



National Service & Legislative Headquarters
807 Maine Avenue SW
Washington, DC 20024-2410
tel 202-554-3501
fax 202-554-3581

**STATEMENT OF
SHANE L. LIERMANN
DAV DEPUTY NATIONAL LEGISLATIVE DIRECTOR
FOR THE RECORD OF THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 29, 2022**

Chairwoman Luria, Ranking Member Nehls and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to submit a statement for the record of today's legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit veterans service organization (VSO) comprised of more than one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

We are pleased to offer our views on the bills impacting service-disabled veterans, their families and the programs administered by the Department of Veterans Affairs (VA) that are under consideration by the Subcommittee.

H.R. 1182, the Veteran Deportation Prevention and Reform Act

H.R. 1182, the Veteran Deportation Prevention and Reform Act, provides protections from deportation for noncitizen veterans.

The bill would specifically direct the Department of Homeland Security (DHS) to create a program and application process to allow eligible deported veterans residing outside of the United States to return to the country as noncitizens lawfully admitted for permanent residence. Additionally, it calls for the Department of Defense (DOD) and DHS to jointly establish a program to ensure members of the Armed Services and their spouses and children have a pathway to citizenship. DOD estimates that there are approximately 25,000 noncitizens currently serving in the U.S. Armed Forces.

Under this bill, the DOD, the Department of Veterans Affairs (VA), and Homeland Security would be mandated to conduct a joint study and report on all of the veterans that have been deported in the past two decades. In June 2019, the Government Accountability Office found that Immigration and Customs Enforcement (ICE) has not been tracking the number of veterans who have been deported, or been adhering to internal policies regarding potentially removable veterans. This joint study could establish how many veterans have been forcibly removed.

DAV is concerned with protecting honorably discharged wartime noncitizen veterans with service-related disabilities from deportation without due process and the opportunity to participate in any VA program; however, we do not have a resolution specific to H.R. 1182, and therefore we take no position.

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

H.R. 1183, the Honoring the Oath Act, would establish the Military Family Immigration Advisory Committee and modifies the naturalization procedures for a noncitizen in the Armed Forces.

U.S. Immigration and Customs Enforcement shall notify the committee when any individual in removal proceedings is a (1) member of the Armed Forces, (2) veteran, or (3) noncitizen spouse or minor child of such an Armed Forces member or veteran. The committee shall review the case of any such individual and make recommendations to the DHS and the Department of Justice as to how the case should be resolved. Such an individual shall not be removed until the committee has provided its recommendations.

DHS and the DOD shall jointly carry out a program allowing a noncitizen individual who serves on active duty in the Armed Forces (and any noncitizen spouse or minor children of the individual) to become a U.S. citizen if the individual is not otherwise ineligible for citizenship. The Armed Forces member shall be given the opportunity to apply for citizenship during the accession process into the Armed Forces. DHS shall adjudicate such an individual's application by the last day of the individual's active service in the Armed Forces.

DAV is concerned with protecting honorably discharged wartime noncitizen veterans with service-related disabilities from deportation while filing and awaiting a decision on their application for U.S. citizenship; however, we do not have a resolution specific to H.R. 1183, and therefore we take no position.

H.R. 5916, the Wounded Warrior Access Act

H.R. 5916, the Wounded Warrior Access Act, would require the VA to establish a secure website to allow veterans, claimants, or their representatives to request records related to VA claims and benefits, the claims folder or C-File.

Currently, veterans can obtain a copy of their VA claims folder from their local VA regional office. It usually will require completion of VA Form 3288, "Request for and Consent to Release Information from Individual's Records." It can take many months to receive the C-File back from VA after the request is submitted. However, they have the option to file a Freedom of Information Act (FOIA) request via VA Form 20-10206 if they do not receive the requested records.

H.R. 5916 would alleviate the potential need for multiple forms and requests. Additionally, the bill would require the VA, upon receipt of a valid request made through

the new website, to provide confirmation of the request within 10 days and the requested records in the form selected by the requestor within 120 days.

For more than 100 years, DAV has provided veterans assistance with their claims and appeals. Veterans often experience delays in receiving requested records which in turn can delay their ability to develop needed evidence or information for their claim or appeal. DAV strongly supports H.R. 5916 as it is consistent with DAV Resolution No. 036, which calls for significant and meaningful claims reform while preserving and enhancing the veteran's due process rights. Veterans must have expeditious access to their own benefits claims and appeals files.

