TESTIMONY
OF
KENNETH HARMAN
BENEFITS POLICY ANALYST
VETERANS' AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
LEGISLATIVE HEARING
ON
"PENDING LEGISLATION"

JUNE 24, 2025

EXECUTIVE SUMMARY

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Chairman Luttrell, Ranking Member McGarvey, and distinguished members of the subcommittee, on behalf of National Commander James LaCoursiere Jr. and more than 1.5 million dues-paying members of The American Legion, we thank you for the opportunity to offer our written testimony regarding proposed legislation.

The American Legion is guided by active Legionnaires who dedicate their time and resources to serve veterans, service members, their families, and caregivers. As a resolutions-based organization, our positions are directed by more than 106 years of advocacy and resolutions that originate at the post level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

H.R. 3123: Ernest Peltz Accrued Veterans Benefits Act

To amend title 38, United States Code, to make certain improvements to laws relating to the payment of certain benefits administered by the Secretary of Veterans Affairs, and for other purposes

The death of a family member is a traumatic and disorienting life event that leaves lasting emotional and financial impacts on family members that can last for months, even years. For the families of veterans, this period is often compounded by the need to navigate complex responsibilities such as notifying life insurance providers, arranging burial services, executing wills, and navigating the Veterans Affairs' (VA) daunting benefits process to receive pending financial support. According to VA National Center for Analysis and Statistics, there are approximately 9,823,792 veterans between the ages of 60 to 85 years of age or more.[1] Of these veterans, 7,808,106 aged 65 and older live at or below the poverty threshold.[2] These figures underscore the importance of ensuring surviving spouses can receive any accrued or pending

[1] U.S. Department of Veterans Affairs, National Center for Veterans Analysis and Statistics. *Veteran Population*. Accessed June 16, 2025. https://www.va.gov/vetdata/veteran_population.asp.
[2] Statista. "Poverty Status of U.S. Veterans by Age 2022." Accessed June 16, 2025. https://www.statista.com/statistics/250310/poverty-status-of-us-veterans-by-age/.

benefits for the month of the veteran's death. For low-income families, expeditious and timely access to these benefits can ease the burden of an already difficult time.

H.R. 3123 aims to correct any potential injustices by improving the reclamation process for spouses and identified family members by safeguarding remaining entitlements and preventing VA from collecting benefits approved and owed at the time of death. The American Legion supports this effort through Resolution No. 281 which has RESOLVED that veterans medical, compensation, pension, and readjustment allowances shall not be considered mere benefits and entitlements under the law but shall be considered rights. These benefits were hard earned through the tireless dedication of our nation's veterans. Not only do these families deserve these benefits, but they also deserve the gratitude of a grateful nation.

We respectfully submit our recommendation of the following amendment(s):

Require the Secretary to maintain veterans' Power of Attorney for 90 days after death, allowing the veterans' widow or Next of Kin to utilize the benefits of an accredited service officer to represent their interests.

The American Legion supports H.R. 3123 with amendments.

H.R. 3627, Justice for America's Veterans and Survivors Act

To amend title 38, United States Code, to direct the Secretary of Veteran Affairs to submit an annual report that contains data and information on the causes of deaths among veterans, and for other purposes.

When a dependent survivor files a VA claim for Dependency and Indemnity Compensation (DIC), current regulations under 38 C.F.R. § 3.312 already stipulates for VA to examine if a veteran's cause of death was due to a primary service-connected disability or secondary contributing factors.[3] DIC may be payable when the cause of death is (a) any condition listed on the death certificate matches with one of the veteran's service-connected disabilities, (b) the cause of death is an approved presumptive disability, or (c) when requirements are met under 38 U.S.C. § 1318 for veterans rated as "total."[4]

The endeavor to produce an accurate death certificate (e.g., death due to health complications from a presumptive toxic exposure, a secondary conditions related to a service-connected disability such as fibromyalgia, or misuse of pain medications to treat a service injury) is complicated by the fact that county coroners or state medical examiners not tied to the Veterans Health Administration (VHA) system are often tasked with making the initial death determination without being trained to identify if the death was incurred by military service-connected injuries such as TBIs, PTSD, or substance misuse to manage pain. In fact, county coroners and medical examiners may not even be aware that the deceased person was a former service member.

