to each eligible dependent at least once each quarter of every calendar year until the eligible dependent files a claim for a benefit. If the eligible dependent is a minor child, VA will provide these outreach services to their legal guardian. Outreach services provided to the dependent would include information on the Office of Survivors Assistance and information regarding aid in filing a benefits claim. In developing and revising the materials provided to the eligible dependent, VA would have to consult with veteran service organizations, the Advisory Committee on Women Veterans, and the Advisory Committee on Minority Veterans.

Through Resolution No. 36: *Prevent Gold Star Spouses Loss of Benefits*, The American Legion supports legislative efforts to ensure family members do not lose benefits.[46] We must work to ease the grief of families by facilitating a quick and smooth benefits application process. The last thing any family member should have to worry about after losing their loved one, who died honorably serving our nation, is having their grief exacerbated by an inadequate, insensitive, and bureaucratic VA system.

The American Legion supports this discussion draft *as currently written*.

CONCLUSION

Chairwoman Luria, Ranking Member Nehls, and distinguished members of the Disability Assistance and Memorial Affairs Subcommittee, the American Legion thanks you for your long-standing work to fulfill the needs of the veteran population and for allowing us the opportunity to explain the position of our nearly two million members on these relevant legislative matters. For additional information regarding this testimony, please contact Mr. Advaith Thampi at The American Legion's Legislative Division at (202)-263-2986 or AThampi@legion.org.

[46] The American Legion Resolution No. 36 (2021): *Prevent Gold Star Spouses Loss of Benefits*