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

H.R. 6131 would authorize the VA to send electronic notice to claimants rather than mailed notices. There has been a long-term issue with VA timely mailing notices to veterans, claimants and their representatives and electronic notification would assist in alleviating the problems noted below.

In July 2017, the Government Accountability Office (GAO) released a report detailing VA's chaotic mail practices after it was discovered that VA's mail volume and costs are among the highest in the federal government.

The report found that VA does not reliably report mail expenditure and volume data, leaving them without an accurate picture of how much they spend on outgoing mail and how much outgoing mail they even have. The report also found that VA lacks an efficient mail management policy, and does not have "agency-wide goals" or "performance measures for its mail operations."

Finally, the report uncovered that VA did not give mail managers the proper authority and responsibility to run the vast mailing operation. GAO states that "VA's ability to oversee mailing practices across its facilities is limited because it has not provided its mail managers with appropriate authority and responsibilities." Mail managers practice oversight over VA's mail policy, but do not have any "operational role in mail management."

More recently, the impact of the COVID-19 pandemic resulted in VBA not being able to mail notices to veterans and claimants for months. This resulted in VBA contracting with a vendor.

On August 12, 2021, the Office of Information and Technology informed VBA that the vendor, contracted to provide printing services to VA by the Government Publishing Office (GPO), experienced staffing and equipment issues that resulted in a significant delay in the printing and mailing of letters sent through the Veterans Benefits Management System (VBMS) Package Manager or centralized printing. VBA was informed that since July 13, 2021, there were letters not timely mailed to veterans and other claimants. This printing and mailing delay does not impact Insurance Service,

Education Service or Loan Guaranty Service timeframes for applications, appeals or notifications. In addition, any automated “batch” letters have not been affected by this situation. VBA awarded a new contract on September 29, 2021, with full printing capability achieved by December 31, 2021. Any notification letters issued after this date were printed and mailed timely.

H.R. 6131 would allow the VA to provide notice electronically if a claimant or the claimant’s representative makes that election. A claimant or the claimant’s representative may revoke such an election at any time. Additionally, VA shall annually solicit recommendations from stakeholders on how to improve the notice.

DAV strongly supports H.R. 6131 in accordance with DAV Resolution No. 036, which calls on Congress and VBA to ensure that all proposals to streamline and automate the claims development and rating process fully protect veterans’ rights. This includes the right to notice as guaranteed by statute. Given VA’s history with mailing, DAV believes veterans, claimants, and representatives should have the ability to choose how they are notified to include electronically as it will alleviate the vast problems of veterans not being advised timely.

H.R. 6064, to direct the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine for a review of examinations, furnished by the Secretary, to individuals who submit claims to the Secretary for compensation under chapter 11 of title 38, United States Code, for mental and physical conditions linked to military sexual trauma

This bill requires the VA to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine (NASEM) to conduct a comprehensive review of VA medical examinations provided to individuals who submit claims for compensation for a service-connected disability – mental and physical – related to military sexual trauma. This review would include:

- a determination of the adequacy of the Disability Benefits Questionnaires, and the accuracy of the Department’s schedule of rating disabilities;
- consideration of whether certain conditions linked to MST should require referral for both a mental health examination and a physical health examination;
- the necessity of internal pelvic examinations to diagnose certain conditions linked to MST, and whether alternatives to such examinations could be considered if a veteran objects to or cannot complete such examination; and
- a determination of what credentials and training are necessary for a health care specialist to perform such examinations related to physical and mental health conditions linked to MST, for men and for women.

DAV appreciates the changes VBA has made over the past several years to how MST cases are processed. Due to their specialized nature, all MST claims are consolidated through five designated regional offices. Historically, we have seen more

success when VA processors are able to focus on higher volumes of MST claims, effectively becoming experts in developing these unique cases.

However, VA still often misses “markers” linked to MST. These can include the gaining or loss of weight over a period of time; dental records showing a gradual deterioration in the teeth due to binging and purging; unexplained reports of stomachaches, heartburn or onset of headaches; or even sudden breakouts of acne because of stress. This legislation aims to fix this by determining the adequacy of the current Disability Benefits Questionnaires, the accuracy of the Department’s schedule of rating disabilities, and what credentials and training are necessary to perform examinations related to physical and mental health conditions linked to MST.