[3] U.S. Department of Veterans Affairs. "38 CFR § 3.312 – Cause of Death." *Electronic Code of Federal Regulations*. Accessed June 16, 2025. https://www.ecfr.gov/current/title-38/chapter-I/part-3/subject-group-ECFR3d1ed1c9d24c813/section-3.312.
[4] Ibid

The Centers for Disease Control and Prevention (CDC) has acknowledged the need for better training "to improve the quality and accuracy of death scene investigations" provided by responders of emergency medical technicians, police, medical examiners, and coroners when contributing to the compiled data used in the National Veteran Suicide Prevention Annual Report (NVDRS).[5] Furthermore, the CDC acknowledges that the investigative process to collect up to 600 data plots when determining the manner of death often requires 16 months to make.[6]

This long process to determine a service-connected death is detrimental for survivors, who are unable to readily access VA compensation and benefits upon a veteran's death. Both timely and accurate death determinations are paramount to ensure that survivors can access certain survivors' financial safety net funds and receive appropriate linkage to postventions (such as VA bereavement services). To ease this burden and ensure that dependent survivors can readily tap into necessary resources, VA must improve its data collection and cause-of-death identification process.

Rep. Edwards' proposed legislation addresses this inefficiency by mandating the Secretary of VA to better track and annually report how each veteran died, whether through natural causes or a service-connection (especially for those with a mental health condition), and whether the veteran was rated as 100% composite or "total" qualifying for survivors DIC benefits. The American Legion can support via Resolution No. 3: *Accuracy in Reporting Survivor Benefits and COVID-19*, which supports legislation requiring VA to seek independent medical opinions and veterans' military medical history that are chronic and are factors in the veterans demise when claims for survivors' benefits are compromised by medical complexities and controversies (i.e. COVID-19, pandemic disease, etc.), that may influence or alter cause of death as recorded on a veteran's death certificate.

The American Legion supports H.R. 3627 as currently written.

H.R. 3951, Rural Veterans' Improved Access to Benefits Act

To amend the Veterans' Benefits Improvements Act of 1996 and the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 to improve the temporary licensure requirements for contract health care professionals who perform medical disability examinations for the Department of Veterans Affairs, and for other purposes.

While physicians working under the federal supervision of the Department of Veterans Affairs (VA) were already allowed to work across state lines since 2016, new temporary authorities signed into public law under the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* afforded these temporary authorities to VA nurse practitioners, physician assistants, psychologists, and audiologists so that they were allowed to conduct wellness contacts and disability exams across state lines too. The Government Accountability Office (GAO)

[5] U.S. Department of Veterans Affairs, Office of Mental Health and Suicide Prevention. *National Strategy for Preventing Veteran Suicide 2018–2028*. Washington, DC: U.S. Department of Veterans Affairs, 2018. Accessed June 16, 2025. https://www.mentalhealth.va.gov/suicide_prevention/docs/Office-of-Mental-Health-and-Suicide-Prevention-National-Strategy-for-Preventing-Veterans-Suicide.pdf.

[6] Jones, Christopher M. *Reducing Military and Veteran Suicide: Testimony Before the House Veterans' Affairs Subcommittee on Economic Opportunity*. Centers for Disease Control and Prevention, June 15, 2022. https://www.cdc.gov/washington/testimony/2022/t20220615.htm.

discovered that the optometry and dental fields were accidentally omitted and teleworking across state lines with improper authority.[7] These license portability authorities played a pivotal role during the height of COVID-19 pandemic, especially when VA suspended all in-person medical exams for disability benefits.

More importantly, the *Veterans Health Care and Benefits Improvement Act of 2020* also included a provision which granted certain types of Veterans Benefit Administration (VBA) contracted-out health care providers the authority to temporarily conduct medical exams across state lines and in states where they did not hold a medical license.

