

**LEGISLATIVE HEARING ON H.R. 3407, H.R. 3787,  
H.R. 4541, H.R. 5064, H.R. 5549, AND DRAFT  
LEGISLATION**

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND  
MEMORIAL AFFAIRS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

—————  
JULY 1, 2010  
—————

**Serial No. 111-89**

—————

Printed for the use of the Committee on Veterans' Affairs



U.S. GOVERNMENT PRINTING OFFICE

58-056

WASHINGTON : 2010

---

For sale by the Superintendent of Documents, U.S. Government Printing Office,  
<http://bookstore.gpo.gov>. For more information, contact the GPO Customer Contact Center,  
U.S. Government Printing Office. Phone 202-512-1800, or 866-512-1800 (toll-free). E-mail, [gpo@custhelp.com](mailto:gpo@custhelp.com).

## COMMITTEE ON VETERANS' AFFAIRS

BOB FILNER, California, *Chairman*

CORRINE BROWN, Florida	STEVE BUYER, Indiana, <i>Ranking</i>
VIC SNYDER, Arkansas	CLIFF STEARNS, Florida
MICHAEL H. MICHAUD, Maine	JERRY MORAN, Kansas
STEPHANIE HERSETH SANDLIN, South Dakota	HENRY E. BROWN, JR., South Carolina
HARRY E. MITCHELL, Arizona	JEFF MILLER, Florida
JOHN J. HALL, New York	JOHN BOOZMAN, Arkansas
DEBORAH L. HALVORSON, Illinois	BRIAN P. BILBRAY, California
THOMAS S.P. PERRIELLO, Virginia	DOUG LAMBORN, Colorado
HARRY TEAGUE, New Mexico	GUS M. BILIRAKIS, Florida
CIRO D. RODRIGUEZ, Texas	VERN BUCHANAN, Florida
JOE DONNELLY, Indiana	DAVID P. ROE, Tennessee
JERRY McNERNEY, California	
ZACHARY T. SPACE, Ohio	
TIMOTHY J. WALZ, Minnesota	
JOHN H. ADLER, New Jersey	
ANN KIRKPATRICK, Arizona	
GLENN C. NYE, Virginia	

MALCOM A. SHORTER, *Staff Director*

### SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

JOHN J. HALL, New York, *Chairman*

DEBORAH L. HALVORSON, Illinois	DOUG LAMBORN, Colorado, <i>Ranking</i>
JOE DONNELLY, Indiana	JEFF MILLER, Florida
CIRO D. RODRIGUEZ, Texas	BRIAN P. BILBRAY, California
ANN KIRKPATRICK, Arizona	

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

# CONTENTS

July 1, 2010

	Page
Legislative Hearing on H.R. 3407, H.R. 3787, H.R. 4541, H.R. 5064, H.R. 5549, and Draft Legislation .....	1
OPENING STATEMENTS	
Chairman John J. Hall .....	1
Prepared statement of Chairman Hall .....	35
Hon. Doug Lamborn, Ranking Republican Member, prepared statement of .....	36
WITNESSES	
U.S. Department of Veterans Affairs, Thomas J. Pamperin, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration .....	26
Prepared statement of Mr. Pamperin .....	50
-----	
Adler, Hon. John H., a Representative in Congress from the State of New Jersey .....	5
Prepared statement of Congressman Adler .....	39
American Legion, Barry A. Searle, Director, Veterans Affairs and Rehabilitation Commission .....	14
Prepared statement of Mr. Searle .....	45
Disabled American Veterans, John L. Wilson, Assistant National Legislative Director .....	12
Prepared statement of Mr. Wilson .....	42
Donnelly, Hon. Joe, a Representative in Congress from the State of Indiana ...	6
Prepared statement of Congressman Donnelly .....	39
Hastings, Hon. Alcee L., a Representative in Congress from the State of Florida .....	3
Prepared statement of Congressman Hastings .....	37
Walz, Hon. Timothy J., a Representative in Congress from the State of Minnesota .....	2
Prepared statement of Congressman Walz .....	36
Veterans of Foreign Wars of the United States, Eric A. Hilleman, Director, National Legislative Service .....	16
Prepared statement of Mr. Hilleman .....	48
Vietnam Veterans of America, Richard F. Weidman, Executive Director for Policy and Government Affairs .....	10
Prepared statement of Mr. Weidman .....	40
SUBMISSIONS FOR THE RECORD	
Association of the United States Navy, Captain Ike Puzon, USN (Ret.), Director of Government Affairs-Legislation, statement .....	54
Enlisted Association of the National Guard of the United States, Master Sergeant Michael P. Cline, USA (Ret.), Executive Director, statement .....	57
Military Officers Association of America .....	60
National Guard Association of the United States, Peter J. Duffy, Deputy Director Legislation, statement .....	61
Reserve Officers Association of the United States and Reserve Enlisted Association, joint statement .....	61
The Retired Enlisted Association, Master Sergeant Larry D. Madison, USAF (Ret.), Legislative Director, Washington Office .....	63

MATERIAL SUBMITTED FOR THE RECORD

Page

Post-Hearing Questions and Responses for the Record:  
Hon. John J. Hall, Chairman, and Doug Lamborn, Ranking Republican, Subcommittee on Disability Assistance and Memorial Affairs, Committee on Veterans' Affairs, to Thomas Pamperin, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration, U.S. Department of Veterans Affairs, letter dated July 21, 2010, and VA responses ..... 66

**LEGISLATIVE HEARING ON H.R. 3407, H.R.  
3787, H.R. 4541, H.R. 5064, H.R. 5549, AND  
DRAFT LEGISLATION**

---

**THURSDAY, JULY 1, 2010**

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

The Subcommittee met, pursuant to notice, at 10:00 a.m., in Room 334, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Donnelly, and Lamborn.

**OPENING STATEMENT OF CHAIRMAN HALL**

Mr. HALL. Good morning, ladies and gentlemen, would you please rise and join me for the pledge of allegiance.

[Pledge of Allegiance.]

Mr. HALL. Thank you.

The purpose of today's hearing will be to explore the policy implications of five bills and one draft measure, H.R. 3407, H.R. 3787, and related draft legislation H.R. 4541, H.R. 5064, and H.R. 5549 that were recently referred to the House Committee on Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee.

Ranking Member, Mr. Lamborn and I, because we understand there are votes coming shortly, will delay our opening statements until after our first panel has spoken, because these are Members who are the authors and sponsors, prime sponsors of these bills. I know they all have busy days and other meetings to go to.

So with no further ado, if the Committee doesn't mind we will go to the Honorable Timothy Walz of Minnesota.

Mr. Walz, you have 5 minutes, your full statement is already entered for the record.

[The prepared statement of Chairman Hall appears on p. 35.]

**STATEMENTS OF HON. TIMOTHY J. WALZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA; HON. ALCEE L. HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA; HON. JOHN H. ADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY; AND HON. JOE DONNELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA**

**STATEMENT OF HON. TIMOTHY J. WALZ**

Mr. WALZ. Well thank you, Chairman Hall and Ranking Member Lamborn, Mr. Donnelly, and the staff of this Subcommittee, I personally thank you for the work you do for our veterans, and I understand and truly appreciate how much you are making a difference.

I rise today, and I am here to speak on H.R. 3787, the “Honor America’s Guard and Reserve Retiree Act.”

I have submitted my full statement for the record, so I will just summarize this.

It may seem like it is a small piece of legislation, but it is an important one that hinges on honor of your National Guard and Reserve soldiers who served in uniform.

What this piece of legislation does is, those who volunteered, wore the uniform, were subject to the uniform code of military justice, learned their jobs, went to training, stood on the ready to serve this Nation, but were never called to long enough periods of Federal active service, they can still be considered veterans. And I think this is really important.

We already give them retired pay, they already have access to TRICARE, they can already be buried in a military—a veteran cemetery, but what it does is, it gives them the honor of being ready. These are our true minutemen. They are the ones that serve on the ready.

I was speaking briefly with a representative of the Minnesota National Guard, Colonel Eric Ahlness who is here today, and we had devastating tornados in Minnesota 2 weeks ago, and I was out there the following morning, and already throughout the entire night our young National Guard soldiers were on duty where power lines were down helping the injured, removing debris.

Those soldiers can be called up to tornados, to floods, to other things. But they are not considered veterans. So what this piece of legislation does is it honors that service.

The conclusions by the Congressional Research Service (CRS) and the U.S. Department of Veterans Affairs (VA) is this is at no cost to the Federal Government. The benefits are already there, it doesn’t change any of those. We have the unending support.

As I always say, we always come to this room backed by those who know best. The Veterans of Foreign Wars (VFW), the Disabled American Veterans (DAV), the organizations that support this, and we think it is clear, I think—my friend Larry Madison is here, he served 31 years in uniform, and now works making sure that we take care of our veterans. Larry has earned the right to be called a veteran, and I hope the rest of you would stand in support of this.

I think it is incredibly important. They have raised their hand, they did what was needed, and now this Nation can honor them and allow us to pay back those respects.

So Chairman Hall, I thank you again for all the work you do. I thank you for considering this piece of legislation and to the staff that made it possible, and I would certainly encourage my colleagues to join me in honoring those Guard retirees for the service they gave us.

And I yield back.

[The prepared statement of Congressman Walz appears on p. 36.]

Mr. HALL. Thank you, Mr. Walz.

Mr. Hastings? The Honorable Alcee Hastings of Florida, you are recognized for 5 minutes.

#### **STATEMENT OF HON. ALCEE L. HASTINGS**

Mr. HASTINGS. Thank you very much, Chairman Hall and Ranking Member Lamborn and other Members, and I wish to echo the sentiments of my colleague and good friend, Mr. Walz, in thanking you, the staff, and all for holding this hearing and for the incredible work that you do on behalf of all of us.

I would ask unanimous consent that my full statement be made in the record, and try to be as brief as Mr. Walz was.

I am here to testify regarding H.R. 4541, the "Veterans Pension Protection Act of 2010."

Before I begin I would like to welcome and recognize the veterans in the room today and express my gratitude for their service to our Nation. Each of you has made a difference in the history of our Nation and in the lives of so many. And I would also like to thank the veterans' organizations for their constant hard work improving veterans' lives and for appearing before the Subcommittee today.

In the spring of 2009, one of my constituents, a Navy veteran with muscular dystrophy, reached out to the district office that I am privileged to serve in desperate need of assistance.

The Department of Veterans Affairs had abruptly canceled his pension and he had fallen below the poverty line. Unable to pay for daily expenses, unable to meet his mortgage payments, Carey Scriber was on the verge of losing his home and joining the ranks of the 100,000 homeless veterans in our Nation.

Mr. Scriber didn't break any law, nor did he commit any crime.

In March of 2008 he was hit by a truck when crossing the street in his wheelchair, along with his service dog.

Mr. Scriber was on his way to the pharmacy. Persons who saw it, and he said, that he went 10 feet into the air, landed head-first into the pavement, and suffered numerous injuries, as well as his service dog was injured and his wheelchair was destroyed.

As a law-abiding citizen, he reported to the Veterans Administration the insurance settlement payment that he received from the driver's insurance ought to cover his medical expenses and other replacement costs of his wheelchair. As a result, the VA cancelled his pension benefits for an entire year.

And I might add, they did that in 2 days after he made the assertion to them regarding his receipt of the insurance settlement.

You know the particulars of how veterans are assessed, and I will skip through that, it is in my full record.

Under the current law, if a veteran is seriously injured in an accident or is the victim of a theft and receives insurance compensation to cover his or her medical expenses, the replacement cost of the stolen items, or for pain and suffering, he or she will likely lose their pension as a result. This means that the law effectively punishes veterans when they suffer from such an accident or theft.

Mr. Scriber reached out to the VA several times asking to have his pension reinstated and pointed to the particulars having to do with his circumstances, and each time they refused to reinstate his pension. This is when I became personally involved. I contacted the West Palm Beach VA Medical Center, wrote several letters to Secretary Shinseki, and I do quarrel with the bureaucracy. I recall very vividly that the first letter that I wrote to him was in August, the second was in October, and the third, that was a scathing letter, was in February, not having heard from the Department.

And I understand that secretaries have an extraordinary amount of work to do, but too often the bureaucracy, not only in Veterans Affairs, but in our country, don't respond to inquiries appropriately. And I am distraught that they can cancel the pensions of unemployed and disabled veterans without further notice.

In my view, the VA has a moral responsibility to care for our veterans and ensure that they live decent lives. After serving our Nation as valiantly as they have, they deserve no less than the very best benefits. No veterans should be unable to pay their medical bills, unable to get the care that they need, or be in a situation where they could lose their home because they had an accident and told somebody that they got the money and then find that they are losing their pension. It is unacceptable and this is why I introduced this legislation.

This is companion legislation. Our friend and colleague in the Senate, Mr. Tester of Montana, introduced this provision last month, we have 45 co-sponsors, and I am fully cognizant, Mr. Chairman and Mr. Lamborn and other Members, of the backlog of claims filed by those who serve in uniform and the fact that it is growing, and I understand these difficulties, but I refuse, as I am sure you will, to let them overtake our veterans' well being.

The VA must ensure that no veterans are left behind like Mr. Scriber was. There is clearly something wrong with the law that allows for the circumstances that I just described to you.

My full record is in the record, Mr. Chairman. I ask that for the support of the Committee, and that concludes my testimony, and I would be pleased to answer any question you may have, and I thank you for the opportunity to appear.

[The prepared statement of Congressman Hastings appears on p. 37.]

Mr. HALL. Thank you, Mr. Hastings, and thank you for this common sense piece of legislation, and I think all of us are amazed at how slowly the VA moves a lot of the time, but how quickly they moved in in this instance to cancel a pension. It is certainly something that we will look into.

Mr. Adler, the Honorable representative from New Jersey.

**STATEMENT OF HON. JOHN H. ADLER**

Mr. ADLER. Mr. Chairman, I thank you, I thank the Ranking Member, Mr. Lamborn, I thank the Members of the Subcommittee and the staff for the opportunity to testify on behalf of H.R. 5064, the "Fair Access to Veterans' Benefits Act."

The need for H.R. 5064 came from a Federal Appeals Court ruling in which a Korean War veteran, David Henderson, who suffers from paranoid schizophrenia, was denied benefits because his appeal was filed 15 days late. The deadline that Mr. Henderson missed was one that required filing an appeal within 120 days of the final notice from the Board of Veterans' Appeals (BVA), the highest administrative authority in the claims process.

Mr. Henderson appealed to the U.S. Court of Appeals for Veterans Claims (CAVC), but he filed his appeal 15 days late. He tried, but failed, to get the Court to reconsider, arguing that his service-connected disability caused him to miss the deadline. The Veterans Court rejected his argument and the U.S. Court of Appeals for the Federal Circuit Court agreed, in *Henderson v. Shinseki*, that the Veterans Court was right to reject a late appeal.

My bill would require the U.S. Court of Appeals for Veterans' Claims to hear appeals by veterans of administrative decisions denying them benefits when circumstances beyond the veterans control render them unable to meet the deadline for filing an appeal.

"Fair Access to Veterans' Benefits Act" would require the U.S. Court of Appeals for Veterans Claims to excuse late filings if the veteran demonstrates good cause so that meritorious benefits claims are not denied their day in Court.

This bill also requires the Court of Appeals for Veterans Claims to reinstate untimely appeals already dismissed as a result of the Court's failure to toll the filing period for good cause.

The veterans claims process is extremely difficult to navigate, especially when doing so without the aid of an attorney or while suffering from a mental disability.

While the Court of Appeals for Veterans Claims was intended to be informal and fair, the imposition of rigid deadlines has resulted in the denial of benefits for many veterans.

Oftentimes, the reason these veterans missed the filing deadline was because of the very service-connected disabilities that should entitle them to the benefits they are seeking.

It is my hope that H.R. 5064 will help ensure that no veteran is denied disability benefits simply because they have missed an arbitrary rigid deadline.

I would again like to thank Chairman Hall, Ranking Member Lamborn, and Members of the Subcommittee for allowing me to testify on this important matter.

I, like the others, would be happy to answer any questions you may have.

[The prepared statement of Congressman Adler appears on p. 39.]

Mr. HALL. Thank you, Mr. Adler.

Now I will recognize the Honorable Joe Donnelly, Congressman from Indiana.

**STATEMENT OF HON. JOE DONNELLY**

Mr. DONNELLY. Thank you, Mr. Chairman and Ranking Member Lamborn, and I want to thank my colleagues for being here with us today too. Thanks for the opportunity to discuss this bill before the Subcommittee today.

And I want to give my gratitude to the veterans for the service they have given and for all the help the veterans service organizations (VSOs) have given us with these pieces of legislation.

After closely working with the Iraq and Afghanistan Veterans of America (IAVA) and the Disabled American Veterans, H.R. 5549, "The Rating and Processing Individuals' Disability Claims Act," or the "RAPID Claims Act," was introduced by myself, along with Chairman Hall. The goal of the "RAPID Claims Act" is to improve the disability claims process for our Nation's veterans, something we all agree is necessary.

In 2008, Congress passed the Veterans' Benefits Improvement Act, and included in the bill was the Fully Developed Claim, or the FDC pilot program. This allows veterans to Fully Developed Claims, and they can waive the lengthy development period and receive expedited consideration.

FDC was originally a 1-year pilot program conducted at 10 VA Regional Offices (ROs). Due to its significant success, VA recently announced that it is going to implement the program nationwide.

I support this decision to roll out the program nationwide; however, I would like to see FDC become law with a couple of small improvements.

The "RAPID Claims Act" would codify FDC while also modifying it to protect a veteran's effective date for disability compensation and ensuring the veteran who mistakenly files an unsubstantially complete claim in FDC is given fair notice what further evidence might be needed to complete the claim.

When participating in the normal claims process, a veteran can submit a claim at any time, marking the claim's effective date, and the veteran still has up to a year to gather evidence. However, a veteran seeking to participate in FDC may gather evidence independently, preventing an establishment of an effective date for that veteran's disability compensation. This evidence period can take months or up to a year, costing a veteran hundreds or even thousands of dollars in missed benefits.

The "RAPID Claims Act" allows a veteran gathering evidence for a Fully Developed Claim to mark an effective date for his or her compensation by notifying VA that a Fully Developed Claim is forthcoming. Marking this effective date would help ensure that the vet's compensation is made retroactive to an appropriate date.

Additionally, some vets will submit claims through FDC that VA will decide do not qualify for the program for a number of reasons, including missing evidence. If VA determines that a claim submitted through FDC is ineligible, I am concerned that the Veterans Administration may not immediately notify the veteran of what else is needed to substantiate his or her claim. If VA processes the claim before notifying the veteran, this could lead to incomplete and unsatisfactory results.

The "RAPID Claims Act" would modify FDC to require VA to notify and assist the veteran to help substantiate such claims.

Finally, the “RAPID Claims Act” also has a provision targeted at the appeals process. This bill would require that the VA appeals form is included with the Notice of Decision letter, instead of waiting for a veteran to exercise his or her appeal rights before sending the form to the veteran. This is a simple courtesy the VA could extend to our Nation’s veterans.

Once again, thank you Chairman Hall, Ranking Member Lamborn, and all of my colleagues for the opportunity today to highlight what I think are simple solutions to help improve the disability claims process for our veterans.

We have worked hard to achieve much on behalf of our veterans in recent years, and there is also further steps that we can continue to take to help them even more. They certainly deserve our very best.

Thank you, Mr. Chairman.

[The prepared statement of Congressman Donnelly appears on p. 39.]

Mr. HALL. Thank you, Mr. Donnelly.

We also will be considering when we get to our next panels, another piece of legislation that is sponsored by Mr. Buyer, who is unable to be here to discuss it with us right now.

But before we have the votes called, we will ask a couple of quick questions, if we may. I have one for Mr. Walz.

In your testimony you stated that the sole purpose of this legislation is to grant veteran status to those who have been denied up to this point and to avoid having, in your words, second class veteran status.

Could you elaborate what you mean by this statement? And is it your intention to provide these veterans with any benefits to which they are not already entitled?

Mr. WALZ. No. Thank you, Chairman Hall.

No, there are no added benefits that would be here other than the honor of being called veterans. These are folks that did 20 years, attended their annual trainings, attended their schooling that they needed to that were all under the exact same requirements of active-duty forces, but because they were under—the way it is titled under title 38, section 101(2), the definition of a veteran consists of if they did that certain period of time on Federal service, and many of those veterans did not.

There was a tendency, and some of the folks in this room understand, there was a tendency to fall a day or so under that prescribed amount at one time, so we have a lot of veterans that did that.

And my point on the—I don’t think it is asking so much that on a Veterans’ Day event that these folk can fully participate being veterans, render a hand salute when the National Anthem is played, and consider themselves amongst their colleagues who serve. They were the true minutemen, they were on the ready.

There is no additional cost, CRS. And we are certainly willing to work with the Subcommittee if anything should come up. The VA itself had said there would be no more additional benefits offered, no cost to the government.

It is just—to me though it is the honorable, the right thing to do to make sure we move these citizens, especially with the current

reliance on the National Guard and Reserve, of understanding at any given time any one of these folks could have been and would have honorably served.

Mr. HALL. Thank you, Mr. Walz.

Mr. Hastings, we greatly appreciate your sharing Mr. Scriber's story with us.

What pitfalls, if any, do you think this legislation has that would fail to meet the needs of people such as Mr. Scriber or could cause them any increased burden?

Mr. HASTINGS. Well it is really specific, Mr. Chairman, and addresses accidents, thefts, or casualty loss from being included in the determination of a veteran's income.

If anything, I would think that there may be other kinds of situations that veterans might bring to the attention of VA regarding their impact on their pensions from outside income. I would think if a veteran hit the lottery, that might be an entirely proposition. However, feeling very strongly about it, I don't think that should impact the person's right to receive their pension, and certainly not for accidents.

The overall set of circumstances, if there is to be a pitfall, would likely be that most veterans would not be made aware of a law if we can, as I indicated, Mr. Tester filed it on the Senate side, and if it does become law, then I hope that there is early notice. Because I have a suspicion with the number of claims that veterans can bring about—let us use the Gulf for example right now, the number of veterans that are in the fishing business that may receive some kind of compensation, what are they supposed to do? If they report it and they are already marginal in terms of whether or not they are near the poverty line as it were, then are their pension benefits going to be cut off?

So there is some other things to look at, but ours states a specific within the realm of casualty, theft, and accident.

Mr. HALL. So it is basically reimbursement—

Mr. HASTINGS. Yes, sir.

Mr. HALL [continuing]. For medical expenses or loss due to theft?

Mr. HASTINGS. That is correct.

Mr. HALL. Thank you so much.

Mr. Adler, we understand that the veterans' claims and appeals processes are difficult to navigate and need to have major improvements made to them.

With that said, you mentioned in your testimony that the Court of Appeals for Veterans Claims can reinstate untimely appeals that have already been dismissed based on the Court's failure to toll the filing period for good cause.

Please explain to us how you believe the Court can fairly determine which appeals should rightly be reinstated for good cause versus those that simply miss the deadline for another reason.

In other words, how can we believe that a windfall effect can be avoided adding to the further delays in appeals?

Mr. ADLER. Mr. Chairman, thank you for the question. I don't think it is a windfall effect, it is a question of making sure that people who are truly entitled have access to the right litigation process, right appeals process so they can have their appeals considered.

This case with Mr. Henderson was a guy that was 100-percent disabled because of mental incapacity suffered during his service in the Korean War, 100-percent disability. He wanted to have a bump up from out of home care to in-home care because of his disability. Apparently his mental incapacity rendered him unable to file in a timely way his claim.

I think our courts traditionally have been just, but tempered with mercy, and I think that is all we are asking here is for a veteran who is going to win to have a chance to have that appeal considered. If, in fact, he is not going to win, it will be denied on the merits, but I would hate to have a timing issue block fair consideration of a change in his disability status.

Mr. HALL. Thank you. I think that is something our later panels may help us address. I mean 100-percent disability for a psychological or psychiatric condition, there is no question I think that your proposal is a good one and clear.

The question is, what level, I think the Court will probably need to define when the disability is sufficient to justify delaying the deadline.

Let me just move quickly to Mr. Donnelly for one question and then turn it over to the Ranking Member.

Mr. Donnelly, your testimony highlights the risk that some veterans may submit Fully Developed Claims without providing all necessary evidence.

Can you expand upon the steps that VA would be required to take when informing veterans of insubstantial claims prior to processing it? Are you suggesting that the VA include a checklist?

Mr. DONNELLY. Well, it explicitly requires the VA to notify a vet within 30 days if it determines that this is an incomplete claim, and they would be required to revert back to notification and assistance regulations under the Veterans' Claims Assistance Act (VCAA).

So it is just a continuing way to try to be in front with the vet and be helpful to them.

Mr. HALL. Thank you. Mr. Lamborn?

Mr. LAMBORN. Well, Mr. Chairman, I think each of the people presenting their bills has done a good job of explaining it and these are well considered bills that I intend to support.

So in the interest of saving time as well I am just going to refrain from questions for now. But I thank each of them for appearing and for presenting their bills.

Mr. HALL. You ousted Mr. Walz in brevity, so congratulations. Thank you, Mr. Lamborn.

I have one more question for Mr. Donnelly since there is time before these votes are called, which is I am always the guy that talks longer than anything else, so I am maintaining my consistency.

Mr. Donnelly, pertaining to your legislation, the date that a claim is filed is considered the effective date, and upon its approval the claimant receives benefits retroactively.

The "RAPID Claims Act" that you are proposing would provide, among other things, a way for veterans to signal the intent of filing an FDC, a Fully Developed Claim, while being able to file an informal claim to protect the effective date.

Do you foresee any shortcomings or potential exploitations or confusion to such a system, and would there be a way to avoid them, such as veterans filing meritless claims and then using FDC?

Mr. DONNELLY. I think what this does is drop a marker down. And from what we have seen in other voluntary programs, I think in regards to claims that have been reviewed with findings that 95 percent were exactly what they were supposed to be.

When we give the benefit of the doubt we give the benefit of the doubt to the veteran, and that is what we are doing here, is giving them a chance to put a marker down so that in their diligence and in their work they don't look up and find themselves 60 days further behind.

So I don't see that there will be any abuse in this process.

Mr. HALL. Thank you, Mr. Donnelly.

I would like to thank our first panel, Mr. Walz, Mr. Hastings, Mr. Adler, Mr. Donnelly, for the legislation and the work that you have done bringing these bills forward, and thank you for testifying. You are now excused.