For these reasons, DAV supports this legislation in accordance with DAV Resolution No. 074, which calls for oversight of VA in evaluating disability claims for residuals of military sexual trauma.

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

H.R. 6165 directs the Veterans Benefits Administration (VBA) to update the ongoing national training program for claims adjudicators who review claims for post-traumatic stress disorder (PTSD) and require mandatory annual training.

Title 38, Code of Federal Regulations, section 3.304(f) governs the establishment of service connection for PTSD, which requires veterans to have specifically experienced a stressor. A stressor is a psychologically traumatic event that the person experienced, witnessed, or was confronted with that involved actual or threatened death or serious injury, or a “threat to the physical integrity of themselves or others.

For the VBA to grant service connection for disability benefits related to PTSD, VBA must have evidence that:

- the veteran has a diagnosis of PTSD;
- the stressor occurred during military service; and
- a link, established by medical evidence, exists between the current PTSD symptoms and the in-service stressor.

The regulation requires that there be credible supporting evidence of a specific in-service stressor, which distinguishes claims for PTSD from other types of claims for service connection. The regulation outlines five exceptions to the requirement for credible supporting evidence that the specific in-service stressor occurred. These exceptions are avenues that allow VA to use a reduced evidentiary standard for consideration of the in-service stressor.

1. The evidence establishes a diagnosis of PTSD during service.
2. The evidence establishes that the veteran engaged in combat with the enemy.

3. A stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity.
4. Evidence establishes that the veteran was a prisoner of war.
5. Evidence from sources other than the veteran's service records corroborates the veteran's account of a stressor based on in-service personal assault, including evidence of behavior changes following the claimed assault.

For the first four exceptions, the reduced evidentiary standard allows the veteran's lay testimony alone to establish the occurrence of the claimed in-service stressor, provided that there is no clear and convincing evidence to the contrary and the claimed stressor is consistent with the circumstances of the veteran's service. All other types of in-service stressors that would not fit into one of the five exceptions require credible supporting evidence that the claimed in-service stressor occurred.

The VA Office of the Inspector General (OIG) report of December 9, 2020, estimated that claims processors did not follow VA regulations and procedures when processing 18,300 of 118,000 claims (16%).

During interviews with VBA staff, the OIG team had claims processors describe the various stressor types. Only four of 21 claims processors interviewed were able to correctly identify all four types of claimed in-service stressors, and some claims processors were confused about the requirements for verifying a claimed in-service stressor. Claims processors' general confusion concerning stressor types and the stressor verification process was confirmed during interviews with VBA quality assurance staff, who explained that claims processors are unclear about the different types of PTSD stressors and whether the evidence of record could be deemed sufficient to verify the claimed stressor. However, no specific action was taken because the Compensation Service decides mandatory training courses based on identified national error trends. These trends are based on distinct claims processing tasks, such as whether examinations were properly requested or benefits were granted from the correct date, rather than any disability-specific trends such as with PTSD claims processing.

Two reasons claims processors did not fully understand PTSD stressor types and the stressor verification process included the lack of nationally mandated training on processing PTSD claims, and the ineffective organization of the procedures manual (M21-1, Adjudication Procedures Manual) that made it difficult to navigate and implement when processing claims involving entitlement to service connection for PTSD.

The OIG recommended that the Under Secretary for Benefits determine the actions needed to ensure staff understand evidence-gathering and verification of stressor requirements for PTSD claims and monitor the results to ensure effectiveness once those actions are implemented. The under secretary for benefits should also assess whether the adjudication procedures manual needs to be reorganized or

amended for accurate processing of PTSD claims. We would like to point out that there is not a current Senate confirmed under secretary for benefits.

H.R. 6165 would direct VBA to update the ongoing national training program for claims adjudicators who review claims for PTSD and require mandatory annual training. Additionally, the bill will require tracking the quality of PTSD claims. Per VBA's Annual Benefits Report for Fiscal Year 2020, PTSD was one of the most prevalent disabilities for new claimants at over 45,000 claims and is the third most prevalent disability of all veterans receiving compensation with nearly 1.2 million veterans with PTSD.

DAV strongly supports H.R. 6165 in accordance with DAV Resolution No. 036, which supports legislation and other policies that will strengthen training, testing and quality control as well as accountability measures to ensure that VBA leaders and employees develop a corporate culture focused on getting each claim decided right the first time.