Per GAO testimony, "The temporary expansion of license portability helped expand their exam reach to rural and high-need areas and increase veterans' access to specialists and experienced examiners."[8] Additionally, GAO noted a heavier reliance on VA-contracted vendors to administer VA Compensation and Pension (C&P) medical exams. From 2017, VA had migrated its examination workload from almost a 1:1 ratio of having both VHA-employed and VBA-contracted out medical examiners conduct the disability exam to almost a 3:1 ratio by 2021 where many of the disability claims exams are shifted to VA-contracted examiners.[9]

With the influx of new types of disability claims from the monumental passage of *Honoring Our Promise to Address Comprehensive Toxics (PACT) Act*, ensuring that VA-contracted examiners have their license portability extended to continue teleworking in rural clinics and across stateliness is pivotal in addressing VBA current disability claims backlog. Upon rollout, by July 2023 VBA had 401,107 new disability claims concerning toxic exposures still pending examination review and processing.[10] As of this week, there were still 353,474 PACT Act-related disability claims with an average day for completion (ADC) of 165.8 days. Also as of this week, there were 523,719 non-Pact Act related disability claims pending with an ADC of 128 days.[11] Now is not the time to allow a statutory sunset clause to go into effect this December. Time is of the essence to extend this arrangement, as VA-contracted vendors have played an integral role in the past and will continue to do so for the foreseeable future.

Furthermore, extending license portability of authorities to address VA's claims backlog is not the sole issue; VA must provide better oversight in the accuracy of ordered medical exams. This is because a July 2022 VA Office of Inspector General (OIG) report noted VA's lack of quality assurance and oversight over VA-contracted medical examiners, where one vendor company had

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[7] U.S. Government Accountability Officer (GAO*), VA Disability Exams: Opportunities Remain to Improve Program Planning and Oversight,* GAO-23-106939 (Washington, DC, 2023), accessed May 29, 2025, https://www.congress.gov/118/meeting/house/116269/witnesses/HHRG-118-VR09-Wstate-CurdaE-20230727.pdf

[8] Ibid

[9] Ibid

[10] VSO Liaison Martin Caraway, "Q3 PACT Act Offsite slides *Planning for Success"* (presentation, 3rd Quarter *PACT Act* Offsite VSO conference in Boston, MA July 15-16, 2023).

[11] https://department.va.gov/pactdata/interactive-dashboard/, accessed on May 29, 2025.

an accuracy rating of 66%, 74%, and 71% for the years of 2018-2020.[12] This accuracy rate falls well below former VA Secretary Eric Shinseki's stated goal of adjudicating all disability veterans' claims within 125 days with a 98% accuracy rate.[13]

The American Legion supports this legislation through Resolution No. 14: *Quality Assurance for Department of Veterans Affairs (VA) Contracted Compensation and Pension (C&P) Examinations*, which urges Congress to pass legislation that will ensure the quality and timeliness of C&P examinations performed by VA contractors, and ensure that they provide veterans with professional, high-quality service.

The American Legion supports H.R. 3951 as currently written.

H.R. 3835, Veterans Appeals Efficiency Act

To amend title 38, United States Code, to improve the efficiency of adjudications and appeals of claims for benefits under laws administered by Secretary of Veteran Affairs, and for other purposes.

The Board of Veterans Appeals (BVA or "the Board") reviews appeals filed by veterans and dependents from adverse decisions. Appeals filed from decisions made before the Appeals Modernization Act (AMA) effective date of February 19, 2019, are called Legacy appeals. Here, Legacy appeals following a remand by the Court of Appeals for Veterans Claims (CAVC) are allowed to keep their original place in docket order. For both Legacy and AMA claims, current law and regulations place priority on the docket for veterans who are 75 years or older, those facing serious illness, or those under serious financial hardship.

The American Legion Service Officers (VSOs) have long noted issues with BVA being excessively stringent on the interpretation and application of 38 U.S.C. § 7107, where they believe the legal standard of "good cause" was met by the client, yet priority placement on the docket was denied. For instance, VSOs had clients who were temporarily staying with friends or family after an eviction or inability to pay rent. While these veterans are technically not homeless, their circumstances fall squarely within the intent of section 71017. Other examples of financial hardships that were denied priority placement on the docket were veterans with accrued medical debt for treatment of primary/secondary conditions that have yet to be adjudicated as service-connected, pushing veterans further and further into dire financial distress. BVA's current strict interpretation of "seriously ill or financial hardship" category has missed its mark and ignored the original reasons for allowing advancement on the docket rules. A review of current practices is overdue.