And we would ask the changing of the guard, our second panel to join us, please. Richard Weidman, Executive Director for Policy and Government Affairs of the Vietnam Veterans of America (VVA); John L. Wilson, Assistant National Legislative Director, Disabled American Veterans; Barry A. Searle, the Director of Veterans Affairs and Rehabilitation Commission for the American Legion; and Eric A. Hilleman, Director, National Legislative Service, Veterans of Foreign Wars of the United States.

Gentlemen, thank you so much for joining us. We will try to get through as much of this testimony as we can, and if the bell rings we will have to recess and come back. But we will start with Mr. Weidman, you are recognized for 5 minutes.

**STATEMENTS OF RICHARD F. WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA; JOHN L. WILSON, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; BARRY A. SEARLE, DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, AMERICAN LEGION; AND ERIC A. HILLEMANN, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES**

**STATEMENT OF RICHARD F. WEIDMAN**

Mr. WEIDMAN. Mr. Chairman, thank you very much for the opportunity to present testimony here this morning. I will take them in numerical order.

H.R. 3407, the "Severely Injured Veteran Benefits Improvement Act."

First and foremost from our point of view, there was a good deal of need that was answered by the Caregivers Act which you all passed earlier this year, and that addressed the needs of a single generation.

This Committee historically has always sought to have equity between the generations, and the only problem with the Caregivers

Act, was that it ignored the fact that caregivers of Vietnam generation, Korean generation, and World War II generation were not eligible for this kind, and it provide extraordinary service to country over many, many years.

In addition to that all of those older generations of veterans are just that, getting older. And so this increase from our point of view will bring some degree of equity back into the situation for those older care providers.

Do I need to stop, Mr. Chairman?

Mr. HALL. No, that is okay, you can continue your testimony. We have 13 minutes to go,

Mr. WEIDMAN. Actually, I have 3 minutes and 43 seconds.

Mr. HALL. You may finish your statement and we will probably hear one other witness before we recess.

Mr. WEIDMAN. Very good, sir.

Anyway, we are very much in favor of this, and VA's objections to it we find unpersuasive and in the extreme.

Same with—it does something very important, which is recognize that people with severe burns and traumatic brain injury (TBI) need adaptive equipment and access to automobiles, and we thank Mr. Buyer for addressing that as well in this bill and all of co-sponsors from both sides of the aisle.

So we believe that it takes a somewhat different approach than the Caregivers Act, but it is something that is needed and will restore some degree of equity to the situation between the generations.

The "Honor America's Guard and Reserve Retirees Act." When I served on active duty in the U.S. military, there was a dramatic difference between those of us who served on active duty and those who served in the Guard and Reserve, but that was in a long, long time ago in a country very far away called the 1960s, and we are no longer there today.

I believe Congressman Walz is right on the money, is that being subject to being activated at any given time is something that all of the Guard and Reserve are subject to today, and it is materially different than it was at an earlier time.

So we favor the "Honor America's Guard and Reserve Retirees Act."

The "Veterans Pension Protection Act" is just simply good common sense and provides the latitude to make sure that one time payments are not—then don't turn around and exclude people from non service-connected pension.

Frankly, some of the VA's testimony is a little surprising, and sometimes they wonder why the veterans, community, and others regard them as mean spirited, and it comes across as mean spirited, whether that is the intent or not. That if an individual gets a pain and suffering settlement as a result of being run over by a truck when you are in your wheelchair and then you are going to strip the guy of his pension, we think that is just nuts and is not humane and is not in the best tradition of either the VA or the United States of America.

H.R. 5549, the "Rating and Processing Individuals' Disability Claims Act," or the "RAPID Claims Act." We think it is well thought out, it is simple like most things that will be useful, it con-

forms to the military axiom of KISS, Keep It Simple Soldier, some use a different "S" for the last word, but any way it works. And we favor passage, it can only help.

H.R. 5064, the "Fair Access To Veterans Benefits Act." Once again it is just common sense. If an individual is not intellectually capable of recognizing that a deadline is hard and fast because of schizophrenia, that first onset of which was in the military, then shame on the Court and shame on the Board for not allowing the individual additional time.

We also would note that VA's attitude when they take sometimes literally years to make basic decisions is la-di-dah, you will just have to wait. But you can't extend it for I believe it was 22 days in a particular incident cited for the individual veteran who is incapable of recognizing the importance of it?

I think that this will provide the latitude that will allow the Court to render more just decisions, and I thank Committee for considering it, and we favor early enactment.

Thank you again, Mr. Chairman. I would be happy to answer any questions.

[The prepared statement of Mr. Weidman appears on p. 40.]

Mr. HALL. Thank you, sir.

Mr. Wilson.

#### STATEMENT OF JOHN L. WILSON

Mr. WILSON. Mr. Chairman and Members of the Subcommittee, good morning. I am pleased to have this opportunity to appear before you on behalf of Disabled American Veterans to address legislation under consideration today. There are four bills I will address in my oral remarks this morning.

First, H.R. 3407, the "Severely Injured Veterans Benefit Improvement Act of 2009." I will address one of its several provisions, which is the expansion of eligibility for automobile and adaptive equipment grants to disabled veterans and members of the Armed Forces with severe burn injuries.

DAV supports the expansion of this important benefit to those with severe burns.

We also want to raise a related issue of the adequacy of automobile and adaptive equipment grants themselves. Because benefit adjustments have not kept pace with increasing costs of automobiles over the past 53 years, the value of the allowance has been substantially eroded.

Today the current \$11,000 automobile allowance represents only 39 percent of the average cost of a larger sedan, which is typically necessary for such veterans.

To restore equity between the cost of a new vehicle and the allowance, based on 80 percent of the average cost, the amount would rise from \$11,000 to \$22,800.

In accordance with *The Independent Budget* and DAV Resolution 171, our recommendation is that Congress increase the automobile allowance to 80 percent of the average cost of a new automobile today.

Second, H.R. 5064, the "Fair Access to Veterans Benefits Act of 2010," which would provide for the equitable tolling of the timing

of review for appeals of final decisions of the Board of Veterans' Appeals.

Current law does not provide for equitable tolling of the appeal period if a veteran is physically or mentally incapacitated and is thus unable to file, as has been previously indicated. Yet, it is the very disabilities that may significantly impact a veteran's ability to file the appeal paperwork in the first place.

DAV certainly supports this legislation to allow good cause equitable tolling for issues such as physical or mental incapacities.

Third, H.R. 5549, the "RAPID Claims Act," which would expedite those claims certified as fully developed for claimants who waive the development period. If the claimant submits a written notice of their intent to submit a Fully Developed Claim and then does so within 365 days of that notice, the Secretary will accept the then formal claim using the date of the informal claim. That would protect the effective date and save them substantial amounts of time as previously indicated.

In addition, this bill reinstates VA's duty to assist when VA deems a claim is not ready to rate and moves it into the traditional claims process, requiring VA to then notify the claimant accordingly.

DAV was pleased to work with Congressman Donnelly, and add provisions that strengthen protections for veterans, and we support this important legislation.

VA recently rolled out the Fully Developed Claim or FDC program, which as previously indicated, was mandated by Congress under Public Law 110-389, and seeks to expedite claims that are ready to rate. However, VA's FDC program was missing key protections for veterans that H.R. 5549 offers.

VA has since added to the FDC program a provision so veterans can file an informal claim to protect their effective date before submitting the formal FDC application.

We also want to be assured by VA however that when a claim is not ready to rate and, therefore, no longer eligible for the FDC program, that VA will inform the veteran accordingly.

We are pleased that H.R. 5549 directs VA to inform the claimant should their claim be returned to the normal claims process, and we support this legislation as I previously indicated.

Fourth, I would like to clarify my remarks in my written statement regarding the amendment in nature of a substitute offered by Mr. Walz to H.R. 3787. This amendment clearly addresses our concerns, which was the extension of veteran status to individuals who had completed 20 years of military service and reserve status potentially leading to later efforts to extend benefits to these newly defined veterans. This potential for the expansion of benefits could then negatively impact the benefits available to veterans, their dependents, and survivors as currently defined.

Since that amendment excludes access to such benefits, it resolves our concern with the original bill.

Mr. Chairman, we are pleased with the interest that Congress has shown as oversight of the benefits delivery process, we also applaud the Veterans Benefits Administration's (VBA's) openness and outreach to VSOs and incorporation of our suggestions to accept informal claims into the FDA program. However, we remain con-

cerned about their failure to integrate us into their reform efforts or solicit our input at the beginning of the process.

This is a mistake for a number of reasons. VSOs not only bring vast experience and expertise about claims processing, but our local and national service officers hold power of attorney for hundreds of thousands of veterans and their families. In this capacity, we are an integral component of the claims process. We make VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources for VBA to develop and adjudicate claims. We would like to see ourselves more actively involved in each of these new processes and new pilots as they come on Board.

I would be glad to answer any questions you may have, sir.

[The prepared statement of Mr. Wilson appears on p. 42.]

Mr. HALL. Thank you, Mr. Wilson.

We have a few minutes left in the vote across the street, so at this point we will recess the hearing, and when we come back we will hear from Mr. Searle and Mr. Hilleman.

This meeting is in recess.

[Recess.]

Mr. HALL. The Subcommittee on Disability Assistance and Memorial Affairs will resume our hearing on pieces of legislation, which we have already been discussing. And I apologize for whoever it is that makes the schedules and calls these votes when we have important business to do.

Mr. Barry Searle from the American Legion, you are recognized for 5 minutes.

#### **STATEMENT OF BARRY A. SEARLE**

Mr. SEARLE. Thank you for the opportunity to present the views of the American Legion on several important topics. H.R. 3407. The American Legion is well-known for its advocacy for veterans. We feel that all veterans, but particularly severely injured veterans and those who have received the Purple Heart deserve our utmost respect and have earned the thanks of a grateful Nation.

We who do not on a daily basis contend with injuries both physical and psychological, which were received due to selfless service to this Nation, can never fully repay these severely injured heroes.

H.R. 3407 focuses on increased compensation for disabled veterans and recipients of the Purple Heart. It further adds traumatic brain injury for eligibility for aid and attendance benefits, and severe burn injuries for both veterans and active-duty members for adaptive equipment to automobiles, and extends the provisions of an existing pension for certain hospitalized veterans.

Traumatic Brain Injury, the signature wound of Iraq and Afghanistan, along with severe burns, are a legacy of the tactics being conducted by our enemies in Iraq and Afghanistan. The improvised explosive device (IED) is a weapon of choice for our enemy and is insidious in its utilization and often even more devastating in its long-term effects than gunshots due to the multiple wounds, concussion, and burns it produces.

Terrible scars and the attending loss of appendages and range of motion due to the fires resulting in an IED explosion are a life-long

sacrifice our veterans and military personnel must endure as a result of service to the Nation.

The American Legion believes that these warriors have suffered, and will continue to suffer, for their entire life and should not be forced to pay for daily attendance or adaptive equipment necessary to bring some normalcy to their life upon their return.

H.R. 3407 authorizes the VA Secretary to increase monthly special pension for recipients of the Congressional Medal of Honor.

The American Legion feels that these recipients are a special class of veteran. These recipients have given this Nation conspicuous gallantry above and beyond the call of duty.

The American Legion supports H.R. 3407.

H.R. 3787, to amend title 38 U.S. Code to deem certain service and Reserve components as active duty service for purposes of laws administered by the Secretary of Veterans Affairs, and H.R. 4541, the "Veterans Pensions Protection Act of 2010."

The American Legion has no position on either of these legislations.

H.R. 5064, the "Fair Access to Veterans Benefits Act of 2010." This bill impacts the issue of equitable tolling, a principle of tort law stating a statute of limitations will not bar a claim if despite use of due diligence the plaintiff did not or could not discover the injury until after expiration of the limitations period.

Currently the appellant has 120 days from the date of notice of the final decision of the Board of Veterans' Appeals is mailed to file a notice of appeal to the United States Court of Appeals.

A Supreme Court ruling on an unrelated matter rendered its decision that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement and thus could not be waived.

On 24 July, 2008, the Court of Appeals for Veterans Claims ruled in a two to one decision that this ruling prohibited from using equitable tolling to extend the 120-day appeal period.

The American Legion supports proposed legislation that would allow the CAVC to apply equitable tolling in certain situations, especially in such instances where the veterans service-connected disability hindered the filing of a timely appeal.

The American Legion supports H.R. 5064.

H.R. 5549. H.R. 5549 allows for the waiver of a claim development by VA in those cases where a veteran certifies that he or she has submitted a Fully Developed Claim.

While this measure stands to potentially increase the speed with which a veteran may receive benefits, there are still concerns about this legislation.

The American Legion supports efforts to streamline the claims process and to fast track those claims where additional work is unnecessary. However, it is essential that the veterans ensure and fully understand what is being asked of them when they submit these waivers.

The American Legion believes that there must be further clarification on what mechanism is provided by H.R. 5549 to protect a veteran in situations where a veteran may erroneously believe, and therefore, certify, that all necessary development has been performed on a claim.

It is critical that the veteran be entitled to return to the traditional claims or general population process at any point when it becomes clear that the claim is in fact not fully developed. In this way the rights of the veteran would be protected while allowing more speed in processing.

It is understood that the veteran has a right to file a notice of disagreement with a decision and enter into an appeals process; however, this would delay the claim as it moves through another backlogged system and, therefore, defeat the purpose of the original intent of H.R. 5549, to expedite accurate decisions of original claims.

In short, there are still concerns about the implementation of the measure such as this and how it will affect veterans.

The American Legion would like to see more clarification and assurances of protection for veterans so that they are not put in a situation where they sacrifice their ability to receive thorough review of their claim and in hopes of having it processed more swiftly.

With the previous concerns noted, the American Legion supports H.R. 5549.

As always, the American Legion appreciates the opportunity, and thanks this Subcommittee to testify and present the position of over 2.5 million veterans of this organization and their family.

This concludes my testimony.

[The prepared statement of Mr. Searle appears on p. 45.]

Mr. HALL. Thank you, Mr. Searle.

Mr. Hilleman.

#### **STATEMENT OF ERIC A. HILLEMAN**

Mr. HILLEMAN. Thank you, Mr. Chairman, Members of the Subcommittee.

On behalf of the 2.1 million men and women of the Veterans of Foreign Wars and our Auxiliaries I thank you for the opportunity to testify on these bills pending before the Subcommittee.

Due to the time constraints I will limit my remarks to three bills.

Beginning with H.R. 5549, the "Rating and Processing Individuals' Disability Claims Act," or "RAPID Claims Act."

The VFW is heartened by this legislation, which would provide VA a mechanism for identifying and expediting claims that are ready to rate by granting the Secretary the authority to waive the mandatory 60-day development period with written permission of the veteran.

As of June 15th, VA announced a new expedited claims process reminiscent of this legislation.

VA is seeking to advance ready to rate compensation and pension through a fast track process.

The details are yet unclear, but this Committee's continued effort to reduce the backlog through oversight and advancing ideas such as ready to rate, claims have encouraged the VA to adopt this practice.

Under this bill, if a veteran submits a statement which indicates the veteran's intent to submit a Fully Developed Claim, the veteran would have 1 year from the date of submission to provide the Secretary with a Fully Developed Claim and access the expedition treatment of their claim.

If the Secretary determines a claim to be underdeveloped, the VA would notify within 30 days the veteran of more evidence and information is required for their case.

The backlog of veterans claims for disability compensation and pension is approaching 900,000, and over 100,000 new claims are expected to be filed every year for the foreseeable future.

This legislation will create an incentive for veterans and their duly appointed representatives to represent VA with fully developed cases in a timely fashion. In turn, it will reduce the time and energy required of VA to track down external evidence while developing the case.

While this legislation creates an incentive to compile outside evidence quickly and address a veteran's claim, it does not stress the importance of quality rating decisions.

The VFW has always believed quality rating decisions are central to addressing a long-term backlog and instilling confidence in the VA's disability benefits system.

The VFW cannot support this legislation as written due to the absence of the date of preservation in Section 2, paragraph 2, which allows a veteran to submit a statement of intent to submit a Fully Developed Claim.

As worded, we believe the intent of this section was to imply that a veteran could preserve the date of claim and still access the expedited claims process.

We would be happy to fully support this legislation with the inclusion of language preserving this right to the date of claim.

The second bill is H.R. 3407, the "Severely Injured Veterans Benefits Improvement Act of 2009."

We are proud to support this legislation, which would increase the aid and attendance for severely injured veterans, qualify severely burned veterans for adaptive grants, increase pension for housebound veterans, expand aid and attendance to cover veterans with traumatic brain injury, and increase the service pension for Congressional Medal of Honor recipients.

We would like to highlight Section 3, which expands the eligibility for those who have suffered severe burn injuries to qualify for automotive and adaptive grants.

Given the severe burns caused by many improvised explosive devices, veterans are living with scar tissue that decreases the range of motion and limits the use of digits and extremities. Burn injuries in some cases are extreme enough to require special adaptation to simply achieve basic functionality and independent living.

The VFW believes every possible accommodation should be made to restore the highest level of independence to these deserving veterans.

H.R. 3787, the "Honor America's Guard and Reserve Retirees Act."

H.R. 3787 has in mind an extremely important goal, to give men and women who choose to serve our Nation in the Reserve component the recognition their service demands.

The mission of many Guard and Reservists is to facilitate and support the developments of their comrades so that the unit is fully prepared when called upon. Unfortunately, the law does not currently allow those who serve several years and are entitled to re-

tirement pay, TRICARE, and other benefits, to call themselves veterans.

Such men and women have been extremely busy and have made extraordinary sacrifices in support of missions and Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). That is why we are in full support of this legislation.

Thank you for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Hilleman appears on p. 48.]

Mr. HALL. Thank you, Mr. Hilleman.

First to Mr. Weidman—or is it Weidman, I am sorry.

Mr. WEIDMAN. It is Weidman, sir.

Mr. HALL. Thank you so much. Forgive my memory lapses.

According to your testimony, VVA supports H.R. 3787 on the grounds that the nature of service of Reservists and members of the National Guard—reflects the changes in the nature of service of Reservists and members of the National Guard; however, the VA differs contending that benefits eligibility could continue to be based either on active duty or a qualifying period of active service during which a member was physically engaged in serving the Nation in an active military role.

VA argues that this bill would extend the same status to those who were never called to active duty and did not suffer disability or death due to active duty for training or inactive duty training, and hence do not have active service.

Can you tell us why you support this bill and what are the pros and cons of H.R. 3787 and the draft legislation?

Mr. WEIDMAN. As I mentioned in the brief summary in my oral remarks, Mr. Chairman, there was a really big difference in that long ago, far away land known as the 1960s America between those who went into the Guard and Reserve and those of us who went into active duty.

Today anybody who joins the Guard and Reserve should have an expectation that they can be called to active duty at any given time, number one.

And number two is, because that is the case the training frankly is a heck of a lot more serious and the preparation is a heck of a lot more diligent than it was some 40 to 45 years ago.

And third, the prejudice and the price that one pays in a society in general is actually very heavy for anybody in the Guard and Reserve.

In another Subcommittee they have—Ms. Herseth-Sandlin and Mr. Boozman have heard testimony documenting the prejudice on the part of employers against employing anybody who is in the Guard and Reserve because of the likelihood that that individual will be deployed not just once but possibly multiple times over the course of the next decade.

And so as a result, you are paying all the price in terms of giving up latitude of personal freedom and movement, you are paying the price in terms of an economic price in terms of a civilian job market, and number three is you essentially signed on the line.

We often, within Vietnam Veterans of America, have to really work hard to encourage Vietnam era veterans, those who served in the military on active duty during Vietnam, but were not sent in

theater, if you will. Well frankly, most of us were 18, 19, 20 years old, and as we used to call it, the big green machine, didn't give a good doggone where you wanted to go on your dream sheet, you got sent wherever Uncle Sam wanted you. And the same is true in today's Guard and Reserve. So it may well be that people do not get deployed and activated and deployed.

To not be able to call yourself a veteran when you have made all of those sacrifices and prepared for war and prepared to be deployed it seems to us that it is so changed in degree as to be different in nature today and that retirees should in fact be recognized as veterans. And you have Members of this Committee incidentally that would fall under the same category. Not just because of that, it is because of the change of the nature of the service itself and where it fits into the total forced concept.

I hope that hasn't been too meandering an answer, Mr. Chairman.

Mr. HALL. No, it is been a good one, and I think it is clear to all of us who are paying attention that men and women who serve in the Guard and Reserve today and their families live with the possibility and the expectation that at any moment, that any day they may be called on for another tour of duty.

Mr. WEIDMAN. Right.

Mr. HALL. So it is not just not going to training on weekends anymore and going about your business. Today you may actually, and will and do serve in combat along with our active duty troops.

Vietnam Veterans of America supports H.R. 5549 on its belief that the key to eliminating the backlog is proper preparation of claims and making the process yield more accurate determinations.

Could you elaborate on how VVA believes this bill would achieve this goal and what downside, if any, do you see from this legislation?

Mr. WEIDMAN. We have maintained for longer than it has been an issue actually much on the Hill that getting it right the first time, doing it right the first time was the way to go when it came to claims. We also believe the same thing is true in terms of the medical side of the House, which is why we still take great exception to VA's refusal to take a military history from every individual and use it in a full diagnosis and structuring of a treatment plan.

On the benefits side, if you get the case prepared correctly, the adjudication will take care of itself almost.

What we mean by that and what we have advocated over and over and over again and don't advocate with the leadership of VBA, is that there be an agreed upon set format for what goes into a C-file even while we are working on paper so that you can find the most salient documents, number one.

Number two, is that there has to be, Secretary Shinseki calls it, a template, we call it a summary, of what are the most salient facts in a case so that you cite the law or regulation then summarize the evidence with footnotes one, two, three, four, five, and you have a tab in the paper thing. You can also do that kind of tab in electronic. And you go right to it so about why the individual qualifies for that particular disability under the statute. The evidence is either there or it is not there. Then you cite the second regula-

tion or statute, and then summarize, and then footnotes, five, six, seven, eight. All of that goes in the preparation.

If it is properly prepared you could adjudicate a complicated claim in 1 to 2 hours max. Max. And in many cases you can do it in 30 minutes. It is either there or it is not there. But that takes effort in the initial preparation.

The more we can reward by an express line or a RAPID mechanism as described in this legislation, mechanisms whereby you are rewarded for putting that effort into a Fully Developed Claim in the beginning, then your backlog will start to come down.

The very first meeting that then National President Tom Corey of Vietnam Veterans of America and I had with Secretary Principi when he came in in 2001, he said his—and that was 10 years ago, sir—said that his top priority was reducing the backlog, which at that point was 300,000, and we said, don't go for speed, go for accuracy. If you get the claims adjudicated properly, we won't churn them back and forth through the system, but in order to do that you have to do the stress on the proper preparation.

So we think that the concepts are advanced in this RAPID legislation put forth by Mr. Donnelly, are good common sense, they are not dissimilar than the things that the Congress has already advanced in the FDC or the Fully Developed Claims process, but it goes a step further.

So we think it is sound, and as long as the guarantees of the individual rights are reserved to the individual, as mentioned by my colleagues from the DAV and the VFW and American Legion are preserved, we have no problem with this legislation and think it is worth pursuing.

Mr. HALL. Thank you, sir.

Mr. Wilson, you suggested in your testimony that there are currently unfair restrictions on the eligibility for adaptive equipment to veterans who qualify for automobile grants under section 3901 of title 39 U.S. Code.

To what extent does section 3 of H.R. 3407 address the need to expand the eligibility for adaptive equipment grants, and where does it fall short, if at all?

In other words, is there anything else that we need to do in this area?

Mr. WILSON. That is a good question, sir, and I would like to respond for the record to have an accurate comment to that detailed consideration.

If you are going to provide a benefit for an adaptive equipment for a vehicle, given that we have had 53 years of no substantial change in how these particular benefits have been funded and you have a vehicle allowance of \$11,000, it will not cover the cost of a vehicle, which is substantially more today. Disabled veterans typically are going want a larger sedan to be able to get your chair in and out, to be able to use it properly, to have the accessories as far as moving the seat back and forth electronically, or adjust the steering wheel. These all seem like simple things to us who have all of our physical abilities but when you have to use various prosthesis and the like and have to be dependent upon the chair or the scooter, these things become key, and only a larger sedan can do that, and only in the current allowance prohibits such a purchase

for veterans as they usually are not in the most financially advantageous situation.

So we certainly continue to lobby for an increased allowance for this particular issue.

And I would be glad to comment as I said for the record on other provisions regarding that section of the bill.

[The DAV subsequently provided the following information:]

DAV supports this critical provision of Section 3 of H.R. 3407 which expands eligibility for adaptive equipment grants to veterans who have severe burn injuries. We also contend that restrictions on the eligibility for adaptive equipment to only those veterans who qualify for the automobile grant as specified in section 3901 of title 38, United States Code does not address the needs of veterans whose service-connected disabilities prohibit the safe operation of a motor vehicle. Veterans suffering from joint replacement surgeries or severe arthritis for example would also benefit from automotive adaptive equipment grants as such equipment could facilitate safer operation of their motor vehicles. We urge Congress to expand such eligibility accordingly.

Mr. HALL. Thank you, sir. I think I would agree that most of us probably—most of the public would not view a \$22,000 vehicle as a luxury vehicle.

Mr. WILSON. Yes, sir.

Mr. HALL. It is not top of the line. It is sort of medium, and certainly if you are looking for an adequate sedan or a van with lift gate capabilities and so on I don't think you will find it in a smaller less expensive car.

Mr. WILSON. Yes, sir.

Mr. HALL. Which would probably be less reliable too.

Mr. Searle, H.R. 5549 would allow veterans to certify that they have submitted a Fully Developed Claim, which would expedite the process in order to get better veteran results and relieve the VA of some of the backlog.

You have suggested on behalf of the American Legion that this legislation would benefit from further clarification to prevent veterans from mistakenly certifying a Fully Developed Claim.

Could you suggest what further steps or modification might be necessary in order to ensure veterans to not make this mistake?

Mr. SEARLE. Yes, Mr. Chairman. My approach on that was we have a concern about the adjudication of the claim once it is submitted and a veteran certifies it is been fully developed. We are looking at—while there are numerous—most of the adjudicators are veterans focused and wanting to help the veterans, there are some cases an attitude that the veteran may be trying to cheat the government.

What our concern is that a rater, when he gets a veteran, would say is a Fully Developed Claim he would go with the attitude of saying okay, I want to justify this claim rather than reject it. Our concern is that rather than returning the claim saying that there is something missing, the claim would simply be rejected and then have to go into the appeals process.