To reduce BVA's appeals backlog, this proposed legislation would require an annual progress report be delivered to Congress with the following information:

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[12] U.S. Department of Veterans Affairs Office of Inspector General (OIG), *Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions.* Report #21-01237-127 (Washington, DC, 2022), accessed May 29, 2025, *https://www.oversight.gov/sites/default/files/documents/reports/2022-06/VAOIG-21-01237-127.pdf*

[13] U.S. Department of Veterans Affairs, "Breaking the Back of the Backlog: Transformation Plan Aims for 2015 Claims Goal." https://www.vba.va.gov/transformation/

- Cases in which an adjudicator failed to comply with a relevant decision of the Board
- Cases where an Agency of Original jurisdiction (AOJ) did not satisfy the Duty to Assist (DTA) guidelines
- Number of claims filed in the National Work Queue (NWQ) still pending office assignment for adjudication
- Number of cases pending before The Board
- Number of cases afforded expeditious treatment
- Number of cases were remanded by the Court of Appeals for Veterans Claims
- Number of cases are seeking continuous pursuit

Especially for the last metric, The American Legion and other Veteran Service Organizations (VSOs) have long called for the VBA to improve its process to assign correct effective dates. VBA's current computer code uses the same End Product (EP) for Supplemental Claims reopening a decision and Supplemental Claims that are continuously pursued. As a result, VBA's computer system is not able to accurately track effective dates, resulting in individual VBA adjudicators having to manually fix the effective back date. Improved metrics on the frequency of this error may help prompt VBA to adopt technological solutions.

The American Legion welcomes the reporting of these metrics, as it would provide more transparency and pinpoint VBA's workflow bottlenecks. The American Legion notes that the Social Security Administration (SSA) established data reporting and analysis for its disability adjudication process in the previous decade, and has reported improved consistency and quality of its case reviews. Furthermore, SSA's data-informed decisions allowed training opportunities and staff feedback which resulted in improved accuracy and helped inform agencies with differences between agency and federal court interpretation of agency policies.[14] Moreover, The American Legion notes SSA's published report on the data analysis which drove conversations on how to create more effective, efficient policies at lower cost, and we believe that similar data analysis requirements for VBA's disability claims process could drive similar benefits.

Lastly, the proposed legislation would grant the Board Chairman authority to aggregate claims involving similar factual or legal issues for quicker resolution as a collective group, rather than adjudicate each similar case individually, as BVA currently does. BVA would also be authorized to request an opinion from the VA's Office of General Counsel if an appeal or group of appeals involves a question of law that would benefit from such an opinion.

We respectfully submit our recommendation of the following amendment(s):

Allowing the Board Chairman to aggregate common questions of law or fact should include a provision that when this is done, notice is provided to Congressionally chartered VSOs.

In ordinary civil litigation, when a Court certifies a class, some kind of notice is generally provided to others affected by the litigation so that they may protect their interests. Even with the best of

[14] Ray, Gerald K, and Jeffrey S Lubbers. "A Government Success Story: How Data Analysis by the Social Security Appeals Council (with a Push from the Administrative Conference of the United States) Is Transforming Social Security Disability Adjudication." The George Washington Law Review, September 2015. https://www.gwlr.org/wp-content/uploads/2015/11/83-Geo-Wash-L-Rev-1575.pdf.

intentions, it is quite possible that a group of cases aggregated by the Board will not be representative of all veterans affected by an issue, will not contain the most relevant medical or other evidence bearing on the issue, or will not consider all legal provisions bearing on the issue. Accordingly, VSOs must be provided with the basic elements of due process when the Board aggregates claims: notice and the opportunity to respond. This will ensure that the outcome of the aggregation is fully informed and as relevant as possible to meet the needs of the larger veteran benefits system.

Through Resolution No. 5: *Department of Veterans Affairs Appeals Process*, The American Legion supports any legislation that calls on VA to address all claims, to include its growing inventory of appeals in an expeditious and accurate manner. Furthermore, Resolution No. 5 resolves VA to create no program that diminishes a veteran's due process rights. The American Legion supports proposed legislation with the abovementioned recommended changes.

The American Legion supports H.R. 3835 with amendments

H.R. 3834, Protecting Veterans Claim Options Act

To amend title 38, United States Code, to clarify the jurisdiction and certain rules of evidence of the Board of Veterans' Appeals.

The passage of the Appeals Modernization Act (AMA) of 2017 was a monumental piece of legislation designed to streamline the Board of Veteran Appeals (BVA) claims appellate process to reduce the growing backlog.[15] This gave veterans more control over their claims by expanding access to three lanes in which veterans can seek adjudication of their claim. The previous appellate process consisted of just two pathways: the appealing and decision review officer (DRO) process. The change gave more control to the veteran by offering them the ability to submit supplemental claims, request a higher-level review, or appeal directly to the Board.

Since the passage of the AMA, there have been growing concerns with the rigidity of the process, specifically supplemental evidence submission and remands. Procedural technicalities such as the ever-changing requirement for "new and relevant" evidence was being used to remand or dismiss appeals without full review. A 2023 Government Accountability Office (GAO) report noted that Court of Appeals for Veterans Claims (CAVC) and Board data show that over the past three fiscal years, CAVC remanded roughly 80% of appealed Board decisions, often because CAVC found the Board's explanation of its findings to be inadequate.[16] Additionally, there was confusion and inconsistency about what evidence could be submitted, and what would be included. This process and procedural inconsistency prevented veterans from having a truly fair opportunity to have their claims fully reviewed.

The legislation seeks to add a new section which states that the Board may not deny relief solely on the basis that the appellant did not present or secure new and relevant evidence regarding a

[15] Appeals Modernization Act PUBLIC LAW 115–55—AUG. 23, 2017, PUBL055.PS

[16] VA DISABILITY BENEFITS Board of Veterans' Appeals Should Address Gaps in Its Quality Assurance Process GAO-24-106156, VA DISABILITY BENEFITS: Board of Veterans' Appeals Should Address Gaps in Its Quality Assurance Process

supplemental claim. Additionally, the bill provides the claimant the opportunity to provide evidence after a CAVC remand to the Board, preserves the veterans' place on the docket, and allows expeditious adjudication from the Board. Lastly, it prevents bureaucratic dismissal of claims and ensures a merit-based review is conducted providing veterans with due process under section 5108(a).[17]

The American Legion recognizes Congress' efforts and commitment to reducing the backlog and providing statutory recourse for veterans to obtain timely access to their earned benefits. Providing a 90-day evidentiary window following a remand from the Court of Appeals for Veterans Claims would end the remand cycle for veterans able to substantiate their claims based upon the guidance provided in a Court decision. The process of appealing to the Court frequently reveals evidence missing from the record before VA or clarifies precisely what additional facts must be proven to grant a claim. Allowing Veterans to submit this new evidence directly to the Board will reduce administrative churn and allow Veterans to access their earned benefits more efficiently. We further support this legislation through Resolution No. 5: *Department of Veterans Affairs Appeals Process.*

We respectfully submit our recommendation of the following amendment(s):

During the 90-day evidentiary window, if the veteran provides favorable, supplemental evidence post court remand that, the Board Veterans Law Judge shall consider the additional evidence and render a decision for the veteran.

The American Legion Supports H.R. 3834 with amendments.

H.R. 3833, Veterans' Caregiver Appeals Modernization Act

To amend title 38, United States Code, to make certain improvements to the program of the Department of Veterans Affairs to provide comprehensive assistance for family caregivers of eligible veterans, and for other purposes.

The American Legion supports the underlying premise of this legislation and if it is the intent of Congress to retain eligibility determinations for Program of Comprehensive Assistance for Family Caregivers (PCAFC) to remain with the Veterans Health Administration. The American Legion supports the bill.

We do, however, respectfully submit our recommendation for a significant amendment:

Transfer the adjudication of eligibility for the PCAFC from the Veterans Health Administration (VHA) to the Veterans Benefits Administration (VBA).

We do not make this proposal lightly. This is not merely an administrative shift; it provides structural correction grounded in law, logic, and fairness.

[17] 38 USC Ch. 51: CLAIMS, EFFECTIVE DATES, AND PAYMENTS 38 USC Ch. 51: CLAIMS, EFFECTIVE DATES, AND PAYMENTS

The US Court of Appeals for Veterans Claims ruled that PCAFC determinations are legal and subject to appellate rights via the Board of Veterans' Appeals. VBA currently has the technological infrastructure, statutory mission and benefit accountability to fairly and transparently adjudicate PCAFC eligibility. VHA has systemic and statutory restrictions to providing a representative access to systems needed to review evidence weighed in a PCAFC determination. VBA is in custody of key determining factors such as the service-connected disabilities and their degree of severity, which are critical to determine basic eligibility to PCAFC. Furthermore, PCAFC determinations are very similar to the adjudication of special monthly compensation based upon the need for aid and attendance, which is already performed by VBA as both require an assessment of the veteran's need for help with activities of daily living. Thus, VBA already has substantive competence in making these determinations. Moreover, unifying the adjudication of these benefits in VBA will dramatically reduce the potential for inconsistent findings between VHA and VBA regarding a veteran's need for help with activities of daily living.