What we are saying is that the unassisted veteran is not a professional at this complicated effort. What we may do in good faith assume, because he has lived the event, it is a Fully Developed Claim. The claim would then be turned in, certified as fully developed, the adjudicator would look at it and say well there is some-

thing missing, but rather than returning it we want the safeguard that it does in fact get returned for further development rather than simply saying, no, I reject this claim and then it would have to go into the appeals process.

Mr. HALL. Mr. Hilleman, you emphasized in your testimony the importance of addressing quality rating decisions calling them quote, "central to addressing the long-term backlog and instilling confidence."

What do you believe can be done specifically to address the VA's ability to render quality and consistent rating decisions?

Mr. HILLEMAN. That is an excellent question,

Mr. Chairman. It is a very broad question though. This Committee has had a number of hearings based on that issue. You have gone over issues such as the credit system, you have addressed issues such as rating decisions and how rating decisions are made.

At this time, I don't think I could give you an answer that would satisfy the amount of work that this Committee has put forward. I am happy to have a conversation with you or with staff or get back to you for the record if there is some specifics you would like.

Mr. HALL. That is okay. Just one last brief question to each of you.

We heard Congressman Hastings' story about his constituent veteran who had his pension removed in 2 days after having insurance claim resolved in his favor after being hit by a truck and having his service dog injured and needing veterinary care, as well as his wheelchair being totaled and he himself being injured.

Does it strike you as odd and contradictory and unbelievable as it strikes me that the VA can make a decision in 2 days to take somebody's pension away when they get reimbursed for actual expenses, but yet it takes an average of 180 days to decide a claim for benefits?

It seems to me like the swiftness, alacrity and speediness of that decision gives us some indication of how quickly the VA might be able to move if the system were streamlined in the right way.

Mr. Weidman.

Mr. WEIDMAN. Well that is exactly what I was talking about, is that most people who work for the VA get up every day and want to do something good for vets, and that is true in VBA as well as on the medical side of the House. But when they do things like that they earn a reputation of being able to move quickly when it is in the government's quote/unquote "interest," and not in the interest of the individual versus moving quickly, as an example if someone is on the street and they need an adjudication quickly and the evidence should be there to adjudicate quickly. In order to get them off the street it can still take forever.

But 2 days to take away somebody's non service-connected pension we just think it smacks a mean spiritedness.

And a lot of what happens within the VA has to do with organizational structure and rethinking things in a good way. I am trying to answer your question. It is thinking of things in a different way.

One of the extraordinary things about General Eric Shinseki is he is pushing people to think about things in a different way.

An example of that had to do with the GI Bill and a fact that we had an instant backlog on the 21st Century GI Bill. So what

did he do? He called all 56 of those education coordinators into Washington, sat them down and said, what do we actually need to adjudicate this and why does it take so long? And they went through the procedures. And he said, well why does it take so long? Well it takes that long to follow the procedures. Well who wrote the procedures? And they said, well we did. And he said, all right, let us come back to, what do you actually need from these? And they reduced the number of key strokes per claim from 18 to 4 on the computer.

It is a matter of having the same kind of commitment to moving with alacrity that you do in a case where there is a material change that would go against the veteran to move with that kind of alacrity when it goes to the veteran, that is number one.

Number two, a one-time shot of cash does not constitute income, and we think that Mr. Hastings' bill will make that clear, particularly when it is just to hold the veteran harmless for something that happened to him or her beyond their control like an insurance settlement.

And we vehemently disagree with whether it is VA's contention of Office of Management and Budget's (OMB's) contention, who knows, but that a veteran should be penalized for getting an award for pain and suffering for going through somebody running over him in a truck when they are going down the street in their wheelchair.

Mr. HALL. Thank you.

Mr. Wilson.

Mr. WILSON. This is one of those circumstance in which you wish the VA had been more deliberative and taken an extended amount of time in order to respond to a situation of such devastation to an individual so severely handicapped as to lose essentially most every means of ability to manage themselves in their lives due to the injuries that they suffered and were fortunate to come back physically from that injury.

We do believe the VA is moving in a proper direction to modify such outcomes and provide what we would hope would be an accurate quality decision.

The whole business of the 30 plus pilots that we have in place now is an effort to do just that. And we have—we as VSOs sitting at this table have been actively engaged with them on the issue of pensions, on the issue of every other type of claim that VA has, and we appreciate being actively engaged. We would like to see ourselves engaged at the beginning of these particular processes, not later on, with an approach of oh, by the way we didn't talk to the VSOs, perhaps we should do so.

For example, there is these VONAPs, Veterans Online Application, that was rolled out last year with modifications. After it had been modified we were brought into a briefing to see it, what does it look like? Mr. Augustine, our Deputy Services Director was there and said, it would be great to have a pop-up menu that says you have an opportunity to have a veteran service organization or other representation provided to you if you wish, and do you want to do so? Just as a prompt when you go through the application. That wasn't considered because we had not been involved in the beginnings of the VONAPs discussion to provide that kind of input.

The virtual regional office (VRO) in Baltimore. They had subject matter experts go up and see it. We talked about having an opportunity to get up there, but they completed the entire VRO test without a single VSO having an opportunity to see the process.

Lastly, the Providence, Rhode Island situation. An excellent idea is being tested there. We didn't have an opportunity to talk to them about setting it up. When we go and we find they have a contact center and they are calling up veterans who they know are represented by powers of attorney from the screens that they are seeing, asking them for information with no consideration of the power of attorney hold that we had and other organizations had. We said, let us know that you are talking to the veteran asking for information so then we can advise the veteran, who we hold power of attorney on, about whether it is wise to submit the information that is requested or what is the best information that needs to be provided.

Those are concerns that we have. We are hopeful that Congress, and this Committee in particular, will continue to hold oversight hearings on particular issues about to ensure there is a deliberative and focused structure in place to monitor all 30 plus pilots; to access if the information technology (IT) system that they are putting together is adequate?

We would suggest that perhaps an independent body coming in and looking at what is being done—not that VA is not perfectly capable—might be a useful thing to do to validate that the VA's approach to IT is correct.

That kind of oversight involvement with the VSOs dealing with issues such as pension and all types of claims we think would be very useful to all concerned.

Mr. HALL. Thank you, sir.

Mr. Searle, do you have a brief comment to make about my observation or Mr. Alcee Hastings'?

Mr. SEARLE. Yes, Mr. Chairman. I think back to your original question, that is an example of what I was trying to get at with the original question on the Fully Developed Claims.

I think a movement like that, while it could technically be accurate and lawful, lends to the cynicism on the part of some veterans that the VA really is not there so help there.

I think there is no question that General Shinseki, you know, has put the policy out and enforces a policy of, you know, the benefit goes to the veteran.

Our concern is when you get down to the regional level, down to the individual taking a look at the claims level there appears to be in some cases more of an adversarial type of position and not trusting the veterans.

And an example that you had shown would be the same type of thing you were concerned about with the Fully Developed Claims. No, everything is not there, we will deny the claim, rather than okay, let us pull it back out, put it in the general population and assist the veteran.

Mr. HALL. Thank you.

Mr. Hilleman.

Mr. HILLEMAN. Mr. Chairman, unfortunately in the case of this gentleman who lost his pension in 2 days VA was enforcing the

law, and we urge you to change that, because it was callous. VA was executing as it should have, unfortunately it was callus.

VFW believes and maintains that any insurance claim, whether it be life insurance, auto insurance claim for an accident, or in this individual's case an insurance settlement for being struck by an automobile be exempt from pension. Pension is an extremely low threshold for any additional income.

So we are talking about individuals who are living very close to the bottom of the poverty line.

Thank you.

Mr. HALL. Thank you, sir. I am pretty certain that this legislation—Mr. Hastings' legislation will change the law as you say and probably come out of the Subcommittee without a dissenting vote, and my guess out of the full Committee unanimously, and my guess is that it will pass the House and the Senate and be signed into law.

And so my point is, in my own observation, and maybe it is not, it is apples and oranges, but if the law can be followed so quickly in one way, even if it is a mean spirited seeming decision, it may be legal, but they are following the law in 2 days as opposed to when it is on the veteran's side. When it is for the veteran's benefit, it seems to take much longer to follow the law, and I guess that is what we are all getting at.

At any rate, gentlemen, thank you for your testimony, and your written statements which we have made a part of the hearing record. And you are now free.

Mr. WEIDMAN. Mr. Chairman, can I just add one short thing?

Mr. HALL. Yes, sir.

Mr. WEIDMAN. And this is I think an important point.

I mentioned before that most people at VA get up in the morning and they do what they do because they care about serving vets. Many of them can serve outside of VA and make a good deal of more money. On both sides of that house whether it be Veterans Benefits Administration, or the Veterans Health Administration.

And when they come up here to testify, Tom Pamperin is not a mean guy, loves his kids, doesn't kick dogs as far as I know, but you know, the answers are prepared by OMB, and yet they are the ones who are subject to it.

I would just make one point that I have to make over and over again about Office of Management and Budget. You have less than 10 veterans out of 960 permanent employees at OMB, and they are subject to veteran's preference. Now how the heck does that happen if they are following the law? Real good question. The point is that none of them ever served a day in uniform, and the people that work on veterans.

Back in 2001 they assured the veterans organizations, the big six, then deputy director, assures us that not only would she go to a VA hospital in a regional office, but that all of her staff would—the permanent staff. When we met last spring, a year ago, with the President and with the Office of Management and Budget people I saw those same people again on permanent staff and I said, so have you guys made it to a VA hospital yet? And the answer is none of them had ever been across the threshold of a VA hospital

or across the threshold of a VA regional office, and probably didn't know any vets.

My point is this, is that the Committee somehow, it strikes me and my organization, should communicate with Director Orszag and with the President that the people at Office of Management and Budget who are going to be making decisions that dramatically affect the impact of veterans lives should get beyond the numbers and go out and at least see what happens at VA regional offices, what happens at VA hospitals. Because if we didn't learn anything else in Vietnam we sure as hell learned that body count, even when accurate, didn't mean you were winning the damn war.

And the OMB needs to stop setting up essentially a confrontation between VA staff, who now have a more open attitude than we have ever seen from Veterans Benefits Administration and the Congress, and the people who really set that confrontation up aren't even in the room.

We have a real problem with that kabuki dance, and somehow, some way Office of Management and Budget and Mr. Orszag and his people need to be held accountable.

Thank you for that opportunity to express that, Mr. Chairman.

Mr. HALL. Thank you, Mr. Weidman. Thank you. I am sure Mr. Pamperin thanks you. And this panel is excused, and we will call our third panel: Thomas Pamperin, the Associate Deputy Under Secretary for Policy and Programs Management of the VBA, U.S. Department of Veterans Affairs, accompanied by Richard J. Hipolit, Assistant General Counsel of the U.S. Department of Veterans Affairs.

Welcome gentlemen. Your written statements are made a part of the hearing record, so you are free to expand or to speak extemporaneously as you wish.

Mr. Pamperin.

**STATEMENT OF THOMAS J. PAMPERIN, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD J. HIPOLIT, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS**

Mr. PAMPERIN. Mr. Chairman, Members of the Committee, I am pleased to provide the Department of Veterans Affairs' views on pending legislation. Assistant General Counsel, Richard J. Hipolit, accompanies me, and I do appreciate Rick's endorsement of my character.

VA did not have sufficient time to develop and coordinate the Administration's position and costs on H.R. 5549, the "RAPID Claims Act." With your permission we will provide this information for record.

We also will provide in writing the completed cost estimates for Sections 3 and 5 of 3407.

[The VA subsequently provided the cost estimates in the Post-Hearing Questions and Responses for the Record, which appear on p. 66.]

Section 2 of H.R. 3407 would increase the special monthly rates for severely injured veterans.

The VA cannot support the provision as written. We already have numerous authorities to provide the most severely disabled veterans with higher levels of care. Congress would need to identify appropriate offsets for the benefits costs, which are estimated at \$351 million over 10 years.

Section 3 would provide eligibility for automobile and adaptive equipment to disabled veterans and members of the Armed Forces with severe burns.

VA does not object to the provision, subject to Congress identifying appropriate cost savings.

We will provide cost estimates associated with the enactment of this provision on the record.

Section 4 would increase non service-connected disability pension for certain wartime veterans.

VA supports the intent of this provision, but VA couldn't support the provision without a better understanding rather of how the new proposed pension level was developed.

Benefit costs are estimated at \$160 million over 10 years.

VA submitted a legislative initiative on May 26 to address special monthly pension changes required by the Court of Appeals for Veterans Claims decision in *Hartness v. Nicholson*, and we believe—which we believe to be inconsistent with Congressional intent.

Section 5 would provide eligibility for aid and attendance under Section O and R of special monthly compensation (SMC) for all levels of TBI.

VA believes that expansion of eligibility should be reserved to those with severe TBI.

Section 6 would authorize VA to increase the Medal of Honor special pension.

We have serious concerns with this provision. This proposal does not indicate the purpose for providing only a temporary rate increase and provides no guidelines to determine the extent of an increase.

VA estimates the cost of this provision would be \$2 million over 2 years.

Section 7 would extend current provisions relating to pensions for certain veterans in Medicaid approved nursing homes.

VA supports this proposal and estimates that enactment of this provision would result in VA cost savings of approximately \$6.2 million over 10 years.

VA will provide the net budgetary effect to the Federal Government, including Medicaid costs in writing at a later date.

Also States may incur costs as Medicaid will pay a larger share of nursing home care.

H.R. 3787 would deem former members of the National Guard and Reserve who are not otherwise qualified—who do not otherwise have qualifying service to have been on active duty for VA purposes.

VA does not support this bill, and we estimate that it would incur benefit costs of \$15.5 billion over 10 years. VA administrative costs are estimated at \$111 million.

The alternate version of H.R. 3787 would broaden the definition of the term veteran in Section 101, but the broader definition of the term would not be applicable for purposes of compensation, dependency, indemnity compensation, and hospital, nursing home, domiciliary, or medical care.

VA does not support this alternative version because it represents a departure from the active services of foundation for veteran status.

H.R. 4541 would liberalize the existing exemptions from income for improved pension.

We oppose excluding income payments received for pain and suffering because such payments do not represent reimbursement for expenses paid.

VA does not oppose the remaining provisions of this section.

The current law does permit exclusions from pension income calculations for reimbursements for any casualty loss that would not—and there would be no benefit costs associated with those provisions.

Finally, H.R. 5064 would require the Court of Appeals for Veterans Claims to extend the 120-day period for appealing a Board of Veterans' Appeals decision to the Court of Veterans Appeals.

Although VA supports the extension of the 120-day appeal period under certain circumstances, VA has several concerns with this bill.

To avoid potential problems resulting from an unlimited appeal period and retroactive application, Secretary Shinseki submitted to Congress the Veterans Benefits Improvement Act of 2010, which would take a more focused approach.

We estimate the enactment of VA's legislation as proposed would result in no significant costs or savings.

This concludes my statement, sir.

[The prepared statement of Mr. Pamperin appears on p. 50.]

Mr. HALL. Thank you, Mr. Pamperin. And you mentioned providing cost estimates to some of the bills that you don't have at the moment, and we would appreciate that—or to the sections of bills.

You note in your testimony that VA does not support Section 2 of H.R. 3407 stating that the VA already has numerous authorities to provide the most severely disabled veterans with higher levels of care. Specifically you named the Caregivers and Veterans Omnibus Health Services Act of 2010.

Could you please explain why you feel that the Caregivers Act is more beneficial to veterans than Section 2 of this legislation?

Mr. PAMPERIN. Sir, I don't—I would not mean to imply that it is better, merely that we have the capacity to pay higher levels of SMC based upon disabilities. They would be complimentary, but I would not say that one would be better than the other.

Mr. HIPOLIT. If I might add to that. There are several provisions in that Caregivers Act that specifically apply to veterans with TBI, which I think are very beneficial. You may be familiar with it, but just to run down it quickly.

Financial assistance and other benefits are given to caregivers for veterans who have severe disabilities from TBI. There is also a specialized residential care provision where we can contract to

get care for veterans with TBI. There is also a provision for use of non-department facilities for rehab for traumatic brain injuries.

So there are a number of very beneficial provisions in there for TBI veterans.

I am not saying that qualitatively one is better than the other, but there are a number of good things in there for TBI veterans.

Mr. HALL. Are those some of the quote “numerous authorities,” that VA has in place under written submission to provide care for severely disabled veterans? Are there others that you could specify?

Mr. HIPOLIT. I think that basically what we are referring to are those provisions.

Mr. HALL. Okay, thank you.

Mr. PAMPERIN. The other thing, sir, that I would point out is that with the revision of the TBI rating schedule about a year and a half ago, with the expansion of it to enable the potential for 100-percent individual evaluation for TBI that there currently exists the ability to award aid and attendance benefits, SMC benefits for TBI.

Now they are not at the O or R level, they are at the special monthly compensation L or aid and attendance rate. But we do have the authority right now to give SMC for TBI.

Mr. HALL. Thank you, sir.

And according to your testimony VA does not support the extension of eligibility for increased compensation for those veterans with multiple levels of TBI, or as you stated, characterized by minor symptoms.

Could you please describe what you mean by minor symptoms resulting from TBI?

Mr. PAMPERIN. Sir, as you may know, TBI is characterized as mild, moderate, or severe, approximate in time to the time of the injury, and that basically is a measure of how long a person is unconscious, and whether or not they have penetrating head wounds and things like that.

It is possible with a mild TBI for an individual to completely or nearly completely recover if they only have one.

So the notion that the current bill would enable for any level of TBI some sort of relatively minor spatial adjustment that would normally be compensated at the 10 percent level, we don't quite believe that that is the way SMC has normally been contemplated.

SMC historically has always required that a veteran have 100-percent disability rather than something less than that.

Mr. HALL. On H.R. 3787, could you please elaborate on why the VA opposes the draft legislation proposed by Mr. Walz, why is it problematic, what are the implications?

His intent, as I see it, is to have a—essentially a change of title of status of a Guard and Reservist to be able to call himself or herself a veteran but with no costs or benefits further than, you know, are already there.

So what unintended consequences—

Mr. PAMPERIN. Sir, I believe that the—obviously the bill as initially drafted would have been very, very expensive. The substitute bill—

Mr. HALL. Right.

Mr. PAMPERIN [continuing]. On its face articulates that it does not qualify people for additional benefits.

Our concern is not with the immediate event as much as it is in a blurring of the definition so that over time additional benefits would be expended, fully recognizing that members of the Guard and Reserve today do sign up, as Mr. Weidman says, for the—not only the chance, but the increasing likelihood of a period of activation. Those individuals who do experience that activation indication are veterans under the title.

What I would say that we are mostly concerned about is that a watering down of that particular word, which is foundational in the entire development of a benefit scheme, would be our concern.

Mr. HALL. What are the implications of the draft legislation in amending Section 101 of title 38?

Mr. HIPOLIT. I want to add on this subject or that there are a number of State laws that rely on our definition of veteran in title 38. We did a survey and we found that many States have laws that use the title 38 definition of veteran for purposes of various benefits that they give. We haven't done a complete survey, but I know there are at least a couple of status laws that we came across where being a veteran under title 38 gets you something under State law, for example a veteran's license plate.

For most of the State benefits that we have seen you need something else, like a service-connected disability, as well as being a veteran under title 38, so these Reservists wouldn't qualify. But by changing the definition of veteran it could have an impact on some State law of benefits.

So that is another thing that probably needs to be considered.

Mr. HALL. Thank you. I understand your concern about lowering, or watering down, as you put it, the description or definition of a veteran and extension by State law of other benefits. At the same time, I have been to many events where those who serve this country in uniform are saluting the colors, and those such as I who have not are holding our hands over our hearts, and it is a symbolic status that is deserving of respect and honor. I think that if there is something that we can do to help Mr. Walz in the intention of this bill to fulfill that intent it is worth looking into. However, you have to look, Mr. Pamperin, down the road at future Congresses and future legislation that may use that definition for other purposes, but the Guard and Reserve today are not the Guard and Reserve of 30 years ago, and their service is not.

We had a Colonel Norton who was a West Point grad and testified and said a number of interesting things before this Subcommittee, but I believe it was he who said the same uniform, same war zone, same benefits. We should treat these people the same way.

So my question is, I guess whether the current definition of the number of deployments, the number of days, et cetera, is sufficient or whether Mr. Walz' amended bill is sufficient?

Mr. PAMPERIN. Sir, we would be glad to work with the Committee on that, and our concerns in no way imply a lack of honor and respect for people who wear the uniform every day and the Guard and Reserve.

Again, those who are activated are considered veterans, whether it is for—if you were called to active duty as a result of OEF/OIF, whether that period of service is a year or it is 6 months or it is 30 days, if you are mobilized under title 10, as long as you serve the period for which you are called you are considered a veteran.

Mr. HALL. Regarding H.R. 4541, could you please tell us why VA opposes the exclusion of pain and suffering payments from pension and income calculations? How do these reimbursements differ from accident, theft, loss, casualty loss, or reimbursements that are addressed in Mr. Hastings' bill?

Mr. PAMPERIN. Mr. Chairman, it may sound like a cold distinction, but the law, Public Law 95-588 that created the current pension law was very, very clear that all income from all sources other than public assistance is income for VA purposes.

Through the process of regulations, and there was a mechanism to having reductions to income, we have made clear that insurance payments that are to recover for the veterinary expenses, the medical expenses, the wheelchair, those are excludable income.

I realize that the individual in that case was injured and that they no doubt are fully deserving of the pain and suffering payment that they got, but the law as constructed and as having been interpreted has always been very clear that every source of income other than welfare is income.

Mr. HALL. So we are considering changing the law.

Mr. PAMPERIN. Yes, you are, sir.

Mr. HALL. And can you tell me if you had any cost estimates or how you would go about costing this bill?

Mr. PAMPERIN. I will get back to you on the status of the cost estimate, but I am sure there is data out there about the number of insurance settlements for pain and suffering that you could derive a percentage based upon the total veteran population and go from there.

[The VA subsequently provided the information in the answer to Question 2(b) of the Post-Hearing Questions and Responses for the Record, which appear on p. 66.]

Mr. HALL. Now we have been discussing and VA has been discussing on working on, as Dole-Shalala suggested, among others, payments for lost quality of life.

Mr. PAMPERIN. Uh-huh.

Mr. HALL. And it seems to me that—I mean even this particular incident that Mr. Hastings' constituent suffered through happened when he was not in the middle of his service but after his service, resulted in some loss of quality of his life, which was already suffering from his injuries during service.

It seems kind of cross purposes to me to on one hand talk about quality of life and on the other hand exclude—or to include, to offset pain and suffering payments that are not coming from the government, they are coming from insurance companies.

But any way, Mr. Hastings isn't here to ask these questions, so I am just trying to imagine what he would ask.

Mr. PAMPERIN. Clearly, sir, this is a public policy issue that is directly what this body is intended to address.

Mr. HALL. So your understanding of the VA's position today is that if pain and suffering payments were excluded from this bill you might support it?

Mr. PAMPERIN. If pain and suffering is excluded from the bill, we believe that the items articulated there are already excludable.

Mr. HIPOLIT. With the exception of medical expenses. I think the medical expenses would be a change, but we do not oppose that part of it. The pain and suffering is the one that we take a position against.

Mr. HALL. Now do you know if on an occasion like this when someone in an RO makes a decision that a veteran is going to have their pension reduced or taken away for a year or whatever it is and then makes that decision within 2 days of receiving information and then a Congressional office advocates for the veteran and gets it reinstated. Does that caseworker at the VA get some reeducation? Is there some conversation about what just happened?

Mr. PAMPERIN. One would hope that there would be. We will attempt to find out exactly who this particular veteran is.

Mr. HALL. We know who the veteran is, but we don't know who the—

Mr. PAMPERIN. Well we know his last name.

Mr. HALL. That is true. Well Mr. Hastings I am sure can—

Mr. PAMPERIN. Okay. You know, it would be rash of me to speculate as to what happened. If the benefit was actually restored, clearly somebody said well what about, you know, all of these expenses? But we will—we can look into it and find out exactly what happened.

Mr. HALL. That would be good.

I think we would appreciate having the VA provide a fuller explanation of the position of the Administration and the cost estimate for H.R. 4541 for the record if you could do that for us, please.

And also I would like to know, I have no desire to go after an individual, but this is an example, about which, that I think that many of us, and certainly many veterans, would like to know more.

When something is reversed like this, when an adverse decision is made for a veteran and then somebody else like a Member of Congress steps in or their representative or their staffer steps in and makes a call and it gets changed back again, and in this case it would seem to me like changing it back was the just thing to do, whether that ripples out through the VA to other people so that we try to keep this from happening again. At any rate, that is enough on that bill.

Regarding H.R. 5064. Mr. Pamperin, in your testimony you made reference to the General Secretary Shinseki's proposed VBA—or "Veterans' Benefits Programs Improvement Act of 2010." This act, which would allow the VA to grant a 120-day extension for appeals, as long as the request is made within 120 days of the expiration of the claimant's previous 120-day window.

Given the often demanding nature of physical rehabilitation and debilitating effects of mental disabilities, would setting yet another strict deadline on top of a previous hard deadline adequately address the problem and provide the discretion to the Court to make equitable decisions?

Mr. PAMPERIN. Sir, I believe that there are not that many cases where the Court has declined to accept jurisdiction because the person has not timely filed.

We are talking about people who have gone through a fairly lengthy adjudication process through the Board of Veterans' Appeals.

I think that somebody who now at the end of that process is not capable of fulfilling the 120-day situation when they have fulfilled every other time filing requirement, that those are exceptional cases, and that that is what an expectation to what would normally be a hard and fast rule where it would be important to have that kind of capability, but that it would be exercised fairly rarely.

Mr. HALL. Could I ask you, Mr. Hipolit, if you have anything to say about the equity issue?

Mr. HIPOLIT. On the good cause exception? Yes, we think that there needs to be some kind of reasonable extension available for good cause but that it needs to have some limitations on it.

I think the bill as originally introduced would be extremely open ended, so that somebody could come back even 20 years later and ask for a good cause exception and at that point it would be very difficult to know what the circumstances really were in the past.

And so we think that our proposal places some reasonable limits on it. It would give essentially 240 days.

Most of the cases that we have seen where somebody did miss a deadline, it wasn't by a huge amount of time. I think in Mr. Henderson's case it was 15 days.

So I think that kind of limited exception would capture most of the cases and provide the Court with an opportunity to provide relief in cases where it was equitable.

Mr. HALL. Thank you. And lastly regarding H.R. 5549.