VBA's Veteran Benefit Management System (VBMS) allows accredited service organizations like the American Legion full access to evidence being weighed to make an eligibility determination, supplemental claims process and allows representatives to participate meaningfully in the appeals process in alignment with 38 CFR § 14.631. VBMS currently has the technical capabilities to integrate with the Board's Caseflow software.

At the time of PCAFCs creation in 2010, VA was working other monumental Veteran Benefit packages moving through Congress simultaneously, presumptive conditions for agent orange exposed Veterans with a Nehmer review, and the Post 9-11 GI Bill. In that context, it was determined that VHA with its clinical work would implement the PCAFC. VHA should still maintain all care, respite services and caregiver support, while allowing VBA to make the initial legal determination of eligibility that aligns more closely with Title 38 programs.

The American Legion believes this is a critical program, and shifting the legal adjudications to VBA aligns with legal classification of the benefit, enhances transparency and accountability, leverages existing infrastructure, and streamlines Congressional oversight and GAO auditing of systemic shortcomings.

The American Legion supports H.R. 3833 with amendments.

H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act

To direct the Secretary of Veterans Affairs to submit a plan to expand the use of certain automation tools in the Department of Veterans Affairs, and for other purposes.

In 2022, Congress passed the PACT Act. This groundbreaking legislation expanded VA eligibility for many veterans who were exposed to toxic substances while they served. While applauded by the veteran community, including The American Legion, this also led to a large backlog in veterans claims to be processed that has lasted the past several years. As of May 2025, this backlog sits at

around 200,000 claims, leading the VA to reinstate mandatory overtime to help address the backlog.[18]

The American Legion has testified many times on the problems that the post-PACT Act claims backlog has caused for veterans and as recently as April 2025, noted that The Veterans Benefits Administration (VBA) was still not adequately prepared to absorb this surge in claims. "While the law's intent was to improve outcomes for toxic-exposed veterans, the result has been a renewed backlog and an overwhelmed workforce struggling under shifting guidance, inconsistent training, outdated development standards, and rotational leadership."[19]

This legislation seeks to address such backlog by enabling the VA to use AI automation to speed up claims processing by mandating VA to design a strategy plan on how to implement AI in claims processing, and design an AI tool to automatically generate claims letters, better track dependent benefits to reduce overpayments, and devise a plan to use AI to automatically label and store relevant claims documents.[20] It must be noted that VA testified that it was already piloting or fielding such AI capabilities two years prior to June 6, 2023.[21] This bill would codify a strategy plan for a more streamlined implementation of such promising technology.

The American Legion can support this Legislation through Resolution No. 123: *Increase the Transparency of the Veterans Benefits Administration's Claim Processing*.[22] This resolution includes a resolved clause that the Legion wants Congress to pass legislation that will bring VA claim processing to under 125 days with a 98% accuracy rate. This legislation will help achieve that goal by utilizing AI resources.

The American Legion supports H.R. 3854 as currently written.

H.R. 3983, Veterans Claims Quality Improvement Act

To amend title 38, United States Code, to improve the quality of the adjudication of claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

This proposed legislation would mandate technology and policies to ensure VBA employees who commit an avoidable error (e.g., unnecessary overdevelopment leading to avoidable decision deferrals) are notified, and the deferrals are documented for corrective training. While VA Decision Review Operation Centers (DROCs) are tasked with reviewing error trends, The

[18] Heckman, Jory. "VA Reinstates Mandatory Overtime to Address 200,000-Claim Backlog." Federal News Network, May 21, 2025. https://federalnewsnetwork.com/workforce/2025/05/va-reinstates-mandatory-overtime-to-tackle-backlog-of-200000-benefits-claims/.
[19] McClain, Brandon. "Legion Urges Reduction of Overdevelopment of VA Claims, Improvements in Timeliness, Accuracy." The American Legion, April 9, 2025. https://www.legion.org/information-center/news/veterans-benefits/2025/april/legion-urges-reduction-of-overdevelopment-of-va-claims-improvements-in-timeliness-accuracy.
[20] "Congressman Valadao Reintroduces Legislation to Improve VA Claims Processing Times | U.S. Congressman David Valadao." Congressman Valadao House of Representatives Site, June 12, 2025. https://valadao.house.gov/news/documentsingle.aspx?DocumentID=2041.
[21] https://docs.house.gov/meetings/VR/VR09/20230606/116037/HHRG-118-VR09-Wstate-TellezR-20230606.pdf
[22] "Resolution No. 123: Increase the Transparency of the Veterans Benefits Administration's Claim Processing." The American Legion, August 30, 2016. https://archive.legion.org/node/349.

American Legion, through its Regional Office Action Review (ROAR) program, has learned that Veteran Service Representatives (VSRs) and Ratings Veteran Service Representatives (RVSRs) do not consistently receive sufficient feedback on recurring errors through the current Systematic Technical Accuracy Review (STAR) quality assurance program. This leaves the employees unaware of how to improve their accuracy. The American Legion is extremely supportive of a more formalized process to standardize feedback to help prevent VSRs/RVSRs from making repeated and avoidable errors.

Likewise, proposed legislation would mandate policies to track the quality of decisions made by the Department of Veterans Affairs Board of Veterans' Appeals (BVA or the Board) in terms of error rates, decisions remanded or returned by the Court of Appeals for Veterans Claims (CAVC) for errors, and decisions that were subsequently vacated by the CAVC. This would inform any employee of the Board responsible for drafting the decision that any error identified by the Board shall be corrected before Board's issuance of a final decision. While Veterans Law Judges (VLJs) had their own internal tracking system to provide this feedback, it was discovered during a November 2023 Congressional hearing that the tracking sheet had disappeared. Therefore, BVA employees were no longer able to look up and track dispositions handed down by the CAVC, such as Joint Motion for Remand (JMR).[23]

Tracking errors is absolutely essential, as VSOs help identify BVA's failures to provide adequate reasonings for findings, or failure to ensure the duty to assist (DTA) has been fulfilled. When The American Legion VSOs investigated this matter further with VA's OIT Department, we were informed that VA has no existing tools similar to the Social Security Administration (SSA) to notify the issuing judge and staff attorneys that their decision had been overturned or remanded. VA's OIT Department informed us that no such capability has been requested by BVA.[24]

SSA's technology platform, called the Electronic Claims Analysis Tool (eCAT), supports efforts to analyze disposition outcomes, improve consistency in the adjudication processes, and better pinpoint areas where employees need retraining.[25] This would be a useful model for VBA to consider. Ensuring that employees working at all levels of VBA, from VSRs processing the claims intake and scheduling for disability medical exams to the VLJs and attorneys crafting the appeals deposition, are aware of their errors and how to correct them is crucial in decreasing future errors and clearing VBA's current claims backlog.

Additionally, this proposed legislation would alter performance review of Board judges from "not less than three years" to "not less than annually." This aligns with the performance review cycle for SSA judges, where they are measured against an "Annual Productivity Expectation" metric.[26] However, the proposed legislation stipulates "that the Secretary may not consider the timeliness

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[23] SVAC Roundtable on "Claims and the Veterans Affairs' High Remand Rate; Class Action Option" held on Thursday, Nov 21, 2024.

[24] Ibid

[25] Ray, Gerald K, and Jeffrey S Lubbers. "A Government Success Story: How Data Analysis by the Social Security Appeals Council (with a Push from the Administrative Conference of the United States) Is Transforming Social Security Disability Adjudication." The George Washington Law Review, September 2015. https://www.gwlr.org/wp-content/uploads/2015/11/83-Geo-Wash-L-Rev-1575.pdf.

[26] "Social Security Disability: Process Needed to Review Productivity Expectations for Administrative Law Judges." Government Accountability Office, June 2021. https://www.gao.gov/assets/gao-19-261.pdf.

or quality of work of any Member of the Board." The American Legion has reservations about this ambiguous language, as it is unclear exactly what metrics would be evaluated if timeliness and quality are excluded. some judges could have low production but produce high quality work, and vice versa.