Mr. Pamperin, could you tell us why VA does not support this bill? Particularly how would the bill change the way VA currently preserves effective dates and provides VCAA notices?

Mr. PAMPERIN. We haven't had the time to develop a position on the legislation. The legislation is very, very similar as Congressman Donnelly pointed out to the Fully Developed Claim process that was tested and is now being deployed.

The notion that a person can't have an informal filing date protected is something that is—I don't believe is consistent with our perception of what the Fully Developed Claim is, that there is a possibility of doing an informal claim.

And what happens in a Fully Developed Claim assertion where in fact the case is not fully developed is not that the case is denied, it merely reverts to a standard case that is not case managed to rapidly move it through the process.

I mean, all cases are managed from a workload perspective, but on a Fully Developed Claim we are trying to move that as rapidly as possible so that, you know, there is much more management involvement in that specific case to make sure that it gets done timely.

Mr. HALL. Is a VCAA then issued?

Mr. PAMPERIN. Yes.

Mr. HALL. Does the FDC program change the way these things are currently done, and if so, how?

Mr. PAMPERIN. It doesn't change the decision process. I mean you need a claim, you need evidence, you need to decide it, and you need to notify.

What the Fully Developed Claim does do is relieve you of some of the VCAA time limits and it puts it in a category of intensively managed cases so that they are done as quickly as humanly possible so that they don't spend a lot of time in cues in various areas of the regional office.

Mr. HALL. Thank you.

Mr. Hipolit, since you are here, this is not actually on our agenda, but I thought you might have some knowledge of this when the final language would be revealed on the presumed service-connection for post-traumatic stress disorder.

The public hearing comment process was last fall, and my understanding is that is sort of any day now?

Mr. HIPOLIT. I think we are pretty close on that now. We received a very large number of comments on that proposed rule and it took quite a while to sort that out, but the process is pretty far along now.

I can't give a specific date when we will have the final rule out, but that is moving along very well now. I think we are——

Mr. HALL. Well as we approach one of the more patriotic weekends that we celebrate, 4th of July, Independence Day, it would seem like a really good time to announce that all men and women who have served in uniform in this country in a war zone and who later have post-traumatic stress disorder will be not just treated, but compensated if they are unable to work because of their injuries. But if it is not this weekend one can hope that it will be soon.

Mr. PAMPERIN. Sir, I believe you may get your wish.

Mr. HALL. Well I'll keep my fingers crossed, thank you.

Thank you very much for the work you do for our veterans, and I would like to talk to you about your relationship with OMB and with Mr. Weidman's comments in mind. Maybe we could set up a field trip for all of us to, you know, go visit some VA facilities together.

I never see enough myself and learn enough myself, and the folks who are doing the financial analysis of some of these proposals perhaps could use some more exposure to what is really going on with our veterans. So we will work on that. We will put our staff to work on that.

But thank you again.

All Members have 5 legislative days to revise and extend their remarks.

We thank all of our panelists for their service to our country and to our veterans. We thank everybody here for their testimony.

And this hearing stands adjourned.

[Whereupon, at 12:34 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

---

### **Prepared Statement of Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs**

Good Morning Ladies and Gentlemen:

Please rise for the Pledge of Allegiance.

The purpose of today's hearing will be to explore the policy implications of five bills and one draft measure, H.R. 3407, H.R. 3787 and accompanying draft legislation, H.R. 4541, H.R. 5064 and H.R. 5549 that were recently referred to the House Committee on Veterans' Affairs' Disability Assistance and Memorial Affairs Subcommittee.

The first bill we will discuss is the Severely Injured Veterans Benefits Improvement Act, H.R. 3407, introduced by Ranking Member Buyer which seeks to significantly increase the level of benefits available to our severely disabled veterans and Medal of Honor recipients. As a cosponsor of this bill, I support its provisions which would amplify the ancillary benefits relating to aid and attendance for traumatic injury for our veterans and to severe burn injuries of both veterans and active duty members for adaptive equipment automobiles, as well as increases for the non service-connected pension and Medal of Honor special pension.

The second bill on today's agenda, H.R. 3787 and its accompanying draft legislation, Honor America's Guard-Reserve Retirees Act, both sponsored by Chairman Walz would grant honorary veteran status to retired members of the Guard and Reserve who completed 20 years of service. I support this bill and look forward to working through the kinks to ensure that these deserving men and women receive the distinction of being called veterans. Our Guard and Reserve comprise a large component of those called to serve in our two current wars. Those changing dynamics need to be reflected in the policy to reflect their level of sacrifice.

Third is the Pension Protection Act of 2010, H.R. 4541, introduced by Mr. Alcee Hastings of Florida, which would prohibit VA from counting casualty windfall payments as income for the purposes of determining eligibility for the non service-connected pension benefit.

Our fourth bill is the Fair Access to Veterans Benefits Act, H.R. 5064 introduced by Congressman Adler of New Jersey which deals with the issue of equitable tolling for appeals filed before the Court of Appeals for Veterans Claims. The Court recently decided in *Henderson v. Shinseki* that it does not have the ability to extend its 120-days filing period deadline and the Federal Circuit Court affirmed that decision. As a cosponsor of this legislation, I clearly believe that our veterans deserve the benefit of the doubt and the CAVC should be able to exercise its judgment to give it to them unfettered. This bill would ensure that those veterans who have good cause, just like in the case of Mr. Henderson, are not shut out of the appeals process without recourse.

Our last bill is the Rating and Processing Individuals Disability Claims Act, or RAPID Act, H.R. 5549, introduced by a veteran member of the DAMA Subcommittee, Mr. Joe Donnelly. H.R. 5549 seeks to improve on the VA's adoption of the Fully Developed Claims Pilot provision in P.L. 110-389 by ensuring that veterans are able to protect their effective date while fully developing their claim. It would also ensure that veterans are apprised of their appeals right when VA denies a claim.

These are all worthwhile measures that will help our veterans tremendously. I thank the Members for their thoughtful legislation. I thank our other esteemed witnesses for joining us today and look forward to any further insight they may provide.

I now yield to Ranking Member Lamborn for his Opening Statement.

**Prepared Statement of Hon. Doug Lamborn, Ranking Republican Member,  
Subcommittee on Disability Assistance and Memorial Affairs**

Thank you Chairman Hall,

I look forward to this opportunity to confer with our witnesses on the bills we are considering this morning.

To allow maximum time for discussion, I will limit my opening remarks to H.R. 3407 the Severely Injured Veterans' Benefits Improvement Act.

This commendable bill was introduced by full Committee Ranking Member Steve Buyer to improve benefits for our most deserving veterans.

These are the men and women who are so severely injured that they require assistance attending to daily personal needs such as bathing and eating.

For veterans in need of regular aid and attendance, H.R. 3407 would provide a 50 percent increase in the amount they receive for special monthly compensation.

This increase will ensure that they are able to acquire professional medical services that will allow them to remain in their homes.

It would also expand eligibility for veterans with severe traumatic brain injury to receive aid and attendance, and it would authorize veterans with severe burns to receive specially adapted auto grants.

H.R. 3407 would make these needed improvements without increases in direct spending.

I urge my colleagues to support this bipartisan bill.

Thank you, and I yield back.

---

**Prepared Statement of Hon. Timothy J. Walz,  
a Representative in Congress from the State of Minnesota**

Chairman Hall, Ranking Member Lamborn, fellow Members of the Committee, thank you for the opportunity to testify to the Subcommittee today regarding H.R. 3787, the Honor America's Guard Reserve Retirees Act.

As a 24 year guardsman and a veteran myself, I am proud to sponsor this legislation, which has been a priority among the veterans community for years. As you are all well aware, the reserve component of our military performs an invaluable role in supporting the active duty component, responding in times of national emergency, and most importantly standing ready to deploy to overseas missions in times of need, as so many of those who have served in the Guard and Reserve post-September 11th have done.

And for those who take on that responsibility and that risk for 20 or more years, we reward their service much as we do the members of the active duty military, with things like military retired pay, medical care through the TRICARE program, and even burial in a veterans' cemetery.

However, under current law, if members of the reserve component have not served a qualifying period of federal active duty, there is one honor that we do not bestow upon them: we do not give them the right to call themselves "veterans" of the armed forces.

I believe that this oversight does a disservice to those who, like their counterparts in the active duty component, volunteered to serve their country and made themselves liable for activation at any time. Furthermore, I think it is a matter of basic common sense that if qualification for reserved retired pay is sufficient to secure government sponsored burial in a federal veterans' cemetery, it should also grant the right to offer a hand salute during the playing of the national anthem, or take part in official Veterans' Day events.

While this may not seem important to some, for those who wore the same uniform, were subject to the same code of military justice, received the same training and spent 20 years or more being liable for call-up, this lack of recognition is a gross injustice.

H.R. 3787 would finally correct this injustice in the most straight-forward way possible: by adding reserve component military retirees to the Title 38, section 101(2) definition of the term "veteran." This particular section of the U.S. Code is considered the most fundamental in defining who is and is not a veteran under our law. By including Guard and Reserve retirees under this, the most basic definition of veteran, we ensure that they are not relegated to second class veteran status, but are instead full, unalloyed veterans.

As I have said, the sole purpose of this legislation is to grant veteran status to those who have been denied it up to this point. In light of this fact, we have gone

to great lengths to ensure that no new material benefits accrue to those who would gain veteran status under this legislation.

To begin with, as I have already mentioned, Guard and Reserve retirees already have access to a number of veterans' benefits, such as retirement pay, TRICARE medical care at age 60, space available military aircraft travel, and burial in veterans' cemeteries. Furthermore, due to the nature of their service, even as veterans they would not qualify for a host of other benefits such as those granted under the Post-9/11 GI Bill, which have a minimum active service requirement, or for things like VA Health care which have low-income requirements (the overwhelming majority of Guard Reserve retirees would be Priority Group 7 or 8).

The original text as introduced used section 106 to qualify reserve component retirees by deeming their service active duty. While it would have achieved the goal of including this group in the section 101(2) definition of veterans, it would also have qualified them for a whole slew of benefits which are available only to veterans of active service.

Because of my commitment that this legislation not create any new entitlements or benefits, I decided to reject that approach, and intend to introduce an amendment in the nature of a substitute that goes at the section 101(2) language directly. Furthermore, in order to avoid even the potential for any unintended or unforeseen benefits accruing to reserve component retirees, we have also included conforming amendments to Chapters 11, 13, and 17, covering all disability benefits, DIC payments and VA health care, which ensures that those servicemembers who qualify for veteran status under the new language shall not have access to any benefits to which they would not otherwise be entitled.

The conclusion that this legislation will not result in any unintended consequences has been supported by both the non-partisan Congressional Budget Office, which has certified this legislation as adding no new burden on the Federal budget or cost to taxpayers, and by the Congressional Research Service, which has gone through the statute with a fine toothed comb and identified every single active reference to 38 USC 101(2)—a list which I will gladly share with anyone who is interested.

And of course, in case there is anything the CBO and CRS experts have missed, I would be happy to work with the Disability and Memorial Affairs sub-committee staff to ensure that those issues are addressed in the final legislation.

Finally, I would like to point out that this legislation is supported by the members of The Military Coalition, as well as the National Military Veterans Alliance, which together represent several million active duty servicemembers, veterans and their families.

It is my hope that this hearing will address any outstanding issues with this legislation so that we can see this long overdue change made, and give the members of the reserve component the honor that they have earned.

---

**Prepared Statement of Hon. Alcee L. Hastings,  
a Representative in Congress from the State of Florida**

Chairman Hall, Ranking Member Lamborn, Distinguished Members of the Subcommittee:

Thank you for holding today's hearing and for the opportunity to testify on H.R. 4541, the *Veterans Pensions Protection Act of 2010*. I am grateful for the leadership of the Subcommittee and its long-standing and unwavering commitment to America's veterans. I share with you the goal of building better lives for all veterans and their families.

Before I begin, I would like to welcome and recognize the veterans in the room today and express my gratitude for their service to our Nation. Each of you has made a difference in the history of our Nation and in the lives of so many. I would also like to thank the veterans' organizations for their constant hard work improving veterans' lives and for appearing before the Subcommittee today.

In the spring of 2009, one of my constituents, a navy veteran with muscular dystrophy, reached out to my office in desperate need of assistance. The Department of Veterans Affairs (VA) had abruptly cancelled his pension and he had fallen below the poverty line. Unable to pay for daily expenses, unable to meet his mortgage payments, Mr. Scriber was on the verge of losing his home and joining the ranks of the 100,000 homeless veterans in our Nation.

Mr. Scriber did not break the law, nor did he commit any crime. In March 2008, he was hit by a truck when crossing the street in his wheelchair, with his service dog. Mr. Scriber was on his way to the pharmacy. "People who saw it said I went

10 feet into the air. I landed head-first into the pavement," he told me. Mr. Scriber suffered from broken bones and teeth. His dog was also injured and his wheelchair destroyed.

As a law-abiding citizen, Mr. Scriber reported to the VA the insurance settlement payment that he received from the driver's insurance to cover his medical expenses and the replacement cost of his wheelchair. As a result, the VA cancelled his pension benefits for an entire year.

When assessing a veteran's eligibility for a pension, the VA considers a variety of sources of revenue to determine a veteran's annual income. If such income exceeds the income limit set by the VA, the veteran does not qualify for a pension or loses their benefits. Currently, the VA considers any reimbursement that compensates a veteran for his or her expenses due to accidents, theft or loss as income. Only reimbursements of expenses related to casualty loss are currently exempted from determination of income.

Under the current law, if a veteran is seriously injured in an accident or is the victim of a theft and receives insurance compensation to cover his or her medical expenses, the replacement cost of the stolen items, or for pain and suffering, he or she will likely lose their pension as a result. This means that the law effectively punishes veterans when they suffer from such an accident or theft.

Mr. Scriber reached out to the VA several times, asking to have his pension reinstated because he could not cover his medical expenses, replace his wheelchair, pay for daily expenses, and afford his mortgage without his pension. Each time, the VA refused to reinstate his pension. This is when I became personally involved. I contacted the West Palm Beach VA medical center and wrote several letters to Secretary Shinseki but the VA did not change its policy, nor did they restore Mr. Scriber's benefits for a whole year.

I am distraught that the VA can cancel the pensions of unemployed and disabled veterans without further notice. The VA has a moral responsibility to care for our veterans and ensure that they live decent lives. After serving our Nation so valiantly, they deserve no less than the very best benefits. No veterans should be unable to pay their medical bills, unable to get the care that they need, or be in a situation where they could lose their home. This is simply unacceptable and this is why I introduced H.R. 4541, the *Veterans Pensions Protection Act*.

The *Veterans Pensions Protection Act* will amend the U.S. Code to exempt the reimbursement of expenses related to accidents, theft, loss or casualty loss from being included in the determination of a veteran's income. This will guarantee the continuity of our veterans' pensions and that no veteran will have their benefits unfairly and abruptly depreciated or cancelled. My distinguished colleague in the Senate, Mr. Tester of Montana introduced the *Veterans Pensions Protection Act* last month after a similar incident happened to one of his constituents.

I understand that the VA is facing increasing issues with regards to providing care and benefits to our returning servicemembers, and the veterans of previous conflicts. With more veterans coming home from Iraq and Afghanistan, the costs of transition and long-term care continue to increase. The backlog of claims filed by those who served in uniform is growing. While I understand these difficulties, I refuse to let them overtake our veterans' well-being. The VA must ensure that no veterans are left behind, like Mr. Scriber was.

There is clearly something wrong with a law that cancels veterans' pensions for a whole year following the award of an insurance payment, which was only intended to cover exceptional medical expenses. Mr. Scriber will never be compensated for his loss. It disheartens me that veterans are overlooked and mistreated due to flaws in VA regulations. I urge the VA to support the *Veterans Pensions Protection Act* and the Subcommittee on Disability Assistance and Memorial Affairs to take action on it.

Mr. Chairman, we must ensure that pension benefits are issued to veterans who legitimately meet the income criteria and rely on such assistance to survive. We must enact regulations that help veterans live better lives, not hurt them. Our veterans have shown their devotion to our Nation with their bravery and sacrifice. We must now prove our dedication to those heroes by treating them in accordance with the values and ideals upon which we have founded this great Nation.

Mr. Chairman, Ranking Member Lamborn, Distinguished Members of the Subcommittee, this concludes my testimony. I would be pleased to answer any questions you may have. Thank you.

---

**Prepared Statement of Hon. John H. Adler, a Representative in Congress  
from the State of New Jersey**

I would like to thank Chairman Hall, Ranking Member Lamborn, and Members of the Subcommittee for the opportunity to testify on behalf of H.R. 5064, the *Fair Access to Veterans Benefits Act*. This Subcommittee has been integral in ensuring that our veterans are receiving the benefits they deserve. I commend you on your leadership.

The need for H.R. 5064 came from a federal appeals court ruling in which a Korean War veteran, David Henderson, who suffers from paranoid schizophrenia, was denied benefits because his appeal was filed 15 days late. The deadline that Mr. Henderson missed was one that required filing an appeal within 120 days of the final notice from the Board of Veterans' Appeals, the highest administrative authority in the claims process.

Mr. Henderson served in the military from 1950 to 1952. He was discharged after being diagnosed with mental health problems and assigned a 100 percent disability rating, making him eligible for disability compensation. In 2001, Henderson sought an increase in compensation based on his need for in-home care. His claim was denied at the VA regional office, and the denial was upheld in 2004 by the Board of Veterans' Appeals.

Mr. Henderson appealed to the U.S. Court of Appeals for Veterans' Claims, but he filed his appeal 15 days too late. He tried but failed to get the court to reconsider, arguing that his service-connected disability caused him to miss the deadline. The veterans' court rejected his argument and the U.S. Court of Appeals for the Federal Circuit agreed, in *Henderson v. Shinseki*, that the veterans' court was right to reject a late appeal.

My bill would require the U.S. Court of Appeals for Veterans' Claims to hear appeals by veterans of administrative decisions denying them benefits when circumstances beyond their control render them unable to meet the deadline for filing an appeal. *The Fair Access to Veterans' Benefits Act* would require the U.S. Court of Appeals for Veterans' Claims to excuse late filings if the veteran demonstrates "good cause" so that meritorious benefits claims are not denied their day in court. This bill also requires the Veterans' Claims Court of Appeals to reinstate untimely appeals already dismissed as a result of the court's failure to toll the filing period for good cause.

The veterans' claims process is extremely difficult to navigate, especially when doing so without the aid of an attorney or while suffering from a mental disability. While the Veterans' Claims Court of Appeals was intended to be informal and fair, the imposition of rigid deadlines has resulted in the denial of benefits for many veterans. Oftentimes, the reason these veterans missed the filing deadline was because of the very service-connected disabilities that entitle them to the benefits they are seeking. It is my hope that H.R. 5064 will help ensure that no veteran is denied disability benefits simply because they have missed an arbitrary deadline.

I would again like to thank Chairman Hall, Ranking Member Lamborn, and Members of the Subcommittee for allowing me the time to testify on this important matter. I would be happy to answer any questions you might have.

---

**Prepared Statement of Hon. Joe Donnelly,  
a Representative in Congress from the State of Indiana**

Chairman Hall and Ranking Member Lamborn, Members of the Subcommittee, thank you for the opportunity to discuss my bill before the DAMA Subcommittee today.

After closely working with the Iraq and Afghanistan Veterans of America and the Disabled American Veterans, I have introduced H.R. 5549, *The Rating and Processing Individuals' Disability (RAPID) Claims Act*, along with Chairman Hall. The goal of *The RAPID Claims Act* is to improve the disability claims process for our Nation's veterans, something we all agree is necessary.

In 2008, Congress passed The Veterans' Benefits Improvement Act (P.L. 110-389). Included in the bill was the Fully Developed Claim (FDC) pilot program, which allows veterans filing fully developed claims to waive the lengthy development period and receive expedited consideration. FDC was originally a 1-year pilot program conducted at 10 VA Regional Offices, and, due to its success, VA recently announced that it would implement the program nationwide.

I support VA's decision to rollout this program nationwide; however, I would like to see FDC become law with a couple small improvements. *The RAPID Claims Act*

would codify FDC while also modifying it to protect a veteran's effective date for disability compensation and ensuring a veteran who mistakenly files an unsubstantially complete claim in FDC is given fair notice what further evidence is needed to complete the claim.

When participating in the normal claims process, a veteran can submit a claim at any time—marking the claim's effective date—and the veteran still has up to a year to gather evidence. However, a veteran seeking to participate in FDC may gather evidence independently, preventing an establishment of an effective date for that veteran's disability compensation. This evidence period can take months or up to a year, costing a veteran hundreds or even thousands of dollars in missed benefits. *The RAPID Claims Act* would allow a veteran gathering evidence for a fully developed claim to mark an effective date for his or her compensation by notifying VA that a fully developed claim is forthcoming. Marking this effective would help ensure that the veteran's compensation is made retroactive to an appropriate date.

Additionally, some veterans will submit claims through FDC that VA will decide do not qualify for the program for a number of reasons, including missing evidence. If VA determines that a claim submitted through FDC is ineligible, I am concerned VA may not immediately notify the veteran of what is needed to substantiate the claim. If VA processes the claim before notifying the veteran, this could lead to incomplete and unsatisfactory results for the veteran, causing more appeals and longer processing periods for veterans. *The RAPID Claims Act* would modify FDC to require VA to notify and assist the veteran to help substantiate such claims.

Finally, *The RAPID Claims Act* also has a provision targeted at the appeals process. The bill would require that the VA Appeals form is included with the Notice of Decision letter, instead of waiting for a veteran to exercise his or her appeal rights before sending the form to the veteran. I believe this is a simple courtesy VA could extend to our Nation's veterans.

Once again, thank you Chairman Hall, Ranking Member Lamborn, and my Subcommittee colleagues for the opportunity today to highlight what I feel are simple solutions to help improve the disability claims process for our veterans. While we have achieved much on behalf of our veterans in recent years, I think we all agree further steps are needed to reduce the wait times faced by veterans and to simplify the process. Thank you.

---

**Prepared Statement of Richard F. Weidman,  
Executive Director for Policy and Government Affairs,  
Vietnam Veterans of America**

Good morning, Mr. Chairman, Ranking Member Lamborn, and distinguished Members of the Subcommittee. Thank you for giving Vietnam Veterans of America (VVA) the opportunity to offer our comments on the important legislative proposals under consideration today.

**H.R. 3407, the "Severely Injured Veteran Benefit Improvement Act"** would increase rates of the following veterans' benefits: (1) wartime disability compensation for veterans in need of regular aid and attendance or higher levels of care; and (2) the non service-connected disability pension for veterans of a period of war whose disability is rated permanent and total and who are permanently housebound.

H.R. 3407 also makes disabled veterans with severe burn injuries eligible for automobile and adaptive equipment assistance; and, it makes veterans who suffer traumatic brain injury eligible for wartime disability compensation; and, this bill also authorizes the Secretary of Veterans Affairs (VA) to increase the rate of the special pension for persons entered on Medal of Honor rolls.

Lastly, H.R. 3407 would extend to September 30, 2021, provisions concerning the treatment of pension amounts of Medicaid-covered veterans who are receiving nursing facility services.

Vietnam Veterans of America applauds Congressman Buyer for introducing this much needed legislation, and also commends the more than two dozen co-sponsors from both sides of aisle. This proposal would recognize the needs of veterans with severe Traumatic Brain Injuries (TBI) and terrible burns to make sure that the special needs of these severely wounded veterans are properly recognized and compensated to put them on an appropriate par with veterans suffering more "traditional" catastrophic injuries. Frankly TBI and terrible burns from explosive devices have become "signature wounds" of our current conflicts in Iraq and Afghanistan, along with Post Traumatic Stress Disorder (PTSD). When Congressman Buyer introduced this important legislation, almost 1 year ago, he correctly noted that many

(if indeed not most) of these servicemembers would likely have died of their wounds in earlier conflicts, therefore it is incumbent on us to make sure that the law (and the regulations) reflect the fact that they survived and have significant needs that need to be properly addressed. It is right and fitting to modify the statutes to ensure that those with severe TBI and burns are eligible for automobile and for adaptive equipment, and that those with TBI be eligible for wartime disability compensation and eligible for aid and attendance.

Earlier this year Congress passed the so-called “Care Givers” bill, which VVA supported, even though this bill only assisted the caregivers for the veterans of a single conflict. This distinguished Committee has a long and history and deep tradition of at least trying to ensure equity among the generations, and trying to ensure that one generation of veterans is not in effect pitted against another generation. The referenced legislation was and is much welcomed by the caregivers for the current generation of veterans who have returned from the Global War On Terror, as well as by all of us who care deeply about their well-being, and the Congress is to be commended for this important step. That program is indeed needed to ensure that these veterans and their families have every opportunity to stay together, solvent, and in their home with dignity and with a relatively decent standard of living. The motivation to “do right by this new generation” and not repeat what the country did to those returning from Vietnam and our families is very strong.

While H.R. 3407 takes a somewhat different approach, enactment of this proposed legislation would go a long way toward restoring equity for those who have been providing care for veterans of earlier conflicts by significantly increasing the rate of special compensation to all severely disabled veterans, thereby easing the strain of caring for these veterans most in need. It would also accord a major increase to non service connected severely disabled wartime veterans who are housebound, many of whom served our country well in earlier wars and are now in need of such assistance. It will have the effect of making it possible for these veterans to stay in their homes, with dignity, as they approach the end of life. While we are grateful for COLAs when they come, this has not been enough to have nearly the effect that this bill will have on these deserving veterans.

Lastly, H.R. 3407 authorizes the Secretary of Veterans Affairs to increase the special pension for persons entered on the Medal of Honor rolls, within the limit of existing funds, up to \$2,000 per month. As there are only 80 or fewer living recipients, this will obviously not be fiscal strain on the country, but will help better recognize these extraordinary Americans.

***H.R. 3787 the “Honor America’s Guard-Reserve Retirees Act”*** (As Amended By Nature of A Substitute) **would deem as active duty service, for purposes of benefits provided through the Department of Veterans Affairs (VA), service of a person entitled to retired pay for non-regular (reserve) service or, but for age, would be so entitled.**

With the advent of the “total force” concept in the overall United States military, and the very heavy reliance on Reserve forces of all of the braches of our military, and also heavy reliance on the National Guard, to wage war and to accomplish the mission of defending the Nation, the very nature of service in these units has so dramatically changed for these personnel since they first entered service as to make the previous distinction between active duty and Guard-Reserve a very blurred line indeed. There is a need to change the law regarding benefits accorded by the VA to reflect these changes in the nature of service. The axiom “same hostile fire—same benefits” is appropriate here. VVA strongly favors enactment of this bill.