Under SSA's Annual Expectations Performance metric, Administrative Law Judges (ALJ) and Administrative Appeals Judges have collectively met their 97% decisional accuracy rate goal for initial disability decisions.[27] In comparison, VA's own internal audit of BVA judges and counsel staff found that of the 3,500 cases sampled, there was a Quality Assurance (QA) rate of 95.8% accuracy for Legacy appeals and 95.5% for AMA appeals decisions.[28] The American Legion acknowledges that the legal professionals at the Board are collectively providing high quality decisions.

Lastly, proposed legislation would mandate that SECVA consult with the Board Chairman and the Office of Administrative Review of the Veterans Benefits Administration to create a plan to improve the quality of decisions of the Board to remand, and to mitigate the number of such decisions that are unnecessary under any applicable law or regulation. The American Legion recommends adding language to include other stakeholders (i.e., VSOs, veteran law firms, and other federal agencies) as there has been a lot of institutional knowledge and literature already out there recommending for a collaborative, systems approach to address the claim backlogs at other federal agencies.

For instance, a 2018 report compiled by the Administrative Conference of the United States already queried the SSA, BVA, Office of Medicare Hearings and Appeals, the Federal Trade Commission (FTC), and Occupational Safety and Health Review Commission. The Conference recommended for claims decisions to be sanitized of PIIs so that data scientists can analyze for claims trends and efficiency. Furthermore, this report found that SSA's Appeals Council already had an innovative model to adjudicate by assigning batches involving similar issues so that adjudicators would spend less time researching regulations.[29]

After the COVID-pandemic forced many federal agencies to change their hearings operations to address their disability claims backlogs, Federal agencies realized the importance of data analysis and need for an agency's correct decision-making process to avoid erroneous decisions which would add on to the caseload of the appeals courts. As a result, many agencies noted that certain agencies were already piloting sophisticated and innovative AI technologies in their case management case flow work to capture data, identify recurring problems, and inform effective fixes.[30]

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[27] Social Security Administration FYs 2023-2025 Annual Performance Report, March 11, 2024. https://www.ssa.gov/agency/performance/materials/2025/SSA_FYs2023-2025_APR.pdf.

[28] Board of Veterans Appeals Annual Report FY 2024. Accessed June 16, 2025. https://department.va.gov/board-of-veterans-appeals/wp-content/uploads/sites/19/2025/04/2024_bva2024ar.pdf.

[29] "Implementation and Use of Electronic Case Management Systems in Federal Administrative Adjudication." Administrative Conference of the United States, May 23, 2018. https://www.acus.gov/document/electronic-case-management-federal-administrative-adjudication .

[30] Ho, Daniel E, David Marcus, and Gerald K Ray. "Improving the Quality of Mass Justice." The Regulatory Review, May 24, 2022. https://www.theregreview.org/2022/05/23/ho-marcus-ray-quality-mass-justice/.

Additionally, veteran law firms, such as The American Legion's litigation partner, have long noted flaws in VA's current QA division. Specifically, veterans law firms have expressed consternation over the effectiveness of BVA's internal Quality Reviews, as their attorneys are temporarily assigned this duty. This questions an attorneys' true ability to have objectivity and candor in their QA reviews when they eventually might be reassigned under a Veterans Law Judge (VLJ) that he/she conducted a negative Quality Review report on.

We therefore respectfully submit our recommendation for an amendment:

To require other stakeholders' participation in this quality review process, as their own quality assurance protocols and success outcomes would strengthen BVA's quality efforts.

Through Resolution No. 5: *Department of Veterans Affairs Appeals Process*, The American Legion supports any legislation that calls on VA to address all claims, to include its growing inventory of appeals, in an expeditious and accurate manner.

The American Legion supports H.R. 3983 with amendments.

CONCLUSION

Chairman Luttrell, Ranking Member McGarvey, and distinguished members of the subcommittee, The American Legion thanks you for your leadership on these important issues, and for allowing us the opportunity to provide feedback on this legislation.

The American Legion looks forward to continuing this work with the Committee and to providing the feedback we receive from our membership. Questions concerning this testimony can be directed to Jake Corsi, Legislative Associate, at jcorsi@legion.org.