***H.R. 4541 the “Veterans Pensions Protection Act of 2010”*** **would exclude from annual income, for purposes of eligibility for pensions for veterans and their surviving spouses and children, reimbursements resulting from: (1) any accident; (2) any theft or loss; (3) any casualty loss; (4) medical expenses resulting from any such accident, theft, or loss; and (5) pain and suffering (including insurance settlement payments and general damages awarded by a court) related to such accident, theft, or loss.**

The VA practice of including all funds received from any source, including one time receipt of restitution of property for theft or fire, as income for those on non service connected pension from VA was never a particularly wise one, and was often seen a just plain perverse and mean spirited. VVA commends Mr. Hastings and his colleagues who have co-sponsored this measure, and urge the Congress move toward enactment at an early date.

***H.R. 5549 “The Rating and Processing Individuals’ Disability Claims Act’ or the ‘RAPID Claims Act’”*** **would allow a veteran who has representation from an accredited representative to waive lengthy waiting periods when filing a claim if they and their representative have gathered all evidence**

**and relevant information, and it would further require the Secretary to consider the claim in an expeditious manner.**

VVA has long maintained that the key to eliminating the backlog is proper preparation of claims, and making the process yield more accurate determinations. This very simple and straightforward bill will codify what is just common sense.

VVA favors early passage of this legislation.

**H.R. 5064 the "Fair Access to Veterans Benefits Act of 2010" would extend the 120-day limit for the filing of an appeal to the Court of Veterans Appeals after a final decision of the Board of Veterans' Appeals upon a showing of good cause for such time as justice may require. The proposal considers as good cause the inability of a person to file within the 120-day period due to a service-connected disability. Further, the bill would make such extension applicable to appeals of final Board decisions issued on or after July 24, 2008.**

It has never made any sense to those of us at Vietnam Veterans of America (VVA) that the VA can take any amount of time such as they may consume to take an action on a claim by an individual veteran, but woe to the veteran who misses a VA deadline, no matter how valid the reason. This proposed action simply makes this process a bit more equitable in that if the veteran misses a deadline due to that very disability in question, or a related disability, then the appeal will be considered.

VVA strongly favors early passage of this legislation.

Mr. Chairman, this concludes my remarks. Many thanks to you and your colleagues again for allowing Vietnam Veterans of America (VVA) to share our views with this distinguished committee today. I will be pleased to answer any questions you or your colleagues may have.

---

**Prepared Statement of John L. Wilson,  
Assistant National Legislative Director, Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV) to address the various bills under consideration by this Subcommittee today.

H.R. 3407, the Severely Injured Veterans Benefit Improvement Act of 2009, would amend title 38, United States Code, to make certain improvements to laws administered by the Secretary of Veterans Affairs relating to benefits for severely injured veterans.

Section 2 would increase the rate of monthly disability compensation for severely injured veterans subject to section 5503 (c) of title 38 in need of regular aid and attendance from \$1,893 to \$2,840 and from \$2,820 to \$4,230 for those eligible under paragraphs one and two respectively. DAV supports this increase in monthly compensation for this important group of veterans who must deal with significant levels of disability as a result of their service-connected conditions.

Section 3 would expand the eligibility for automobile and adaptive equipment grants to disabled veterans and members of the armed forces with severe burn injuries. Currently a veteran or servicemember must have the loss, or permanent loss of use, of one or both feet; loss, or permanent loss of use, of one or both hands, or permanent impairment of vision in both eyes to a certain degree. Those qualified for the automobile grant must currently have ankylosis, immobility of the joint, of one or both knees or hips resulting from an injury or disease incurred or aggravated by active military service may also qualify for the adaptive equipment grant. Adaptive equipment includes power steering, power brakes, power windows, power seats, and special equipment necessary to assist the eligible person into and out of the vehicle.

While DAV supports the expansion of this benefit, we must also raise the related issue of the adequacy of automobile and adaptive equipment grants themselves. Because sporadic adjustments have not kept pace with increasing costs, over the past 53 years the value of the automobile allowance has been substantially eroded. In 1946, the \$1,600 allowance represented 85 percent of the average retail cost and was sufficient to pay the full cost of lower priced automobiles. The Federal Trade Commission cites National Automobile Dealers Association data that indicate that the average price of a new car in 2009 was \$28,400. The current \$11,000 automobile allowance represents 62 percent of the 1946 benefit when adjusted for inflation by the Consumer Price Index (CPI); however, it is only 39 percent of the average cost of a new automobile. To restore equity between the cost of an automobile and the

allowance, the allowance, based on 80 percent of the average new vehicle cost, would be \$22,800. In accordance with *The Independent Budget* and DAV Resolution 171, our recommendation is that Congress enact legislation to increase the automobile allowance to 80 percent of the average cost of a new automobile in 2009 and then provide for automatic annual adjustments based on the rise in the cost of living. We also recommend that Congress consider increasing the automobile allowance to cover 100 percent of the average cost of a new vehicle and provide for automatic annual adjustments based on the actual cost of a new vehicle, not the CPI.

Additionally, in accordance with DAV Resolution No. 172, we note that section 3902 of title 38, United States Code, and section 17.119(a) of title 38, Code of Federal Regulations, restrict the eligibility for adaptive equipment to those veterans who qualify for the automobile grant as specified in section 3901 of title 38, United States Code. Not all veterans whose service-connected disabilities prohibit the safe operation of a motor vehicle meet the requirements of section 3901 of title 38, United States Code and we contend that veterans should be provided the adaptive equipment necessary to safely operate a motor vehicle. Therefore, DAV recommends that Congress adopt legislation to provide or assist in providing the adaptive equipment deemed necessary to any veteran whose service-connected disability interferes with the safe operation of a motor vehicle.

Section 4 would increase the non service-connected pension payments for certain veterans. DAV has no position on this issue.

Section 5 would expand the eligibility of veterans with traumatic brain injury for aid and attendance benefits. Veterans currently eligible in this category include bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 60 percent or more disabling and the veteran has also suffered service-connected total blindness with 20/200 visual acuity or less, or if the veteran has suffered service-connected total deafness in one ear or bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 40 percent or more disabling and the veteran has also suffered service-connected blindness having only light perception or less, or if the veteran has suffered the anatomical loss of both arms so near the shoulder as to prevent the use of prosthetic appliances. DAV has no position on this issue.

Section 6 would authorize the Secretary of Veterans Affairs to increase the Medal of Honor special pension by up to \$1,000 more per month, as funds are appropriated. DAV would not be opposed to this group of veterans who have rightfully earned this Nation's highest honor to also received increased compensation as detailed in this legislation.

Section 7 amends title 38, United States Code, section 5503, which addresses hospitalized veterans and estates of incompetent institutionalized veterans. This bill extends the statute for hospitalization eligibility dates for treatment of veterans with non service-connected disabilities from September 30, 2011 to September 30, 2021. DAV has no position on this issue.

H.R. 3787 would amend title 38, United States Code, to deem certain service in the Reserve components as active service for purposes of laws administered by the Secretary of Veterans Affairs. Specifically, this bill seeks to extend "veterans status" to individuals who have completed 20 years of military service in Reserve status. While DAV has no resolution on this matter, we do have concerns that by granting veterans status now there may be unintended consequences in the future. A redefinition of the term veteran may then lead to efforts to extend benefits due those newly defined and their dependents and survivors. This potential for the expansion of benefits could then negatively impact the benefits available to current veterans, their dependents and survivors.

H.R. 4541, the Veterans Pensions Protection Act of 2010, would exempt reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to pensions for veterans and surviving spouses and children of veterans. This legislation is outside the scope of the DAV's mission as it addresses pension benefits for non service-connected conditions. We nonetheless have no opposition to its favorable consideration.

H.R. 5064, the Fair Access to Veterans Benefits Act of 2010, would provide for the equitable tolling of the timing of review for appeals of final decisions of the Board of Veterans' Appeals. Essentially, 120-day period would be extended to claimants when they can provide a showing of good cause for not previously having been able to file a notice of appeal within the normally prescribed timeline. Examples of "good cause" include issues such as physical or mental incapacities. Current law does not provide for equitable tolling of the appeal period if a veteran is physically or mentally incapacitated and unable to file the appeal within the allotted time period. Yet, it is these very disabilities that may significantly impact a veteran's ability to file the appeal paperwork in the proper time frame. DAV has testified on this

proposal. This bill partially fulfills DAV Resolution No. 226, which calls for legislation to broaden the definition of equitable tolling, or the addition of a good cause provision to ensure that all veterans are not prevented from timely filing appeals for adverse decisions due to physical or mental incapacities, sending the request for appeal to the wrong office or other good cause reasons. DAV certainly supports this legislation as it moves the appeals process closer to providing a reasonable opportunity for veterans in certain circumstances to continue their appeals.

H.R. 5549, the Rating and Processing Individuals' Disability Claims Act or the RAPID Claims Act seeks to provide expedited procedures for the consideration of certain veterans' claims. Specifically, the bill would expedite those claims certified as fully developed for individuals represented by veterans service organizations (VSOs) or other representatives who waive the development period afforded them by the Veterans Claims Assistance Act. Further, if the claimant submits written notification of their intent to submit a fully developed claim and then does so within 365 days of that notice, the Secretary will accept this informal claim when it is submitted with the date of claim as that of the claimant's original informal claim notice. Lastly, this bill would reinstate VA's duty to assist when VA deems a claim is not ready to rate and requires them to notify the claimant accordingly.

The Fully Developed Claim (FDC), mandated by Congress under Public Law 110-389, was recently launched by the VA and is similar to this bill in seeking to expedite claims that are ready to rate. However the VA's FDC program is missing key protections for veterans that this bill offers. First, under the FDC pilot there is no provision that would allow a veteran to file an informal claim to protect their effective date before submitting the FDC application.

Also, under the current claims system, a veteran may submit an informal claim before beginning development in order to secure an earlier effective date for a later disability rating. The FDC program, while quicker once adjudication begins, does not protect this earlier date, forcing a veteran to choose between an earlier effective date or quicker claims processing. Second, when a veteran elects to participate in the FDC program and waives some VCAA notice requirements, there are no provisions requiring that VA comply with notice requirements should that claim be returned to the normal claims process.

H.R. 5549 offers important adjustments to current processes that the VA has yet to incorporate into its many pilots. We recommend its passage.

We are pleased with the interest that Congress has shown in its oversight and investigation of the benefits delivery process. While we also applaud the Veterans Benefits Administration (VBA) for their openness and outreach to the VSO community, we still remain concerned about their failure to integrate us into their reform efforts or solicit our input at the beginning of the process. This is a mistake for a number of reasons: VSOs not only bring vast experience and expertise about claims processing, but our local and national service officers hold power of attorney (POA) for hundreds of thousands of veterans and their families. In this capacity, we are an integral component of the claims process. We make VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources for VBA to develop and adjudicate veterans' claims. We would encourage VBA to integrate us during the planning stages of new initiatives and pilots, as well as throughout the ongoing Information Technology (IT) development.

We also encourage Congress to await enactment of other legislation modifying any particular approach in the claims process until the results of the 30-plus pilots are known. Additionally, we would encourage Congress to continue to use its oversight and investigation authority in working with the Administration in examining the many initiatives currently underway. Questions for your consideration remain in the midst of this flurry of activity. For example, is there a deliberative, focused structure in place to monitor these pilots? What was the planning for each of them? How are the findings for each of them organized? What is the plan to assess the successes and lessons learned? What is the standard for success? What metrics are in place? Do the metrics include timeliness, accuracy and quality measures? How are best practices being captured and integrated into other pilots? Does the IT piece of this plan respond to the call by VSOs to ensure we are kept in the information loop when new evidence is requested from a veteran?

We are concerned that in an effort to meet the Secretary's goal of "breaking the back of the backlog" there could be a bias towards process improvements that result in greater production over those that lead to greater quality and accuracy. Is the Veterans Benefit Management System (VBMS) being rushed to meet self-imposed deadlines in order to show progress towards "breaking the back of the backlog?" We have been told that rules-based decision support will not be a core component of the VBMS, but that it will be treated as a component to be added-on after its rollout, perhaps years later. We question whether the VBMS can provide maximum quality,

accuracy and efficiency without taking full advantage of the artificial intelligence offered by modern IT through the use of rules-based, decision support. In addition, the VBMS must have comprehensive quality control built in, as well as sufficient business practices established, to ensure that there is real-time, in-process quality control, robust data collection and analysis and continuous process improvements.

We would urge the Committee to fully explore these issues with VBA. With regard to IT, we offer that an independent, outside, expert review of the VBMS system might be helpful while it is still early enough in the development phase to make course corrections, should they be necessary.

The last bill to address is an amendment to H.R. 3787, which seeks to modify the original bill's title and other provisions. As previously stated, while DAV is not opposed, we do have concerns that by granting veteran status to those who completed a full career in a Reserve status, there may well be unintended consequences in the future.

That concludes my testimony and I would be happy to answer any questions the Subcommittee may have.

---

**Prepared Statement of Barry A. Searle, Director,  
Veterans Affairs and Rehabilitation Commission, American Legion**

Mr. Chairman and Members of the Subcommittee.

Thank you for the opportunity to present the views of The American Legion on: H.R. 3407, Severely Injured Veterans Improvement Act of 2009; H.R. 3787, To deem certain service in the Reserve Components as active service for the purpose of laws administered by the Secretary of Veterans Affairs; H.R. 4541, Veterans Pensions Protection Act of 2010; and, H.R. 5064, Fair Access to Veterans Benefits Act of 2010; and H.R. 5549, the Rapid Claims Act.

**H.R. 3407: Severely Injured Veterans Benefit Improvement Act of 2009**

The American Legion has a proud history of advocacy for America's veterans. All veterans, particularly severely injured veterans and those who have been awarded the Purple Heart deserve the utmost respect and have truly deserved the thanks of a grateful Nation. The American Legion recognizes the importance of caring for those injured through service as expressed through an organizational resolution titled: The American Legion Policy on VA Compensation. This resolution states that we, who are not forced on a daily basis, to contend with physical and psychological injuries received as a result of selfless service to this Nation, can never fully repay these severely injured heroes.

H.R. 3407, the "Severely Injured Veterans Benefit Improvement Act of 2009," focuses on increased compensation for disabled veterans, and recipients of the Purple Heart. It further adds Traumatic Brain Injury (TBI) for eligibility for aid and attendance benefits, and severe burn injuries of both veterans and active duty members for adaptive equipment to automobiles, and extends the provisions of an existing pension for certain hospitalized veterans.

The American Legion has testified before Congress numerous times concerning the need for increased assistance to veterans who have been injured in service to this country. We are pleased that this bill increases the special monthly compensation rate for aid and attendance for severely injured veterans. While overall inflation is relatively low in today's economy, the costs of caring for severely injured veterans at home to include personal health care services on a daily basis continue to increase.

Traumatic Brain Injury (TBI), "the signature wound for Iraq and Afghanistan," along with severe burns, is a legacy of the tactics being conducted by our enemies in Iraq and Afghanistan. The improvised explosive device (IED) is the weapon of choice for our enemy, and is insidious in its utilization and often even more devastating in its long-term effects than gunshots due to the multiple and terrible wounds and burns it produces. The American Legion has undertaken an effort to better understand TBI and Post Traumatic Stress Disorder (PTSD) in order to become more of a subject matter expert on the issues. On a regular basis new information is being developed both by military and civilian medical authorities which show how vulnerable the brain is to impacts, even those from sporting events such as professional football. It can be surmised that in the near future research will conclusively show that TBI is a debilitating and long lasting injury. Clearly, veterans who in many cases have been exposed to multiple severe explosions should be added to the need for aid and attendance.

Likewise, the terrible scars and the attending loss of appendages and range of motion due to the fire resulting in an IED explosion are a life-long sacrifice our veterans and military personnel must endure as a result of service to this Nation.

H.R. 3407 authorizes adaptive equipment for automobiles of veterans and service-members with severe burns and other disabilities. The American Legion believes that these warriors have suffered and will continue to suffer for their entire lives and should not be forced to pay for the adaptive equipment necessary to bring some normalcy to their lives upon their return. The cost to adapt personal vehicles to improve mobility and to give some semblance of personal independence is not too great a cost for this Nation to give these wounded warriors.

Finally, H.R. 3407 authorizes, subject to the availability of appropriations for the purpose, the VA Secretary to increase the monthly special pension by not more than \$1,000. Once again The American Legion feels that a recipient of the Congressional Medal of Honor is of a special class of veteran. These recipients have given this Nation "conspicuous gallantry above and beyond the call of duty." It is right that this Nation give some token of esteem in the form of an increase to their special pension.

**The American Legion supports H.R. 3407**

**H.R. 3787: To amend title 38, United States Code, to deem certain service in the reserve components as active service for purposes of laws administered by the Secretary of Veterans Affairs.**

**The American Legion has no position on this specific legislation at this time.**

However, The American Legion does feel that there is a need for appropriate entitlements based on levels of sacrifice. In the case of H.R. 3787 reserve component members must meet the criteria of having completed a minimum of 20 "good" years for retirement. In those 20 years the servicemember is required to maintain physical fitness and professional standards to include military and civilian education, and weapons and equipment qualifications. In some cases these activities, in particular, maintaining physical fitness, and weapons qualification can have long term negative impact on hearing, and sensitive joints such as knees and shoulders.

The role of the Reserve Component servicemember has changed since the Gulf War that began in 1990. Prior to that war the reserve component was regarded as a strategic force to be called upon when greater mobilization of the armed forces was required for our national security. However, much of the combat power that comprises our warfighting efforts now resides in the reserve component. For this reason, the reserve component has changed from a strategic force to an operational force. Thus, in a wartime era, where we as a Nation are relying more and more on the Guard and Reserve, it is imperative that earned benefits fairly reflect level of sacrifice. The American Legion will continue to review the issue of fair entitlements for Reserve and Guard members to develop a fair and complete organizational resolution that supports fair equity in benefits for all who have served.

**H.R. 4541: Veterans Pensions Protection Act of 2010**

This legislation would amend title 38, United States Code, to exempt reimbursements of expenses related to accident, theft, loss or casualty loss from determinations of annual income with respect to pensions for veterans and surviving spouses, and children of veterans.

**The American Legion has no position on this legislation**

**H.R. 5064: Fair Access to Veteran's Benefits Act**

H.R. 5064 reflects current procedures concerning equitable tolling. Equitable tolling is a doctrine or principle of tort law: a statute of limitations will not bar a claim if despite use of due diligence the plaintiff did not or could not discover the injury until after the expiration of the limitations period.

Under 38 U.S.C. §7266(a), an appellant has 120 days from the date the notice of a final decision of the Board of Veterans' Appeals (BVA) is mailed to file a notice of appeal (NOA) to the United States Court of Appeals for Veterans Claims (CAVC). From 1998–2008, previous precedential decisions of the United States Court of Appeals for the Federal Circuit (*Bailey*) had permitted equitable tolling by the CAVC for the 120 day time period under §7266(a). The Supreme Court, however, in *Bowles v. Russell*, 551 U.S. 205 (2007), made it clear that the timely filing of a NOA in a civil case is a jurisdictional requirement and that courts have no authority to create exceptions. The Supreme Court further concluded that only Congress can make such exceptions.

In *Henderson v. Shinseki*, the CAVC ultimately dismissed the veteran's appeal because he had missed the 120 day deadline by 15 days. The veteran argued that his service-connected mental disorder, rated 100 percent disabling, caused him to miss the deadline. While Mr. Henderson's appeal was pending at the CAVC, the Supreme Court rendered its decision in *Bowles*, in which it stated that "the timely filing of a notice of appeal in a civil case is a jurisdictional requirement," and thus cannot be waived. The Court also stated that it had no authority to create equitable exceptions to jurisdictional requirements.

On July 24, 2008, the CAVC ruled in a 2-1 decision that the holding in *Bowles* prohibited it from using equitable tolling to extend the 120-day appeal period set forth in § 7266(a). The CAVC determined that Congress had "specifically authorized" it to conduct "independent judicial appellate review" of the BVA, and that well-settled law established that its cases were "civil actions." Starting from that premise, the CAVC concluded that § 7266(a) was a notice of appeal provision in a civil case, and that it was jurisdictional and could not be equitably tolled. Accordingly, the court ruled that the Federal Circuit's precedent in *Bailey* was effectively overruled, and it dismissed Mr. Henderson's appeal for lack of jurisdiction.

Mr. Henderson subsequently filed a timely appeal of the CAVC decision with the United States Court of Appeals for the Federal Circuit. On December 17, 2009, the Federal Circuit affirmed the decision of the CAVC dismissing the veteran's appeal for lack of jurisdiction.

The Federal Circuit decision in *Henderson*, citing the Supreme Court decision in *Bowles*, has made it quite clear that equitable tolling in veterans' appeals at the Federal court level is prohibited. In April of this year, Senator Arlen Specter introduced S. 3192, the "Fair Access to Veterans Benefits Act," to require the CAVC to consider if a veteran's service-connected disability would have made it difficult or impossible for him or her to meet a deadline for filing an appeal.

The American Legion Resolution No. 32, adopted at the 2008 National Convention, supports proposed legislation that would extend the 120 day CAVC appeal deadline to 1 year following the BVA final denial of an appeal. It is in keeping with both the spirit and intent of Resolution No. 32 to support legislation, such as H.R. 5064, that would allow the CAVC to apply equitable tolling in certain situations, especially in such instances where the veteran's service-connected disability hindered the filing of a timely appeal.

**The American Legion supports H.R. 5064.**

#### **H.R. 5549**

#### **The Rating and Processing Individual's Disability Claims Act (RAPID Claims Act)**

This legislation would amend title 38, United States Code, to provide for expedited procedures for the consideration of certain veteran's claims, and for other purposes. H.R. 5549 allows for the waiver of claim development by VA in those cases where a veteran certifies that he or she has submitted a "fully developed claim." While this measure stands to potentially increase the speed with which a veteran may receive benefits, there are still concerns about this legislation. The American Legion supports efforts to streamline the claims process, and to fast track those claims where additional work is unnecessary. However, it is essential to ensure that veterans fully understand what is being asked of them when they submit to these waivers.

The intent is to relieve VA of certain required waiting periods so that they may move more swiftly to a decision provided the veteran certifies that no additional research is needed. While this is very beneficial in many cases, unrepresented veterans may not fully understand what is required to grant their claim, and therefore may place themselves in jeopardy by not submitting crucial evidence.

The American Legion believes that there must be further clarification on what mechanism is provided by H.R. 5549 to protect a veteran in situations where a veteran may erroneously believe, and therefore certify that all necessary development has been performed on a claim. It is critical that the veteran would be entitled to return to the traditional claims process at any point when it becomes clear that the claim is in fact, "not fully developed." In this way the rights of the veteran would be protected while allowing for more speed in processing.

It is understood that the veteran has the right to file a Notice of Disagreement (NOD) with a decision and enter into the appeals process. However, this would delay the claim as it moves through another bag logged system and thereby defeats the purpose of the original intent of H.R. 5549 to expedite accurate decisions of original claims.

In short, there are still concerns about the implementation of a measure such as this and how it will affect veterans. The American Legion would like to see more clarification and assurances of protections for veterans so that they are not put in a situation where they sacrifice their ability to receive thorough review of their claim in the hopes of having it processed more swiftly.

**With the previous concerns noted, The American Legion American Legion supports H.R. 5549**

As always, The American Legion appreciates the opportunity, to testify and represent the position of the over 2.5 million veterans of this organization and their families. This concludes my testimony.

---

**Prepared Statement of Eric A. Hilleman, Director,  
National Legislative Service, Veterans of Foreign Wars of the United States**

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE:

On behalf of the 2.1 million members of the Veterans of Foreign Wars of the United States and our Auxiliaries, the VFW would like to thank this committee for the opportunity to present our views on today's pending legislation.

**H.R. 3407, Severely Injured Veterans Benefits Improvement Act of 2009.**

We are proud to support this bill, which would increase aid and attendance for severely injured veterans, qualify severely burned veterans adaptive grants, increase pension for housebound veterans, expand aid and attendance to cover veterans with traumatic brain injury (TBI), and increase the service pension for Congressional Medal of Honor (CMH) recipients.

Under this legislation aid and attendance would increase by 50 percent. **Section 2** increases the rate from \$1,893 to \$2,840 for veterans qualifying for specific levels of Special Monthly Compensation (SMC) and from \$2,820 to \$4,230 for veterans in receipt of SMC and in need of regular aid and attendance. Further, **section 5** allows veterans suffering from TBI to qualify for SMC, as well as aid and attendance. Veterans suffering from seriously debilitating injuries, such as TBI and other injuries that qualify for SMC, will benefit greatly from this increase in compensation. Rising costs of in-home care and assistance have forced veterans and their families into tradeoffs between seeking the assistance needed and purchasing basic staples. With this increase, veterans will be able to live with a higher level of dignity and quality of life.

**Section 3** expands eligibility for those who have suffered severe burn injuries to qualify for automobile and adaptive equipment grants. Given the severe burns caused by many improvised explosive devices, veterans are living with scar tissue that decreases range of motion and limits the use of digits and extremities. Burn injuries, in some cases, are extreme enough to require special adaptation to simply achieve basic functionality and independent living. The VFW believes every possible accommodation should be made to restore the highest level of independence possible to these deserving veterans.

**Section 4** increases certain special monthly pension by 10 percent for veterans from \$4,340 to \$4,774 for a single veteran and from \$5,441 to \$5,985 for veterans with dependents. The VFW supports this increase.

The VFW enthusiastically supports this raising the CMH monthly pension to \$2000. **Section 6** seeks to increase the rate of special pension for CMH recipients from \$1,000 a month up to an additional \$1,000 a month; but this additional pension is to be determined by the Secretary subject to funding availability. We encourage Congress to appropriate the necessary funding to provide CMH recipients with a full monthly pension of \$2,000. These extraordinarily brave American heroes deserve our support and recognition for their sacrifice. As the few remaining CMH recipients age, this compensation will serve to support our prized heroes in their latter years.

Finally, the VFW supports **Section 7**, to extend pension to support certain hospitalized veterans from September 30, 2011, to September 30, 2021.

**H.R. 3787, the Honor America's Guard-Reserve Retirees Act**

H.R. 3787 has in mind an extremely important goal: to give the men and women who choose to serve our Nation in the Reserve Component the recognition that their service demands. The mission of many guard and reservists is to facilitate and support the deployments of their comrades, so the unit is fully prepared when called upon. Unfortunately, the law does not currently allow those who serve several years and are entitled to retirement pay, TRICARE, and other benefits, to call themselves

'veterans'. Such men and women have been extremely busy and have made extraordinary sacrifices and we believe they have earned the right to call themselves a veteran.

In recent years, Congress has enhanced benefits to the members of the Guard and Reserve to reflect our Nation's continued reliance on their service. This bill adds noble recognition to those Americans who stand at the ready for the duration of their career. Congressman Walz has reaffirmed his intent by amending the language to ensure there will be no budgetary impact to by bestowing the noble distinction of 'veteran' on this group of men and women.

The VFW is proud to support passage of this bill.

#### **H.R. 4541, Veterans Pensions Protection Act of 2010**

This legislation would protect pension payments from including insurance settlements of any kind from the calculation amount in determining pension. Further, this bill would require VA to make determinations on the fair market value and replacement value of any assets claimed for exclusion under the insurance settlement.

The VFW supports the intent of this legislation, but cannot support this language. We believe that this bill would require VA to make further determinations regarding replacement value in the cases of insurance settlements. The current pension threshold for a veteran without dependents is \$11,830 annually. In order to exclude any income resulting from an insurance settlement from factoring against that amount, VA would need to further examine the values associated with the insurance settlement. These additional decisions will further delay and complicate a relatively simple benefit.

We would suggest this legislation be rewritten to accept any insurance settlement as excluded from the calculation of pension. It is likely this will achieve the noble goal of aiding a veteran in serious financial distress, while allowing them to replace the loss of damaged property. This also prevents VA from expending more resources to develop other pension claims.

#### **H.R. 5064, Fair Access to Veterans Benefits Act of 2010**

VFW supports this bill, which would provide some flexibility in the equitable tolling of timelines for the Board of Veterans' Appeals, and for other purposes. We believe that this bill creates flexibility that could favor veterans within the claims appeal process. The current 120-day deadline to file an appeal to the U.S. Court of Appeals for Veterans Claims (CAVC) does not leave room for veterans that may have unique circumstances due to medical or mental health problems. An example of this is the David Henderson case. Because he suffers from paranoid schizophrenia, he was unable to meet the 120-day deadline and was denied the right to appeal to the CAVC.

This is but one of many instances where a veteran was unable to file a timely appeal due to the effects of a mental condition. Subsequently, he was denied the ability to have his appeal heard by the appropriate appellate body. We applaud the change that this legislation makes in granting veterans, of past and present, latitude in the appeals process. It provides a just and equitable system for those who have suffered due to circumstances beyond of their control and ensures they have their day in court.

#### **H.R. 5549, the Rating and Processing Individuals' Disability Claims Act or the Rapid Claims Act**

The VFW is encouraged by this legislation, which would provide VA a mechanism for identifying and expediting claims that are 'ready-to-rate' by granting the Secretary the authority to waive the mandatory 60-day development period with the written permission of the veteran. If a veteran submits a statement, which indicates the veteran's intent to submit a fully developed claim, the veteran would have 1 year from the date of submission to provide the Secretary with a fully developed claim and access to the expeditious treatment of their claim. If the Secretary determines a claim is not fully developed, the VA will notify the veteran within 30 days of the evidence and information required to rate the case.

The backlog of veterans' claims for disability compensation and pension is approaching 900,000 and over a hundred thousand new claims are expected to be filed every year for the foreseeable future. This legislation will create the incentive for veterans and their duly appointed representatives to present VA with fully developed cases in a timely fashion. In turn, it will reduce the time and energy required of VA to track down external evidence while developing cases.

While this legislation creates an incentive to compile outside evidence and quickly address a veteran's claim, it does not stress the importance of quality rating decisions. The VFW has always believed quality decisions are central to addressing the long-term backlog and instilling confidence in the VA's disability benefits system.

The VFW cannot support this legislation as written due to the absence of the preservation of the date of claim in cases described under Section 2, paragraph (2); which allows a veteran to submit a statement of intent to submit a fully developed claim. As worded, we believe the intent of this section was to imply that a veteran could preserve a date of claim and still access the expedited claim process. We would be happy to fully support this legislation with the inclusion of language preserving the right to the date of claim.

Thank you for the opportunity to present our views before this Subcommittee, and we welcome your questions.

---

**Prepared Statement of Thomas J. Pamperin,  
Associate Deputy Under Secretary for Policy and Program Management,  
Veterans Benefits Administration, U.S. Department of Veterans Affairs**

Mr. Chairman, I am pleased to provide the Department of Veterans Affairs' (VA) views on pending legislation. I am accompanied today by Assistant General Counsel Richard J. Hipolit.

I will not be able to address H.R. 5549, the Rating and Processing Individuals' Disability Claims Act (RAPID Claims Act), included on today's agenda, because we did not have sufficient time to develop and coordinate the Administration's position and cost estimates. With your permission, we will provide that information in writing for the record. We also will provide in writing the completed cost estimates for sections 2 and 5 of H.R. 3407, which we are currently completing.

**H.R. 3407**

H.R. 3407, the "Severely Injured Veterans Benefits Improvement Act of 2009," includes provisions that would: (1) increase special monthly compensation rates for severely injured Veterans; (2) provide eligibility for automobiles and adaptive equipment to disabled Veterans and members of the Armed Forces with severe burn injuries; (3) increase non service-connected disability pension for certain wartime Veterans; (4) provide eligibility for aid and attendance benefits to Veterans with traumatic brain injuries; (5) authorize the Secretary of Veterans Affairs to increase Medal of Honor Special Pension; and (6) extend current provisions relating to pensions for certain hospitalized Veterans. The amendments made by this bill would become effective September 30, 2011.

**Section 2**

Section 2 of the bill would increase the monthly rates of disability compensation specified in 38 U.S.C. § 1114(r)(1) and (r)(2) as payable for aid and attendance, from \$1,893 to \$2,840, and for higher levels of care, from \$2,820 to \$4,230.

VA supports the objective of H.R. 3407, to ensure that severely injured Veterans are provided with the financial means to receive proper care for their service-connected disabilities. However, we do not support this provision. VA already has numerous authorities to provide the most severely disabled Veterans with higher levels of care, including the recently passed Caregivers and Veteran Omnibus Health Services Act of 2010. There is no evidence that the proposed rate is the correct rate. In addition, Congress would need to identify appropriate cost-saving PAYGO offsets to offset the benefit costs which are estimated to be \$30.9 million for the first year, \$163.4 million over 5 years, and \$351.3 million over 10 years. VA estimates that there would be no additional administrative costs associated with this provision.

**Section 3**

Section 3 would expand the category of persons eligible for automobile allowance and adaptive equipment as specified in 38 U.S.C. § 3901(1) to include certain Veterans and members of the Armed Forces serving on active duty who are disabled with a severe burn injury, as determined under regulations prescribed by the Secretary.

VA recognizes that burn injuries are a likely result of the current conditions of warfare in Iraq and Afghanistan because of the ubiquitous use of improvised explosive devices (IED) by enemy forces. We also understand the importance of providing Veterans disabled because of severe burn injuries with eligibility for automobiles and adaptive equipment benefits to help better manage their disability. Therefore, VA does not object to this provision, subject to Congress identifying appropriate cost-saving PAYGO offsets.

We are unable at this time to provide cost estimates associated with enactment of this provision, but will provide that information in writing for the record.

#### Section 4

Section 4 would increase monthly payments of non service-connected disability pension under 38 U.S.C. § 1521(e) to Veterans who, in addition to being permanently and totally disabled, have additional disability rated 60-percent or greater or are permanently housebound. The rates would increase from \$4,340 to \$4,774 for unmarried Veterans without dependents and from \$5,441 to \$5,985 for Veterans with a spouse or dependent. VA supports the intent of providing for those Veterans who served our country during wartime but who have limited income and are severely disabled or permanently housebound because of non service-connected disabilities. However, VA cannot support this provision without better understanding how the new proposed pension level was developed.

Under the 2006 precedent of the United States Court of Appeals for Veterans Claims in *Hartness v. Nicholson*, the increased pension rate under section 1521(e) would also be payable to wartime Veterans who are not totally disabled but who are 65 years of age or older and who are permanently housebound or have a disability rated at least 60-percent disabling. Because we do not believe Congress intended payment of the heightened pension rate to Veterans who are not totally disabled, Secretary Shinseki on May 26, 2010, submitted to Congress proposed legislation, the Veterans Benefit Programs Improvement Act of 2010, to clarify that the rates payable under section 1521(e) apply only to Veterans who are permanently and totally disabled and are also permanently housebound or have additional disability independently rated at least 60-percent disabling. That proposal would ensure that the payments to which this legislation pertains are consistently based on the existence of severe disability that includes permanent and total disability.

Benefit costs are estimated to be \$14.3 million for the first year, \$77.3 million over 5 years, and \$160.3 million over 10 years. VA estimates that there would be no additional administrative costs associated with this provision.

#### Section 5

Section 5 would amend 38 U.S.C. § 1114(o) to include traumatic brain injury (TBI) among the list of disabilities that qualify for special monthly compensation at the rate specified in section 1114(o). Under the provision as written, this level of compensation would be payable without regard to the severity of the TBI or the resulting disability. Further, eligibility for payment under section 1114(o) would also make Veterans with a TBI of any severity who are also in need of aid and attendance eligible for payment of the higher rate payable under 38 U.S.C. § 1114(r) to Veterans in need of aid and attendance.

We support the intent of providing equitable benefits to Veterans suffering from severe traumatic brain injury symptoms. However, VA cannot support the provision as written. The proposal would extend eligibility for increased compensation rates currently payable only for severe disabilities to Veterans suffering from any level of severity of TBI disability, including mild TBI characterized by minor symptoms. The inclusion of all levels of TBI as a basis for the payment rates under section 1114(o) and (r) would be inconsistent with the purpose of those provisions to address the needs of severely disabled Veterans. VA believes any expansion of eligibility for the rates under section 1114(o) and (r) should be reserved for severe TBI cases with significant physical, cognitive and/or emotional or behavioral impairment. In addition, VA is implementing several new benefits for Veterans with severe TBI through the recent regulation and legislation, including the Caregivers and Veteran Omnibus Health Services Act of 2010.

We are unable at this time to provide cost estimates associated with enactment of this provision, but will provide that information in writing for the record.

#### Section 6

Section 6 would authorize the Secretary to increase by no more than \$1,000 the monthly rate of Medal of Honor Pension for fiscal years 2012 and 2013. The proposed increase is subject to the availability of appropriations.

VA has serious concerns with this provision. Congress generally prescribes rates of pension, compensation, and related benefits, and it would be appropriate for it to prescribe a specific rate should it choose to effect an increase in rates, dependent upon appropriations. This proposal does not indicate the purpose of providing only a temporary rate increase and provides no guidelines to determine the extent of the increase. Further, we have significant concerns with the prospect of using discretionary funds to provide a temporary enhanced benefit on top of an existing mandatory entitlement. Two equally eligible Veterans could receive different levels of compensation should the discretionary funds appropriated for the purpose be insufficient.

VA estimates that costs for this provision, if the maximum authorized increase were provided, would be \$1.0 million per year and \$2.0 million over 2 years.

#### **Section 7**

Section 7 would amend 38 U.S.C. § 5503(d)(7) to extend current provisions governing pensions for certain Veterans in Medicaid-approved nursing facilities that will expire on September 30, 2011. The proposal would extend until September 30, 2021, the provisions in section 5503(d) providing such Veterans a protected pension payment that cannot be used to reduce the amount of Medicaid benefits payable for the Veteran's care. VA supports this proposal to extend valuable benefits to deserving wartime Veterans who have limited incomes and require hospitalization for non service-connected disabilities.

VA estimates that enactment of this provision would result in VA cost savings of approximately \$560 million during the first year, \$2.9 billion for 5 years, and \$6.2 billion over 10 years. There will be Medicaid costs, and VA will provide the net budgetary effect to the Federal Government in writing at a later date. Also, States may incur costs as Medicaid will pay a larger share of nursing home care.

#### **H.R. 3787**

H.R. 3787 would revise 38 U.S.C. § 106 to deem certain persons (namely, former members of the National Guard or Reserves who are entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who would be entitled to such retired pay but for their age) who have not otherwise performed "qualifying active duty service" to have been on active duty for purposes of VA benefits.

Under current law, a National Guard or Reserve member is considered to have served on active duty only if the member was called to active duty under title 10, United States Code, and completed the period of duty for which he or she was called to service. Eligibility for some VA benefits, such as disability compensation, pension, and dependency and indemnity compensation, requires a period of "active military, naval, or air service," which may be satisfied by active duty, or by certain periods of active duty for training and inactive duty training during which the service-member becomes disabled or dies. Generally, those periods are: (1) active duty for training during which the member was disabled or died from disease or injury incurred or aggravated in line of duty; and (2) inactive duty training during which the member was disabled or died from an injury incurred or aggravated in line of duty.

H.R. 3787 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for all VA benefits, despite not having served on active duty or in active service or, if called to active duty, not having served the minimum active-duty period required for eligibility.

VA does not support this bill. Current benefits eligibility is based either on active duty or a qualifying period of active service during which a member was physically engaged in serving the Nation in an active military role. Active service is the foundation for providing VA benefits. In recent years, the National Guard and Reserves have played an important role in our Nation's overseas conflicts. Virtually all those who served in recent conflicts were called to active duty, which qualifies them as Veterans and provides potential eligibility for VA benefits. This bill, however, would extend the same status to those who were never called to active duty and did not suffer disability or death due to active duty for training or inactive duty training, and hence do not have active service. VA would be obligated to provide compensation and health-care for disabilities resulting from injuries incurred in civilian activities, as well as from diseases that develop, during the 20 years that count toward retirement, regardless of any relationship to actual active duty or training drills. Providing compensation and other VA benefits based solely on retirement status would be inconsistent with VA's mission of providing benefits to Veterans who earned them as a result of active service.

Statutes already authorize memorial benefits (burial in national cemeteries, burial flags, and grave markers) to this group of individuals. Therefore, H.R. 3787 would not provide any additional benefit related to the National Cemetery Administration (NCA), nor would it present any additional budget concerns related to the benefits NCA provides.

If H.R. 3787 as currently drafted were enacted, VA would incur estimated benefit costs of \$957.5 million during the first year, \$6.0 billion over 5 years and \$15.5 billion over 10 years. Veterans Benefits Administration administrative costs are esti-

mated to be \$50.0 million the first year, \$73.2 million over 5 years, and \$110.9 million over 10 years.

An alternate version of H.R. 3787 introduced as an amendment would revise the definition of the term “veteran” in 38 U.S.C. § 101(2) to include these individuals. This broader definition of the term Veteran would not be applicable for purposes of compensation under chapter 11 of title 38, dependency and indemnity compensation under chapter 13 of title 38, and hospital, nursing home, domiciliary and medical care under chapter 17 of title 38. VA does not support this alternative version of H.R. 3787 because it represents a departure from active service as the foundation for Veteran status. VA estimates that there would be no additional benefit or administrative costs associated with this alternate version of H.R. 3787.

#### **H.R. 4541**

H.R. 4541, the “Veterans Pensions Protection Act of 2010,” would liberalize the existing exemption in section 1503(a)(5) of title 38, United States Code, by excluding from income, for purposes of determining eligibility for improved pension, payments regarding reimbursement for expenses related to: accident, theft, loss, or casualty loss; medical expenses resulting from such causes; and pain and suffering related to such causes.

The exemption for payments received to reimburse Veterans for medical costs and pain and suffering is an expansion of the current exclusions. We oppose excluding from countable income payments received for pain and suffering because such payments do not represent a reimbursement for expenses related to daily living. The proposed treatment of such payments would be inconsistent with a needs-based program. We believe that payments for pain and suffering are properly considered as available income for purposes of the financial needs test for entitlement under section 1503.

VA does not oppose the remaining provisions of this section exempting reimbursement for accident, theft, loss, casualty loss, and resulting medical expenses, subject to Congress identifying offsets for any additional costs.

Because the current law excludes from pension income calculations reimbursements from any casualty loss, there would be no benefit costs associated with the provisions relating to accident, theft, loss, or casualty loss. VA estimates there would be no additional administrative or full-time employee costs associated with this bill.

#### **H.R. 5064**

H.R. 5064, the “Fair Access to Veterans Benefits Act of 2010,” would require the Court of Appeals for Veterans Claims (Veterans Court) to extend “for such time as justice may require” the 120-day period for appealing a Board of Veterans’ Appeals (Board) decision to the Veterans Court upon a showing of good cause. It would apply to a notice of appeal filed with respect to a Board decision issued on or after July 24, 2008. It would require the reinstatement of any “petition for review” that the Veterans Court dismissed as untimely on or after that date if, within 6 months of enactment, an adversely affected person files another petition and shows good cause for filing the first petition on the date it was filed.

Although VA supports the extension of the 120-day appeal period under certain circumstances, VA has several concerns with this bill. Because the bill would not limit the length of time the appeal period could be extended, appellants would potentially be able to appeal a Board decision at any time after it was issued—even decades later—as long as good cause is shown. This would create great uncertainty as to the finality of Board decisions, which could burden an already overburdened claim-adjudication system and create confusion as to whether a VA regional office, the Board, or the Veterans Court has jurisdiction over a claim.

Petitions for relief under the “good cause” provision could potentially add hundreds of cases to the Veterans Court’s docket, which could increase the processing time for all cases in the court’s inventory. The reinstatement of already dismissed untimely appeals could add even more cases. In view of the open-ended and retroactive nature of the provision, the potential number of new appeals is impossible to quantify, but it might be enormous.

To avoid these and other potential problems resulting from an unlimited appeal period and retroactive application, Secretary Shinseki submitted to Congress the Veterans Benefit Programs Improvement Act of 2010, mentioned earlier in this testimony, which would take a more focused approach. It would permit the Veterans Court to extend the appeal period for up to an additional 120 days from the expiration of the original 120-day appeal period upon a showing of good cause, provided the appellant files with the Veterans Court, within 120 days of expiration of the

original 120-day period, a motion requesting extension. The proposal would ameliorate harsh results in extreme circumstances, e.g., if a claimant were mentally incapacitated during the entire 120-day appeal period, but by limiting how late an appellant could request extension and how long the period could be extended, would not unduly undermine the finality of Board decisions, which is necessary for efficient administrative functioning. Placing an outer limit on the appeal period would maintain the purpose of the rule of finality, which is to preclude repetitive and belated adjudication of Veterans' benefits claims.

In addition, the proposal would be applicable to Board decisions issued on or after the date of enactment and to Board decisions for which the 120-day period following the 120-day appeal period has not expired as of the date of enactment. It would provide a generous approach but one that is carefully crafted so as not to unduly increase the court's caseload and delay Veterans' receipt of timely final decisions on their appeals.

We estimate that enactment of VA's legislative proposal as contemplated would result in no significant costs or savings.

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

---

**Statement of Captain Ike Puzon, USN (Ret.), Director of Governmental Affairs—Legislation, Association of the United States Navy**

Mister Chairman and distinguished Members of the Committee, the Association of the United States Navy is very grateful to have the opportunity to submit testimony for the record on H.R. 3787, to amend title 38, United States Code, to deem certain service in the reserve components as active service for purposes of laws administered by the Secretary of Veterans Affairs.

Our newly transitioned VSO–MSO association, since 1954, has worked diligently to educate Congress, our members, and the public on Navy veterans, Navy equipment, force structure, policy issues, and personnel, DoD civilian and family issues.

I thank this Committee for the on-going stewardship on the important issues of national defense and on behalf of veterans. Our military and veterans along with their families are watching what Congress is considering very carefully. At a time of war, non-partisan leadership sets the example.

**H.R. 3787—Full Veteran Status For Certain Guard/Reserve Retirees**

**Issue:** Certain members of the Guard and Reserve components with 20 years or more service do not otherwise qualify under current law (Title 38) as veterans.

**Background.** All members of the Selected Reserve—those who regularly train in designated military positions—volunteer for service to the Nation and are liable for activation in its defense.

In the event that a reserve component member has not been called to federal active duty during a 20-year-or-more service career, that full reserve career service should be recognized as equivalent qualification for full veteran status under the law. Over time, Congress has authorized a number of veteran's benefits for such 'gray area' reserve retirees. In establishing such benefits, it's clear that these former servicemembers are indeed veterans. (See accompanying rationale)

Twenty or more years of service in the reserve forces and eligibility for reserve retired pay should be sufficient qualifying service for full veteran status under the law.

This issue is a matter of honor to those who through no fault of their own were never activated, but served their Nation faithfully for 20 or more years. It's now time for Congress to take the final step and formally authorize these volunteer career citizen-warriors as veterans under the law.

**Military Coalition Position and The National Military Veterans Alliance Position.** Amend Title 38 to include in the definition(s) of 'veteran' retirees of the Guard/Reserve components who have completed 20 or more years of service, but are not otherwise considered to be "veterans" under the current statutory definitions. Career military service in the reserve forces of our Nation should constitute qualification for veteran status under the law.

**Status.** The Military Coalition recommends the introduction of legislation that would accomplish this change. Suggested language follows:

Adding a new subsection (g) in Section 106, 38 USC, 'Certain service deemed to be active service':

*(g) Any person—*

(1) who is qualified for reserve retired pay under section 12731 of title 10 and is in receipt of reserve retired pay for non-regular service under the provisions of chapter 1223 of title 10; or,

(2) who is qualified for reserve retired pay under section 12731 of title 10 and has been separated or retired from the Ready Reserve but is not yet age 60; and,

(3) has not otherwise performed qualifying active duty service shall be considered to have been on active duty for the purpose of all laws administered by the Secretary [of Veterans Affairs]

### Rationale

As defined in law, members of the reserve components who have completed 20 or more years of service are military retirees and eligible upon reaching age 60 for all of the benefits of active duty military retirees. However, they are not considered to be “veterans” if they have not served the number of consecutive days on federal active duty (defined as active duty other than active duty for training) required by law.

According to the Department of Veterans Affairs, “Reservists who served on active duty establish veteran status and may be eligible for the full-range of VA benefits, depending on the length of active military service and a discharge or release from active duty under conditions other than dishonorable. **In addition, reservists not activated may qualify for some VA benefits.**”

National Guard members can establish eligibility for VA benefits if activated for federal service during a period of war or domestic emergency. **Activation for other than federal service does not qualify Guard members for all VA benefits.**”

Over time, Congress has authorized certain veterans benefits for these retirees, indicating their ‘quasi-veteran’ status. For purposes of this discussion, these individuals will be referred to as “non-veteran retirees.”

VA benefits for non-veteran retirees who have not served on federal active duty for the consecutive number of days required by law include:

- VA disability compensation and VA health care for a non-veteran retiree who is injured and/or disabled while performing inactive duty for training regardless of length of service.
- VA home loan eligibility in exchange for six or more years of honorable service in the Selected Reserve
- VA burial and memorial benefits for the non-veteran retiree entitled to reserve retired pay at the time of death
- Servicemen’s Group Life Insurance (SGLI) and Veterans Group Life Insurance (VGLI)

To qualify for a reserve retirement at age 60, a Guard or Reserve member must accrue the equivalent of 20 years of “points” based on the performance of military duty at a minimum of 50 points per year. The minimum of 1000 qualifying retirement points roughly equates to 2.77 years of military duty based on the performance of drill duty (inactive duty training), annual training, and professional development in military science. (20 yrs. × 50 points = 1000 pt minimum div by 360 = 2.77 years military duty). Moreover, as volunteers, reservists are liable for activation throughout their careers and required to maintain their readiness for such eventualities.

### Budgetary Considerations

Of primary concern to policy makers is the cost of designating non-veteran retirees as veterans. We believe there would be little **or no cost** for the following reasons:

By definition, non-veteran retirees will not have a VA disability rating. Indeed, if they were injured while on military duty, they would be eligible for a VA disability rating and VA health care. Most would have assets and incomes above the VA Priority Group 8 means test, which has been closed to new applicants for more than 4 years. A few individuals in the non-disabled, non-veteran retiree cohort might qualify for VA health care as Priority Group 7 means-tested individuals. Very few would qualify for enrollment in Priority Group 5 as indigent veterans.

In almost all instances, these individuals will have other full-time employment, either in the private sector, or as civilian government employees. Many have health care insurance through their employer. Once they reach age 60, they will be eligible for TRICARE.

Finally, the Nation’s operational reserve policy requires the routine activation of Guard and Reserve servicemembers for 12 months every fifth or sixth year. Going forward, there will be a negligible number of career reservists who would not qualify as active duty veterans.

**Summary**

For the vast majority of non-veteran retirees, this issue is about honor not benefits. They seek public and statutory recognition as “veterans of the Armed Forces of the United States”. They volunteered to serve, served honorably, and were prepared to serve on active duty if called. The absence of statutory recognition is a vestige of the Cold War, when the Nation relied upon conscription for its manpower. A small cohort of today’s volunteers should not be penalized for decisions beyond their control concerning federal activation.

**AUSN Request that you pass H.R. 3787, including as it may be amended by Congressman Walz.**

---

Association of the United States Navy  
Alexandria, VA.  
*June 28, 2010*

The Honorable John Hall  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Douglas L. “Doug”  
Lamborn  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hall and Ranking Member Lamborn:

The Association of the United States Navy (AUSN) representing veterans, military members and their families strongly support H.R. 3787, a bill to assign veterans status to members of the Reserve Components of the United States Military who have served for 20 years or more—thus becoming military retirees—but who were never on active duty status long enough to qualify as a “veteran.”

All members of the Selected Reserve volunteer for service to the Nation and are liable for activation in its defense. In the event that a Reserve component member has not been called to federal active duty during a twenty-year-or-more service career, we believe that service should qualify the member for full status as a veteran under the law. This issue is a matter of honor to those who through no fault of their own were never activated, but served their Nation faithfully for 20 years.

As a Nation, our military cannot function without the Guard and Reserve. Our Reserve Components are ‘operational reserve’ and have been for a long time. The large numbers of Reserve component members who have been called to serve in OEF/OIF will qualify as veterans. However, there are those who serve at the armories and bases and whose jobs are to make sure the other members of their units are qualified and ready to deploy. Almost all members do deploy in some format but do not stay on active duty for the required amount of time—for at least 30 days continuous. There are others who, while ready to deploy had they been needed, were not called to active duty during their time of service. Under current law, even if they serve for 20 years or more, they are not and will not be considered as veterans under Title 38. These members serve less than 30 days active duty time—but, over a 20 year span—serve our Nation in natural disasters, current boarder duty, and even deploy to overseas bases—in support of conflicts—but, all in less than 30 days. Thus, the simple step of recognizing the service of those who spend 20 years or more as meriting the distinction of being called a veteran is a major issue for them and our country, one of pride and one of having their sacrifices recognized. Our Total Force includes the Guard and Reserve Components. They wear the same uniforms and earn the same medals and awards for honorable service and in our Nations conflicts. They are worthy of the honor of being called “veteran.”

H.R. 3787 would eliminate this inequity. This legislation as it is written will not qualify Reserve components for any additional benefits that they already do not have access to. It does redefine them as Veterans in Title 38, and in some cases they will be recognized as Veterans for burial in some states. All current wartime veterans that serve in a combat zone will already qualify.

The Association of the United States Navy ask the Committee to pass this important piece of legislation. A briefing paper is attached. Our point of contact is Ike Puzon, Captain, USN, retired, Director of Governmental Affairs—Legislation AUSN, 703-548-5800, ike.puzon@ausn.org. Written testimony has been submitted.

Sincerely,

C. Williams Coane RADM, USN (Ret)  
*Executive Director*

---

**Statement of Master Sergeant Michael P. Cline, USA (Ret.), Executive Director, Enlisted Association of the National Guard of the United States**

Mister Chairman and distinguished Members of the Committee, the Enlisted Association of the National Guard of the United States (EANGUS) is very grateful to have the opportunity to submit testimony for the record on H.R. 3787.

Our association has worked diligently since 1972 to educate Congress, our members, and the public on National Guard veterans, equipment, force structure, policy issues, and personnel, DoD civilian and family issues.

I thank this Committee for the on-going stewardship on the important issues of national defense and on behalf of veterans. Our military and veterans along with their families are watching what Congress is considering very carefully. At a time of war, non-partisan leadership sets the example.

**H.R. 3787—Full Veteran Status For Certain Guard/Reserve Retirees**

**Issue:** Certain members of the Guard and Reserve components with 20 years or more service do not otherwise qualify under current law (Title 38) as veterans.

**Background.** All members of the Selected Reserve—those who regularly train in designated military positions—volunteer for service to the Nation and are liable for activation in its defense.

In the event that a reserve component member has not been called to federal active duty during a 20-year-or-more service career, that full reserve career service should be recognized as equivalent qualification for full veteran status under the law. Over time, Congress has authorized a number of veteran's benefits for such 'gray area' reserve retirees. In establishing such benefits, it's clear that these former servicemembers are indeed veterans. (See accompanying rationale)

Twenty or more years of service in the reserve forces and eligibility for reserve retired pay should be sufficient qualifying service for full veteran status under the law.

This issue is a matter of honor to those who through no fault of their own were never activated, but served their Nation faithfully for 20 or more years. It's now time for Congress to take the final step and formally authorize these volunteer career citizen-warriors as veterans under the law.

**Military Coalition Position and The National Military Veterans Alliance Position.** Amend Title 38 to include in the definition(s) of 'veteran' retirees of the Guard/Reserve components who have completed 20 or more years of service, but are not otherwise considered to be "veterans" under the current statutory definitions. Career military service in the reserve forces of our Nation should constitute qualification for veteran status under the law.

**Status.** The Military Coalition recommends the introduction of legislation that would accomplish this change. Suggested language follows:

Adding a new subsection (g) in Section 106, 38 USC, 'Certain service deemed to be active service':

*(g) Any person—*

*(1) who is qualified for reserve retired pay under section 12731 of title 10 and is in receipt of reserve retired pay for non-regular service under the provisions of chapter 1223 of title 10; or,*

*(2) who is qualified for reserve retired pay under section 12731 of title 10 and has been separated or retired from the Ready Reserve but is not yet age 60; and,*

*(3) has not otherwise performed qualifying active duty service shall be considered to have been on active duty for the purpose of all laws administered by the Secretary' [of Veterans Affairs]*

### Rationale

As defined in law, members of the reserve components who have completed 20 or more years of service are military retirees and eligible upon reaching age 60 for all of the benefits of active duty military retirees. However, they are not considered to be “veterans” if they have not served the number of consecutive days on federal active duty (defined as active duty other than active duty for training) required by law.

According to the Department of Veterans Affairs, “Reservists who served on active duty establish veteran status and may be eligible for the full-range of VA benefits, depending on the length of active military service and a discharge or release from active duty under conditions other than dishonorable. **In addition, reservists not activated may qualify for some VA benefits**”.

National Guard members can establish eligibility for VA benefits if activated for federal service during a period of war or domestic emergency. **Activation for other than federal service does not qualify Guard members for all VA benefits.**

Over time, Congress has authorized certain veterans benefits for these retirees, indicating their *‘quasi-veteran’ status*. For purposes of this discussion, these individuals will be referred to as “non-veteran retirees.”

VA benefits for non-veteran retirees who have not served on federal active duty for the consecutive number of days required by law include:

- VA disability compensation and VA health care for a non-veteran retiree who is injured and/or disabled while performing inactive duty for training regardless of length of service.
- VA home loan eligibility in exchange for six or more years of honorable service in the Selected Reserve
- VA burial and memorial benefits for the non-veteran retiree entitled to reserve retired pay at the time of death
- Servicemen’s Group Life Insurance (SGLI) and Veterans Group Life Insurance (VGLI)

To qualify for a reserve retirement at age 60, a Guard or Reserve member must accrue the equivalent of 20 years of “points” based on the performance of military duty at a minimum of 50 points per year. The minimum of 1000 qualifying retirement points roughly equates to 2.77 years of military duty based on the performance of drill duty (inactive duty training), annual training, and professional development in military science. (20 yrs. × 50 points = 1000 pt minimum div by 360 = 2.77 years military duty). Moreover, as volunteers, reservists are liable for activation throughout their careers and required to maintain their readiness for such eventualities.

### Budgetary Considerations

Of primary concern to policy makers is the cost of designating non-veteran retirees as veterans. We believe there would be little *or no cost* for the following reasons:

By definition, non-veteran retirees will not have a VA disability rating. Indeed, if they were injured while on military duty, they would be eligible for a VA disability rating and VA health care. Most would have assets and incomes above the VA Priority Group 8 means test, which has been closed to new applicants for more than 4 years. A few individuals in the non-disabled, non-veteran retiree cohort might qualify for VA health care as Priority Group 7 means-tested individuals. Very few would qualify for enrollment in Priority Group 5 as indigent veterans.

In almost all instances, these individuals will have other full-time employment, either in the private sector, or as civilian government employees. Many have health care insurance through their employer. Once they reach age 60, they will be eligible for TRICARE.

Finally, the Nation’s operational reserve policy requires the routine activation of Guard and Reserve servicemembers for 12 months every fifth or sixth year. Going forward, there will be a negligible number of career reservists who would not qualify as active duty veterans.

### Summary

For the vast majority of non-veteran retirees, this issue is about honor not benefits. They seek public and statutory recognition as “veterans of the Armed Forces of the United States”. They volunteered to serve, served honorably, and were prepared to serve on active duty if called. The absence of statutory recognition is a vestige of the Cold War, when the Nation relied upon conscription for its manpower. A small cohort of today’s volunteers should not be penalized for decisions beyond their control concerning federal activation.

**Addendum**

According to 38 USC,

(2) The term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

(10) The term “Armed Forces” means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(21) The term “active duty” means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(22) The term “active duty for training” means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to “full military benefits”, or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers’ Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term “inactive duty training” means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers’ Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

(24) The term “active military, naval, or air service” includes—

(A) active duty;

(B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and

(C) any period of inactive duty training during which the individual concerned was disabled or died—

(i) from an injury incurred or aggravated in line of duty; or

(ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

**EANGUS Requests that you pass H.R. 3787.**

### Statement of Military Officers Association of America

**Chairman Hall, Ranking Member Sanborn and Members of the Disability and Memorial Assistance Subcommittee**, the Military Officers Association of America (MOAA) is pleased to submit for the official record of this hearing the following statement in support of H.R. 3787.

MOAA does not receive any grants or contracts from the Federal Government.

#### **H.R. 3787 (Rep. Tim Walz, D-MN), the Honor America's Guard and Reserve Retirees Act.**

The purpose of the bill is to establish in law that members of the National Guard and Reserve who are qualified for a non-regular retirement under Chapter 1223 of 10 USC but who were never called to active federal service during their careers, are "veterans of the Armed Forces of the United States" as defined in Title 38.

This issue is a matter of honor to those who through no fault of their own were never activated, but served their Nation faithfully for 20 or more years. It's now time for Congress to take the final step and formally authorize these volunteer career citizen-warriors as veterans under the law.

MOAA understands that the intent of this bill is honorific only: the bill does not seek to award any benefit for which these veterans have not qualified for elsewhere in law.

#### **Justification for H.R. 3787**

All members of the National Guard and Reserve forces volunteer for service to the Nation and are liable for activation in its defense.

Over time, Congress has authorized a number of veterans' benefits for National Guard and Reserve members, including military reserve retirees. In establishing such benefits, the Nation acknowledges that these servicemembers are "veterans" in many respects except for specific recognition in the statute.

In the VA's booklet, *Federal Benefits for Veterans and Dependents*, "Reservists who served on active duty establish veteran status and may be eligible for the full-range of VA benefits, depending on the length of active military service and a discharge or release from active duty under conditions other than dishonorable. In addition, reservists not activated may qualify for some VA benefits".

Some of the benefits available to never-activated career reservists include:

- VA home loan eligibility at six or more years of honorable service in the Selected Reserve
- burial in a national cemetery or state veterans' cemetery; and, memorial benefits for the non-veteran retiree entitled to reserve retired pay at the time of death
- Servicemen's Group Life Insurance (SGLI) and Veterans Group Life Insurance (VGLI)

During the course of a military reserve career, a Guard or Reserve member who is disabled in the line-of-duty during military training—either inactive duty (drill) or active duty training—or traveling to or from such duty on competent military orders may be awarded a VA-rated disability, compensation and access to VA health care for life. Survivors of reservists who die from an injury incurred during such duty are entitled to survivors' benefits. See Section 106(d), 38 USC.

In terms of military benefits under Title 10, members of the reserve components who have completed 20 or more years of qualifying service are entitled, upon reaching age 60, to all of the benefits of active duty military retirees. These earned entitlements include a monthly pension, military health care—TRICARE and TRICARE for LIFE—and other benefits related to their status as military retirees.

Notwithstanding eligibility for certain veterans benefits and entitlement to military retired pay and other Title 10 benefits, reserve retirees who have not been called to active duty during their military careers are not cited as "veterans of the Armed Forces" in Title 38.

Under the Nation's ongoing "operational reserve" policy, over time there will be fewer and fewer Guard and Reserve members who will not have served at least one qualifying tour of active duty in the course of a normal reserve career. For the remaining cohort, the issue of their status as veterans is about honor not benefits.

Never-activated reserve retirees seek public and statutory recognition as "veterans of the Armed Forces of the United States". They volunteered to serve, served honorably, and were prepared to serve on active duty if called. The absence of specific statutory recognition of this cohort as "veterans" is a vestige of the Cold War, when the Nation relied upon conscription for its manpower. These career servicemembers—all volunteers—should not be penalized for decisions beyond their control concerning federal activation.

MOAA understands that the bill's sponsor, Rep. Tim Walz, may offer an Amendment in the nature of a substitute bill at today's hearing to clarify the bill language to ensure that no unearned veterans' benefits would accrue to these veterans subsequent to the bill's enactment.

***The Military Officers Association of America strongly supports enactment of H.R. 3787, the Honor America's Guard-Reserve Retirees Act. In the event that Rep. Walz offers an Amendment in the nature of substitute language to clarify the intent of the bill, MOAA supports that objective, namely that no veterans' benefits not otherwise authorized in law would accrue to these veterans should the bill subsequently be enacted.***

---

**Statement of Peter J. Duffy, Deputy Director Legislation,  
National Guard Association of the United States**

The National Guard is unique among components of the Department of Defense in that it has the dual state and federal missions. While serving operationally on Title 10 active duty status in Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF), National Guard units are under the command and control of the President. However, when not deployed on title 10 orders, members of the National Guard serve under the command and control of their governors to protect their communities from all manner of threats while continuing to train. As a special branch of the Selected Reserves they train not just for their federal missions but for their potential state active duty missions such as fire fighting, flood control and providing assistance to civil authorities in a variety of possible disaster scenarios.

While serving in their states, members are scattered geographically with their families as they hold jobs, own businesses, pursue academic programs and participate actively in their civilian communities. Against this backdrop, members of the National Guard remain ready to uproot from their families and civilian lives to serve their governor domestically or their President in distance parts of the globe as duty calls and to return to reintegrate within the same communities when their missions are accomplished. The National Guard is always ready and always there as the daily national news will certainly reflect.

When persons join the National Guard or Reserve they give the President a blank check to use them as the President deems necessary. It remains up to the President to decide just how to use them. Historically there was no assurance that those serving in the National Guard would be deployed in federal service under title 10 orders that would qualify them as veterans as that term is defined in the U.S. Code. It was not unusual for members to serve their state and Nation honorably for 20 years trained and ready for a call to federal service which never came. This was through no design or machinations on their part but strictly a function of the President's exercise of discretion in deciding whether to activate them for federal service or not.

Because of an oddity in the law, those members of the National Guard and Reserve who have served honorably for 20 years to earn military retirement pay cannot call themselves veterans unless they have served on qualifying title 10 active duty. This is neither fair nor respectful as these members remained trained and ready for federal missions throughout their honorable service. But for the chance call up order from the President, their service is indistinguishable from that of the active forces who can freely separate from service and use the veterans appellation irrespective of any overseas deployment.

NGAUS strongly supports **H.R. 3787**. The time is long past due to extend the well earned status of veteran to our dedicated career men and women of the National Guard and Reserve without conditioning the same on a chance call to serve on qualifying title 10 active duty. Their selfless and honorable service deserves nothing less than to bestow upon them the right to call themselves veterans.

---

**Statement of Reserve Officers Association of the United States,  
and Reserve Enlisted Association**

**INTRODUCTION**

Mr. Chairman and distinguished members of the House Veterans Affairs Subcommittee on Disability Assistance and Memorial Affairs on behalf of 1.1 million Reserve Component members, the Reserve Officers Association (ROA) of the United States and the Reserve Enlisted Association (REA) expresses our appreciation for the opportunity to testify.

Many Guard and Reserve servicemembers have served admirably for 20 plus years and qualify for retirement without having been called to active duty service during their careers. At age 60, they are entitled to Reserve military retired pay, government health care, and other benefits of service, including some Veterans' benefits. Yet current law denies them full standing as a Veteran of the armed forces.

### **Veteran Status**

Often times those Reserve Component members who after serving their country, particularly for 20 years or more, believe they are considered to be a veteran. Unfortunately as many of you may know by now, this is not the case. Both ROA and REA have listed in our 2010 legislative agendas that Veteran status is a top issue.

Reserve Component members, as defined in law, who have completed 20 or more years of service are military retirees and eligible once reaching 60 years of age for all of the active duty military retiree benefits. Conversely they are not considered to be "Veterans" if they have not served the required number of uninterrupted days on Federal active duty (defined as active duty other than for training).

REA's executive director, Lani Burnett, retired Chief Master Sergeant of the U.S. Air Force, wrote in *THE OFFICER*, January 2009, in regards to Veteran status, that, "It may surprise you to know that even after serving honorably in the Reserve or Guard for 20 years, you may not be considered a 'veteran' of the armed forces, under the current statutory definition, if you were not called to active duty during your career." This statement shocked many of our readers.

As she pointed out later in a May 2009 article, servicemembers focus on numerous things such as the mission at hand, the job, training and development, the troops, going where needed, and others, but not much thought is given to making sure they had the right kind of duty to qualify to become a Veteran upon retirement.

Those Reserve Component members that have been called to serve in Operation Enduring Freedom or Operation Iraqi Freedom will undoubtedly qualify as Veterans. Though there are many others who stand in front of and behind these men and women—preparing them and supporting them—individuals that are also ready to deploy but because of their assigned duties may never serve in that capacity. Nevertheless they serve faithfully.

Twenty or more years of service in the reserve forces and eligibility for reserve retired pay should be sufficient qualifying service for full Veteran status under the law.

This issue is a matter of honor for those, who through no fault of their own were never activated, but served their Nation faithfully for 20 or more years.

### **Hurdles**

Seemingly, the biggest hindrance to passing H.R. 3787 to grant Veterans status, is the misconception that passage would have unintended consequences, causing this group of Veterans to receive benefits that they would not otherwise qualify for. The argument is to not use Section 101 language, rather select a different section. This would be a grave error.

The pending legislation would change the legal definition of 'Veteran' so that proper acknowledgment and recognition that comes with the designation of 'veteran' would be made. BUT it would NOT change the legal qualification for access to any benefits.

Each benefit has a different set of qualifications because each was created at a different time. Every time Congress passes new legislation that is signed into law authorizing new Veteran benefits, the eligibility requirements are determined for that specific benefit. Veteran status depends on which Veteran program or benefit you are applying for.

There are innumerable programs to outline, but an example could be "Veteran's Preference for Federal Jobs" in which preference is given to separated Veterans who received an honorable or general discharge and served on active duty (not active duty for training). Furthermore Reservists that are retired from the Reserve but not receiving retired pay (such as Gray-area retirees) are not considered "retired military" for purposes of Veterans' preference.

Thus allowing the utilization of Section 101 language does not generate unintended consequences. Although if that were to happen, and it was placed elsewhere it would cause harm because a disparate outcome would be created causing this specific group to be classified as second-class veterans. Such a result would not only, not grant these admirable men and women the honor they deserve for their 20 years plus service, but denigrate it.

H.R. 3787 would amend Title 38 to include in the definition of Veteran retirees Guard and Reserve Component members who have completed 20 or more years of

service, but are not considered to be Veterans under the current statutory definitions. ROA and REA have signed letters supporting the efforts of Congressman Tim Walz (D-Minn.) on this issue.

#### Cost

Reserve Component members with 20 years or more service without qualifying consecutive active duty time, cannot have a Veterans Affairs (VA) disability rating. Though, if they are injured while on military duty, they would be eligible for a VA disability rating and VA health care. Some would have assets and incomes above the VA Priority Group 8 means test (closed to new applicants for over 4 years). Some in the non-disabled and non-veteran retiree group might qualify for VA health care for Priority Group 7. Only a very small amount would qualify for enrollment in Priority Group 5 as indigent veterans.

In the majority of circumstances these individuals will have other full-time employment in the private sector or as a civilian government employee. Therefore many have health care insurance through their employer. Upon reaching 60 years of age they will be eligible for TRICARE.

Lastly, the operational reserve policy requires routine activation of Reserve Component members for 12 months every fifth or sixth year. There will be as we move forward a small number of career reservists that will not qualify as active duty veterans.

#### CONCLUSION

The Reserve Officers Association and Reserve Enlisted Association, again, would like to thank this sub-committee for the opportunity to present our testimony.

America's servicemen and women from the Reserve Components come from the heart of communities across this great country and its territories. They have proven themselves to be worthy and capable, and have earned the respect they so richly deserve from their fellow citizens. What they also deserve is the honor to be called Veteran.

ROA and REA appreciate efforts by this Subcommittee to address employment issues that veterans face. We are looking forward to working with you, and supporting your efforts in any way that we can.

Upon request ROA and REA can provide copies of THE OFFICER articles referenced.

---

#### Statement of Master Sergeant Larry D. Madison, USAF (Ret.), Legislative Director, Washington Office, The Retired Enlisted Association

Mr. CHAIRMAN, RANKING MEMBER LAMBORN, AND MEMBERS OF THE COMMITTEE, thank you for this opportunity to provide testimony for the record to the Disability Assistance and Memorial Affairs Subcommittee of the House Committee on Veterans Affairs.

The Retired Enlisted Association is a Veterans Service Organization founded 46 years ago to represent the needs and points of view of enlisted men and women who have dedicated their careers to serving in all the branches of the United States Armed Services: Active Duty, National Guard and Reserves, as well as the members who are doing so today.

The Retired Enlisted Association enthusiastically supports the passage of H.R. 3787, the Honor America's Guard and Reserve Retirees Act, and whatever amendments may be offered by Congressman Walz of Minnesota.

As currently defined in law, members of the reserve components who have completed 20 or more years of service are military retirees and eligible upon reaching age 60 for all of the benefits of active duty military retirees. However, they are not considered to be "veterans" if they have not served the number of consecutive days on federal active duty (defined as active duty other than active duty for training) required by law.

According to the *Federal Benefits for Veterans, Dependents and Survivors* handbook, 2009 edition, published by the Department of Veterans Affairs, "Reservists who served on active duty establish veteran status and may be eligible for the full-range of VA benefits, depending on the length of active military service and a discharge or release from active duty under conditions other than dishonorable. **In addition, reservists not activated may qualify for some VA benefits**" [emphasis added].

It adds further that "National Guard members can establish eligibility for VA benefits if activated for federal service during a period of war or domestic emer-

gency. **However, activation for other than federal service does not qualify Guard members for all VA benefits** [emphasis added].

Over time, Congress has authorized certain veterans benefits for these retirees, indicating their 'quasi-veteran' status. For purposes of this discussion, these individuals will be referred to as "non-veteran retirees."

VA benefits for non-veteran retirees who have not served on federal active duty for the consecutive number of days required by law include:

- VA disability compensation and VA health care for a non-veteran retiree who is injured and/or disabled while performing inactive duty for training regardless of length of service.
- VA home loan eligibility in exchange for six or more years of honorable service in the Selected Reserve
- VA burial and memorial benefits for the non-veteran retiree entitled to reserve retired pay at the time of death
- Servicemen's Group Life Insurance (SGLI) and Veterans Group Life Insurance (VGLI)

These are substantial and appreciated benefits and this legislation contemplates adding no new benefits if veterans status is granted.

To qualify for a reserve retirement at age 60, a Guard or Reserve member must accrue the equivalent of 20 years of "points" based on the performance of military duty at a minimum of 50 points per year. The minimum of 1000 qualifying retirement points roughly equates to 2.74 years of military duty based on the performance of drill duty (inactive duty training), annual training, and professional development in military science. (20 yrs. × 50 points = 1000 point minimum divided by 365 = 2.74 years military duty). Moreover, as volunteers, reservists are liable for activation throughout their careers and required to maintain their readiness for such eventualities.

It is not well known that members of the Reserve Components who are sent for duty on the southern border of the United States are sent in other than active duty orders. So no matter how long those individuals may be on duty, their time does not count as active duty time and therefore does not count toward gaining veterans status.

In addition, for many years members of the air Reserve Components, including the Naval Air Reserve, the Air National Guard and the Air Force Reserve have flown missions to many destinations around the world, doing what the active duty components would otherwise have to do. Again, many, if not most of these missions are flown in other than active duty status, once again depriving these individuals of time that could count for veterans status.

In short, an individual may serve a career in the Reserve Components of the United States Armed Forces and become a military retiree, with all of the earned benefits that come with that status, and yet not be a "veteran" as defined by law. Frankly, this makes no sense in today's world, if it ever did.

When one looks at the uniform of someone serving in the United States military, several things are very noticeable. Among these are the ribbons and medals worn on the uniform, the branch of service, and on some, the unit patch. As the Army says on its Web site, "Soldiers wear a wide assortment of insignia, ribbons, medals, badges, tabs and patches. To the uninitiated, the variety can be bewildering. Yet, each device represents a Soldier's accomplishment—or that of his or her unit—**and is a great source of pride and accomplishment**" [emphasis added]. The same can be said of all the other branches of service.

Within the U.S. Armed Forces, things without monetary value are meaningful and are a source of great pride and honor. Clearly, one of those things is the distinction of being called a "veteran." And yet that honor is denied to some who serve honorably and with distinction for 20 years or more in the Reserve components. It is time to change that.

The Congressional Budget Office has said there is no cost involved in making this change because there are no new benefits that will be granted to the personnel involved. The fact is, this is strictly an issue of honor.

It should be noted that the Guard-Reserve, Veterans, and Retiree Committees of The Military Coalition have each put this initiative on their top 10 priorities list for 2010, and it is endorsed by both The Military Coalition and the National Military Veterans Alliance.

Finally, the Nation's operational reserve policy requires the routine activation of Guard and Reserve servicemembers for 12 months every fifth or sixth year. Going forward, there will be a negligible number of career reservists who would not qualify as active duty veterans.

**Summary**

For the vast majority of non-veteran retirees, this issue is about honor not benefits. They seek public and statutory recognition as "veterans of the Armed Forces of the United States." They volunteered to serve, served honorably, and were prepared to serve on active duty if called. The absence of statutory recognition is a vestige of the Cold War, when the Nation relied upon conscription for its manpower. A small cohort of today's volunteers should not be penalized for decisions beyond their control concerning federal activation.

This is a chance for the House Veterans Affairs Committee and the Congress to honor the service of those individuals at virtually no cost to taxpayers. We sincerely hope Congress will do the right thing and pass the Honor America's Guard and Reserve Retirees Act.

**MATERIAL SUBMITTED FOR THE RECORD**

Committee on Veterans' Affairs  
Subcommittee on Disability Assistance and Memorial Affairs  
Washington, DC.  
*July 21, 2010*

Thomas Pamperin  
Associate Deputy Under Secretary for Policy and Programs Management  
Veterans Benefits Administration  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20402

Dear Mr. Pamperin:

Thank you for testifying at the House Committee on Veterans' Affairs' Subcommittee on Disability Assistance and Memorial Affairs' legislative hearing on "H.R. 3407, H.R. 3787 and related draft legislation, H.R. 4541, H.R. 5064, and H.R. 5549" held on July 1, 2010. We would greatly appreciate if you would provide answers to the enclosed follow-up hearing questions by Wednesday, August 18, 2010.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all full committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your responses by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

John J. Hall  
*Chairman*

Doug Lamborn  
*Ranking Republican Member*

---

**Questions for the Record**  
**The Honorable John J. Hall, Chairman**  
**Subcommittee on Disability and Memorial Affairs**  
**The Honorable Doug Lamborn, Ranking Member**  
**Subcommittee on Disability and Memorial Affairs,**  
**House Committee on Veterans' Affairs**  
**"Legislative Hearing on H.R. 3407, H.R. 3787 and**  
**Related draft legislation, H.R. 4541, H.R. 5064, H.R. 5549"**  
**July 1, 2010**

**Question 1:** Please provide the completed cost estimates for H.R. 3407.

**Response:** Please see attachment for cost estimates for H.R. 3407.

H.R. 3407, the "Severely Injured Veterans Benefits Improvement Act of 2009," includes provisions that would: (1) increase special monthly compensation rates for severely injured Veterans; (2) provide eligibility for automobiles and adaptive equipment to disabled Veterans and members of the Armed Forces with severe burn injuries; (3) increase non service-connected disability pension for certain wartime Veterans; (4) provide eligibility for aid and attendance benefits to Veterans with traumatic brain injuries; (5) authorize the Secretary of Veterans Affairs to increase Medal of Honor Special Pension; and (6) extend current provisions relating to pensions for certain hospitalized Veterans. The amendments made by this bill would become effective September 30, 2011.

*Section 2*

Section 2 of the bill would increase the monthly rates of disability compensation specified in 38 U.S.C. § 1114(r)(1) and (r)(2) as payable for aid and attendance, from \$1,893 to \$2,840, and for higher levels of care, from \$2,820 to \$4,230.

As stated in testimony, costs are estimated to be \$30.9 million for the first year, \$163.4 million over 5 years, and \$351.3 million over 10 years. VA estimates that there would be no additional administrative costs associated with this provision.

#### *Section 3*

Section 3 would expand the category of persons eligible for automobile allowance and adaptive equipment as specified in 38 U.S.C. § 3901(1) to include certain Veterans and members of the Armed Forces serving on active duty who are disabled with a severe burn injury, as determined under regulations prescribed by the Secretary.

Benefit costs are estimated to be \$14.5 million during the first year, \$75.1 million for 5 years and nearly \$148.0 million over 10 years. VA estimates that there would be no additional administrative costs associated with this provision.

#### *Section 4*

Section 4 would increase monthly payments of non service-connected disability pension under 38 U.S.C. § 1521(e) to Veterans who, in addition to being permanently and totally disabled, have additional disability rated 60-percent or greater or are permanently housebound. The rates would increase from \$4,340 to \$4,774 for unmarried Veterans without dependents and from \$5,441 to \$5,985 for Veterans with a spouse or dependent.

As stated in testimony, benefit costs are estimated to be \$14.3 million for the first year, \$77.3 million over 5 years, and \$160.3 million over 10 years. VA estimates that there would be no additional administrative costs associated with this provision.

#### *Section 5*

Section 5 would amend 38 U.S.C. § 1114(o) to include traumatic brain injury (TBI) among the list of disabilities that qualify for special monthly compensation at the rating specified in section 1114(o). Under the provision as written, this level of compensation would be payable without regard to the severity of the TBI or the resulting disability. Further, eligibility for payment under section 1114(o) would also make Veterans with a TBI of any severity who are also in need of aid and attendance eligible for payment of the higher rate payable under 38 U.S.C. § 1114(r) to Veterans in need of aid and attendance.

Benefit costs just for the added beneficiaries under 38 U.S.C. § 1114(o) are estimated to be \$1.6 billion during the first year, \$9.1 billion for 5 years and \$20.7 billion over 10 years. Additional significant costs would be incurred as many of the new 38 U.S.C. § 1114(o) beneficiaries would now be eligible for the increased aid and attendance under 38 U.S.C. § 1114(r)(1). VA estimates that there would be no additional administrative costs associated with this provision.

#### *Section 6*

Section 6 would authorize the Secretary to increase by no more than \$1,000 the monthly rate of Medal of Honor Pension for fiscal years 2012 and 2013. The proposed increase is subject to the availability of appropriations.

As stated in testimony, VA estimates that costs for this provision, if the maximum authorized increase were provided, would be \$1.0 million per year and \$2.0 million over 2 years.

#### *Section 7*

Section 7 would amend 38 U.S.C. § 5503(d)(7) to extend current provisions governing pensions for certain Veterans in Medicaid-approved nursing facilities that will expire on September 30, 2011. The proposal would extend until September 30, 2021, the provisions in section 5503(d) providing such Veterans a protected pension payment that cannot be used to reduce the amount of Medicaid benefits payable for the Veteran's care.

As stated in testimony, VA estimates that enactment of this provision would result in VA cost savings of approximately \$563 million during the first year, \$2.9 billion for 5 years, and \$6.2 billion over 10 years.

VA regrets any confusion resulting from our response during the hearing on July 1, 2010, regarding the net budgetary effect to the Medicaid Program as a result of extending the provisions of 38 U.S.C. § 5503(d)(7). VA contacted the Center for Medicare and Medicaid Services of the Department of Health and Human Services, but did not receive a response as to the budgetary impact of extending § 5503(d)(7). VA is therefore unable to provide a forecast of costs that will be incurred by the Medicaid Program as a result of this amendment.

**Question 2:** The Department of Veterans Affairs (VA) expressed opposition to H.R. 4541, the "Veterans Pensions Protection Act of 2010," in so far as it seeks to

exclude, from countable income, payments received by Veterans for pain and suffering from insurance companies and other third parties. Please inform us how many Veterans would fall into this category?

**Response:** VA cannot determine the number of Veterans that this provision would affect and/or how many fall into this category. Data are not available regarding the frequency or amounts of such payments to pension beneficiaries.

**Question 2(a):** What are the policy considerations for excluding medical expense reimbursements from countable income and not payments received for pain and suffering due to severe accidents such as that by Congressman Hastings' constituent?

**Response:** The distinction between these two types of payments is that reimbursement for medical expenses replaces an economic loss, whereas payment for pain and suffering does not. Disability pension is a need-based program in which the level of need is determined by counting the amount of income available to the Veteran. A Veteran who incurs medical expenses due to an accident may be required to expend his or her income to pay such expenses. Reimbursement for such expenditures returns the Veteran's available income to the same level it would have been at but for the accident, with no net increase in available income. In contrast, payment for pain and suffering does not replace expended income, but constitutes additional income available to the Veteran.

**Question 2(b):** What are the costs associated with H.R. 4541?

**Response:** Current law excludes reimbursement for casualty loss as countable income in determining pension entitlement; therefore, no benefit costs are associated with this provision. This proposal would additionally exclude payments received for pain and suffering related to accident, theft or loss, and casualty loss. VA cannot determine potential benefit costs related to this proposed provision because data are not available regarding the frequency or amounts of such payments to the population of pension beneficiaries.

**Question 3:** According to your testimony, VA opposes both H.R. 3787 and an alternate draft version of this legislation. Please elaborate on your opposition to H.R. 3787 and the alternative version of the bill, including any unintended consequences that VA foresees.

**Question 3(a):** VA contends that extending even honorary Veteran status to retired Reservists and National Guard members represents a departure from the principle that active duty service is the foundation for Veteran status. What is VA's position in response to proponents of the draft alternative to H.R. 3787 who argue that a departure in policy concerning veteran status is appropriate given the new nature and character of Reserve and National Guard service?

**Response:** There is minimal value in amending 38 U.S.C. section 101(2) for the purpose of extending honorary Veteran status to retired Reserve or Guard members who did not otherwise have active military service at some point during their careers. Proponents of this bill want Reserve and Guard members to receive proper recognition based on the enhanced role they have assumed over the last decade. However, individuals who assume this enhanced role through a period of active service are currently recognized as "Veterans" as defined in 38 U.S.C. 101(2). It is arbitrary and inequitable to provide the same Veteran status to 20-year Guard or Reserve members who did not serve the minimum period of active duty time necessary to become a Veteran. Furthermore, it is not clear what tangible benefits outside of the currently available VA benefits would be extended based on this status.

**Question 3(b):** Does VA have an alternative approach to address the concerns raised by the draft bill's proposal?

**Response:** Outside the existing benefits and services that are available to Reserve and Guard members, VA does not have an alternate approach to recognize these individuals.

**Question 3(c):** What is the population of retired Reservists and National Guard members who would benefit from the alternative version of H.R. 3783?

**Response:** According to the Defense Finance and Accounting Service, there are currently 357,726 living National Guard and Reserve Component retirees. VA estimates 25,000 new National Guard and Reservist retirees per year. However, we do not know how many of these retirees have or will have qualifying active duty service. A more precise number would need to be obtained from DoD.

**Question 4:** Please provide VA's position on H.R. 5549, specifically how would this bill change the way VA currently preserves effective dates and provides VCAA notice?

**Response:** The legislation would not affect VA's longstanding regulations and policy regarding determining and assigning effective dates. Although H.R. 5549 introduces new procedural practices regarding waiver of development that VA has traditionally provided to claimants, the effective date for any grant of benefits for a claim filed through a standard or expedited adjudicatory process will generally still be the date of claim or date entitlement arose, whichever is later, under current VA laws and regulations.

We also do not believe this bill would affect VA's provision of Veterans Claims Assistance Act (VCAA) notice under 38 U.S.C. §5103(a), although we note that there is some ambiguity as to the intent of the bill in this regard. The bill states that, if VA determines that a claim is not a "fully developed" claim, it must provide VCAA notice. Although this may imply that VA need not provide VCAA notice if the claim is "fully developed," the bill contains no language explicitly relieving VA of the duty under section 5103(a) to provide such notice. Section 5103(a) directs VA to notify claimants of any information and evidence, not previously submitted to VA, that is necessary to substantiate the claim. VA interprets that statute to mean that VA need not provide notice if the claim is substantiated by the information and evidence submitted with a claim. However, nothing in current section 5103(a) or H.R. 5549 excuses VA from providing VCAA notice in cases in which VA determines that additional information or evidence is needed. H.R. 5549 would define a "fully developed claim" as one in which the claimant indicates that he or she does not intend to submit additional information and evidence and does not require assistance from VA in developing the claim. It is possible that a claim may meet this definition of a "fully developed claim," but that VA may still determine that further information or evidence is needed to substantiate the claim. In such circumstances, we believe that section 5103(a) would require VA to provide VCAA notice and that H.R. 5549 does not clearly provide otherwise.

The U.S. Court of Appeals for Veterans Claims has recognized that claimants may waive the opportunity to submit information and evidence under 38 U.S.C. §5103(a), provided the waiver is voluntary and fully informed. However, absent notice from VA of the information and evidence needed to substantiate the claim, it is questionable whether the Court would find a waiver to be fully informed.

VA does not support this legislation, as further statutory authority is not needed for VA to employ an expedited claims process. VA has already implemented a Fully Developed Claim (FDC) program across all regional offices under the existing authority of 38 U.S.C. §501(a)(4), which provides the Secretary's authority to prescribe rules and regulations to include establishing the method in which claims are adjudicated. The Secretary has complied with the Veterans' Benefits Improvement Act of 2008, Public Law 110-389, section 221(a), which directed VA to carry out a 1-year pilot program to assess the feasibility and advisability of expeditiously processing fully developed compensation and pension claims within 90 days after receipt of the claim. Based on the favorable results from the pilot, VA has expanded and fully implemented the program, thereby rendering H.R. 5549 unnecessary.

The amendment to section 5104 is also unnecessary and adds ambiguity to the existing statute. The amendment would require VA, when it denies a benefit sought, to provide the claimant with "any form or application required by the Secretary to appeal such decision." VA has never required a notice of disagreement to be submitted on a specific form or application. Section 7105(b)(2) of title 38 only requires that a Notice of Disagreement be in writing, and requiring claimants to file a specific form would place an unnecessary burden on them. Although H.R. 5549 would not require VA to adopt a specific form for appeal, amending section 5104 to include reference to such a form would likely create confusion as to whether claimants are required to use a specific form to appeal VA decisions.

**Question 4(a):** Do you foresee any shortcomings or potential exploitations of the bill's provision that would allow a veteran to signal his/her intent of filing a Fully Developed Claim (FDC) while filing an informal claim to secure the earlier effective date? Would there be a way to avoid potential abuse such as veterans filing meritless claims and then using FDC?

**Response:** VA's current Fully Developed Claim (FDC) Program includes procedures to consider any communication or action that shows intent to apply for benefits under the FDC Program as an informal FDC. Further, current VA regulations permit payment from the date of an informal claim irrespective of whether the claim is fully developed when received.

**Question 4(b):** What steps, if any, is VA taking to inform veterans of claims that lack necessary evidence, prior to processing fully developed claims?

**Response:** A claim that does not meet, or no longer meets, FDC criteria will be processed routinely and the Veteran will be notified of this status change. An FDC claim must meet criteria that include all, if any, relevant private medical treatment records and an identification of any treatment records from a Federal treatment facility such as a VA medical center. A claim is not qualified for the FDC Program if the claim requires additional development such as a request for private medical evidence, Guard/Reserve records, or other evidence.

**Question 4(c):** VA contends that including a VA Appeals form along with notices of claim decisions, as proposed by H.R. 5549, would not speed up the appeals process and may confuse veterans who still may be able to avail themselves of administrative processes. Does VA have any alternative ideas for achieving the bill's aim of better informing veterans, family members, and survivors of their rights to appeal claim decisions?

**Response:** Outside of the current practice of communicating appeal rights in the decision notification letter, VA does not have an alternative approach. The following paragraph is included in all notification letters to claimants. A toll free number is also provided if claimants have questions or require additional assistance.

***What You Should Do If You Disagree With Our Decision***

If you do not agree with our decision, you should write and tell us why. You have one year from the date of this letter to appeal the decision. The enclosed VA Form 4107, "Your Rights to Appeal Our Decision," explains your right to appeal.

---

**H.R. 3407  
VBA Cost Estimate  
Severely Injured Veterans Benefit Improvement Act of 2009**

**Issue**

H.R. 3407: Severely Injured Veterans Benefits Improvement Act of 2009, 1st session of 111th Congress.

**Purpose**

Section two provides for a special monthly compensation rate increase for severely injured Veterans. Section three provides eligibility for automobiles and adaptive equipment to disabled Veterans and members of the armed forces with severe burn injuries. Section four provides for an increase in non service-connected disability pension for certain Veterans of a period of war. Section five provides eligibility for aid and attendance benefits to veterans with traumatic brain injuries. Section six provides authority to the Secretary of Veterans Affairs to increase Medal of Honor Special Pension. Section seven extends the current provisions relating to pensions for certain hospitalized Veterans.

**Section 2—Increase in Rate of Special Monthly Compensation for Severely Injured Veterans**

*Summary*

This proposed section would amend 38 U.S.C. § 1114(r)(1) and (2) by increasing the special monthly compensation rate of aid and attendance from \$1,893 to \$2,840 and, for a higher level of aid and attendance, from \$2,820 to \$4,230.

**Cost**

*Benefits Costs (Mandatory)*

Benefit costs are estimated to be \$30.9 million during the first year, \$163.4 million for 5 years and \$351.3 over 10 years.

*Benefits Methodology*

Caseload for R1 (lower level aid and attendance) and R2 (higher level aid and attendance) recipients in FY 2012 and the out-years were based on historical trends. In order to calculate the payment amount for the increase in Special Monthly Compensation (SMC) rates, we annualized the difference between the benefit rates in FY 2010 at the R1 (\$6,669) and R2 level (\$7,650) and the proposed rates (\$7,507 at the R1 level and \$8,897 at the R2 level). Obligations were calculated by applying

the caseload to the increase in the special monthly compensation rates. The effective date of this bill is September 30, 2011.

<b>FY</b>	<b>Veteran Caseload</b>	<b>Total Obligations (000's)</b>
<b>2012</b>	2,653	\$30,898
<b>2013</b>	2,671	\$31,764
<b>2014</b>	2,689	\$32,652
<b>2015</b>	2,708	\$33,563
<b>2016</b>	2,726	\$34,497
<b>2017</b>	2,744	\$35,490
<b>2018</b>	2,762	\$36,510
<b>2019</b>	2,780	\$37,557
<b>2020</b>	2,798	\$38,631
<b>2021</b>	2,816	\$39,735
<b>Total</b>	<b>27,347</b>	<b>\$351,298</b>

COLAs commensurate with current economic assumptions and have been factored into this estimate.

*Administrative/General Operating Expense Costs (GOE)*

No administrative costs are associated with section 2.

**Section 3—Eligibility of Disabled Veterans and Members of the Armed Forces with Severe Burn Injuries for Automobiles and Adaptive Equipment.**

*Summary*

This proposed section would amend Chapter 39, which provides eligibility for an automobile allowance and adaptive equipment to disabled Veterans and members of the armed forces. It would add to those who make up the current “eligible person” category, under 38 U.S.C. § 3901(1), a category of Veterans and members of the armed forces serving on active duty who are disabled with “a severe burn injury.” The definition of a severe burn injury is to be determined through regulations prescribed by the Secretary.

*Cost*

Benefit costs are estimated to be \$14.5 million during the first year, \$75.1 million for 5 years and nearly \$148.0 million over 10 years.

The passage of this bill will extend eligibility to those severely burned Veterans who fall into the 40 percent and 50 percent disability rating and are not currently in receipt of automobile and adaptive equipment benefits. Based on the rating schedule, those rated 0 percent through 30 percent will not be eligible, and it is assumed that those rated 60 percent and above are highly likely to be already eligible for adaptive equipment and automotive grants.

To determine caseload, we based estimates on current diagnostic codes from RCS 20 227: Specific Diagnosis, Major and Largest Evaluation, by Entitlement and Conflict report. According to third quarter data for FY 2010 from this report, there are over four thousand Veterans with burns at 40 percent or greater disability. Of these total Veterans, 3,611 or 86 percent, are rated 40 and 50 percent and will become eligible in 2012. Based on this report, we anticipate 76 accessions per year.

C&P service assumes an 85 percent application rate. In year one through four, an even caseload distribution is assumed for both automobile and adaptive equipment grants. Accessions are distributed evenly over a 4-year period. Automobile grants are a one-time payment. Adaptive equipment benefits are granted once within a 4-year period, and it is assumed half the eligible population will reapply after every fifth year in addition to the new accessions.

Average payments from the FY 2011 President's Budget were applied to the caseload to calculate obligations.

For purposes of this cost estimate, we assume an enactment date of October 1st 2011.

<b>FY</b>	<b>Auto- mobile Grants</b>	<b>Adaptive Equipment Grants</b>	<b>Total Obligations (\$000's)</b>
<b>2012</b>	767	767	\$14,469
<b>2013</b>	783	783	\$15,875
<b>2014</b>	800	800	\$17,479
<b>2015</b>	816	816	\$19,310
<b>2016</b>	64	448	\$7,924
<b>2017</b>	64	456	\$9,102
<b>2018</b>	64	464	\$10,466
<b>2019</b>	64	472	\$12,044
<b>2020</b>	64	672	\$19,164
<b>2021</b>	64	684	\$22,145
<b>Total</b>			<b>\$147,978</b>

**Section 4—Increase in Non-Service Connected Disability Pension for Certain Veterans of a Period of War.**

*Summary*

This proposed section would amend 38 U.S.C. § 1521(e), which authorizes non service-connected disability pension benefits to Veterans of a period of war, to increase monthly payments for those veterans who are eligible for permanently house-bound benefits from \$4,340 to \$4,774 for unmarried Veterans without dependents, and from \$5,441 to \$5,985 for Veterans with a spouse or dependent.

*Cost*

*Benefits Costs (Mandatory)*

Benefit costs are estimated to be \$14.3 million during the first year, \$77.3 million for 5 years and \$160.3 million over 10 years.

*Benefits Methodology*

Caseload for Veterans and Veterans with dependents for FY 2012 and out-years were based on historical trends. To calculate the payment amount for the increase in special monthly pension rates, we annualized the difference between the benefit rates. In FY 2010, the Veterans' rate is \$14,457 and the Veterans' with dependent rate is \$18,120. The proposed rate for Veterans is \$15,563 and \$19,513 for Veterans with dependent. COLAs were factored into the rates in the out-years. Obligations were calculated by applying the caseload to the increase in the special monthly pension rates. The effective date of this bill is September 30, 2011.

<b>FY</b>	<b>Veteran Caseload</b>	<b>Total Obligations (\$000's)</b>
<b>2012</b>	10,923	\$14,347
<b>2013</b>	10,813	\$15,505
<b>2014</b>	10,704	\$15,655
<b>2015</b>	10,596	\$15,808
<b>2016</b>	10,490	\$15,961
<b>2017</b>	10,384	\$16,249
<b>2018</b>	10,279	\$16,423
<b>2019</b>	10,176	\$16,599
<b>2020</b>	10,073	\$16,776
<b>2021</b>	9,962	\$16,939
<b>Total</b>		<b>\$160,262</b>

*Administrative/General Operating Expense Costs (GOE)*

No administrative costs are associated with section 4.

**Section 5—Eligibility of Veterans with Traumatic Brain Injury for Aid and Attendance Benefits.**

*Summary*

This proposed section would amend 38 U.S.C. § 1114(o) by adding the words “if the Veteran has suffered traumatic brain injury” to the statutory list of severe disability combinations that qualify for special monthly compensation.

*Benefits Costs (Mandatory)*

Benefit costs just for the added beneficiaries under 38 U.S.C. § 1114(o) (an SMC rating required before consideration for aid and attendance benefits) are estimated to be \$1.6 billion during the first year, \$9.1 billion for 5 years and \$20.7 billion over 10 years. Additional significant costs would be incurred as many of the new 38 U.S.C. § 1114(o) beneficiaries would now be eligible for the increased aid and attendance under 38 U.S.C. § 1114(r)(1).

According to the Office of Performance Analysis and Integrity (PA&I), as of March 2010, there were 31,198 Veterans on the rolls with an evaluation for TBI. This is 1 percent of the total estimated Veteran compensation caseload in 2010 from the 2011 President’s Budget. This percentage was applied to the total Veteran compensation caseload from the 2011 President’s Budget to estimate the number of Veterans with TBI in the out-years. Based on 2009 data, there were 156 Veterans with service connected TBI and also in receipt of aid and attendance. Based on this, we estimate that 1 percent of total Veterans with TBI are currently in receipt of the SMC “R1” rate. In order to estimate the number of Veterans who are eligible to receive SMC at the “O” level, the total number of Veterans on the rolls with TBI was reduced by the percentage of Veterans who are currently in receipt of SMC R1 rate.

The average degree of disability for Veterans receiving compensation is 40 percent. Obligations were calculated by taking the difference between the September average payment at 40 percent (from the 2011 President’s Budget) and the rates at the SMC “O” level and applying it to the estimated caseload.

<b>FY</b>	<b>Veteran Caseload</b>	<b>Total Obligations (\$000's)</b>
<b>2012</b>	33,698	\$1,639,825
<b>2013</b>	34,967	\$1,717,985
<b>2014</b>	36,197	\$1,813,997
<b>2015</b>	37,389	\$1,911,244
<b>2016</b>	38,545	\$2,009,722
<b>2017</b>	39,665	\$2,109,152
<b>2018</b>	40,750	\$2,212,353
<b>2019</b>	41,801	\$2,317,099
<b>2020</b>	42,829	\$2,423,915
<b>2021</b>	44,269	\$2,558,911
<b>Total</b>		<b>\$20,714,204</b>

COLAs commensurate with current economic assumptions have been factored into this estimate.

#### *GOE Costs*

Based on program knowledge, we believe that there will be minimal GOE costs associated with this proposal due to the small number of cases that need to be adjusted due to special monthly compensation.

#### **Section 6—Authority of Secretary of Veterans Affairs to Increase Medal of Honor Special Pension**

##### *Summary*

The proposal will amend Subsection (a) Section 1562 of title 38 to increase Medal of Honor Special Pension by no more than \$1,000 per month for fiscal years 2012 and 2013. The bill states that this increase is, “subject to the availability of appropriations.”

##### *Cost*

##### *Benefits Costs*

The cost of this legislation is estimated to be \$1.0 million per year with a 2-year total of \$2.0 million.

##### *Benefits Methodology*

According to C&P Service, as of May 2010, there are 84 Veterans in receipt of the Medal of Honor Pension. The rate for special pension will increase by \$1,000 per recipient with the proposed amendment. For purposes of this cost estimate, we assumed a constant caseload. Obligations were calculated by applying the caseload to the annualized rate increase in special pension. The effective date of this bill is September 30, 2011. Authority expires September 30, 2013.

<b>FY</b>	<b>Veteran Caseload</b>	<b>Total Obligation (\$000's)</b>
<b>2012</b>	84	\$1,008
<b>2113</b>	84	\$1,008
<b>Total</b>		<b>\$2,016</b>

##### *Administrative/General Operating Expense Costs (GOE)*

No administrative costs are associated with section 6.

## Section 7—Extension of Provisions Relating to Pensions for Certain Hospitalized Veterans

### Summary

This proposed section would amend 38 U.S.C. § 5503(d)(7) by extending the current provisions relating to pensions for certain Veterans in Medicaid approved nursing facilities [which are scheduled to expire on September 30, 2011] to September 30, 2021.

### Cost

#### Benefits Savings (Mandatory)

Benefit savings are estimated to be \$562.9 million during the first year, \$2.9 billion for 5 years, and \$6.2 billion over 10 years. Although VA will reflect a savings due to lower pension costs, the states may reflect costs, as Medicaid will continue to pay a larger share of Veteran pensioners' nursing home care.

#### Benefits Methodology

According to the Medicaid Nursing Home Beneficiaries report, in September 2008, there were 14,918 Veterans and 23,968 surviving spouses in receipt of improved pension (P.L. 95-588) who are being paid \$90 per month under this provision, for an annual payment of \$1,080 each. Should the authority expire, the benefit for each of these Veterans would be increased to the A&A rate of \$19,953 annually, and the benefit for each surviving spouse would be increased to \$12,820 annually.

The cost of the current provision's obligations is calculated by applying the caseload for both Veterans and survivors to the current \$1,080 annual payment for each. We assume constant caseload through FY 2021. Annual obligations, should the authority expire, are calculated similarly with the cost of living adjustment applied to the benefit rates. The total decrease in obligations is derived from taking the difference between the total annual obligations of assuming the authority expires and the annual obligations with the current provision.

<b>FY</b>	<b>Obligations (\$000's)</b>
<b>2012</b>	(\$562,945)
<b>2013</b>	(\$575,044)
<b>2014</b>	(\$587,385)
<b>2015</b>	(\$599,972)
<b>2016</b>	(\$612,812)
<b>2017</b>	(\$626,563)
<b>2018</b>	(\$640,602)
<b>2019</b>	(\$654,937)
<b>2020</b>	(\$669,573)
<b>2021</b>	(\$684,515)
<b>Total</b>	<b>(\$6,214,347)</b>

#### Administrative / General Operating Expense Costs (GOE)

No administrative costs are associated with this legislation.

#### Contact

Thomas J. Kniffen, Chief, Compensation and Pension Service Regulation Staff (21), 202-461-9625; Sadaf Rahmani 202-461-9956, ORM Benefits Budget Division (24); or Kerry Baker, Policy Staff, Compensation and Pension Service (202) 461-1452 (21).