Discussion Draft, the DIC Modernization Act

This legislation will amend title 38, United States Code, Section 103(d) by adding a new paragraph which would allow surviving spouses who remarry after 10 consecutive years of receipt, or entitlement to, benefits relating to Dependency Indemnity Compensation to retain 50% of the amount payable under such provision and those who remarry after 20 years to retain the full amount. This bill would also reestablish DIC payments to surviving spouses whose remarriage occurred 30 years prior to this legislation and was entitled to this benefit for 10 years.

Under the current statute, there is not a provision that would allow a surviving spouse to have the ability to receive any portion of DIC benefits if they remarry prior to age 55. This legislation would give a surviving spouse the ability to receive half of the benefit if they remarry after 10 years and the entire benefit if they remarry after 20 years.

DAV supports this legislation based on Resolution No. 057, which calls for legislation that improves and reforms DIC benefits to include increasing the monthly amount and lowering the remarriage age for survivors of disabled veterans.

Discussion Draft, to amend title 38, United States Code, to update certain terminology related to marriage under the laws administered by the Secretary of Veterans Affairs

The bill would amend title 38, United States Code, Section 101, by removing language that describes who a spouse can be and the common law criteria. The current statute defines a surviving spouse as a person of the opposite sex from the veteran or as a person who holds themselves to be the spouse of the veteran out in public.

On June 26, 2015, the United States Supreme Court ruled in favor of same-sex couples having the right to marry in all 50 states (*Obergefell v. Hodges*). Same-sex married couples are now able to share veterans' pensions, home loans, medical services and similar benefits previously unavailable to them. This legislation would make the changes in the statute to reflect the *Obergefell* decision.

DAV supports this legislation based on VBA Letter 20-15-16, which provided instructions and procedures for processing compensation, pension, dependency and indemnity compensation (DIC), and vocational rehabilitation and employment (VR&E) claims involving same-sex marriage in light of the *Obergefell* decision. Accordingly, VA may now recognize all same-sex marriages without regard to a veteran's state of residence.

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

The purpose of this draft legislation is to provide comparative information on the benefits provided by the VA and the Social Security Administration so veterans and their survivors can make more informed decisions.

If this legislation is enacted, VA would be required to create two fact sheets – one for veterans and one for survivors of deceased veterans – that compares VA benefits and compensation, monthly insurance benefits provided by the Social Security Administration, and supplemental security income (SSI) provided by the Social Security Administration. The proposed fact sheets would also include differences in eligibility requirements, instructions on how to apply and how to get additional information.

DAV was founded on the principle that this nation's first duty to veterans is the rehabilitation and welfare of its wartime disabled. This principle envisions enhanced outreach to ensure that all disabled veterans receive all benefits they have earned, therefore, DAV fully supports this discussion draft, as it will allow disabled veterans to make informed decisions on their benefits.

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

The purpose of this legislation is to ensure equal awareness of and access to VA benefits provided to the survivors of deceased veterans. This would be accomplished by, first, collecting the demographic data of each beneficiary of survivor's benefits from the VA. This demographic data would include race, ethnicity, tribal affiliation, LGBTQIA+ status and geographic location. Secondly, the VA would identify underserved

demographics based on the data collected, and develop an outreach and education strategy to raise awareness among the underserved populations of the survivor's benefits offered by the VA. Thirdly, the VA would establish a grant program for the purpose of awarding grants to entities to assist with outreach to and education of underserved populations regarding survivor's benefits offered by VA.

In addition, the Under Secretary for Memorial Affairs would be required to carry out education activities to ensure that veterans who belong to an underserved demographic are made aware of any pre-need eligibility for burial in a national cemetery.

DAV supports this draft legislation in accordance with Resolution No. 057, which declares support for legislation that improves and reforms DIC benefits.

Discussion Draft, the Department of Veterans Affairs Principles of Benefits Automation Act

This draft legislation would require the VA to submit a plan to modernize the IT systems of the Veterans Benefits Administration (VBA). The plan would cover a period of four fiscal years and include identifying information systems that need to be modernized or retired and the cost estimates for each system identified.

The bill identifies that VA should increase automation in order to increase speed and accuracy of claims processing decisions, enhance the productivity of VA employees, to be able to achieve greater consistency in the processing and rating of claims by relying on patterns of similar evidence in claims files, to draw information from within the VA and other government agencies and employees should continue to make decision with the mindset of granting claims and benefits. Automation should not be used to in a manner to take away from or infringe upon the due process rights of a veteran or the VA's duty to assist or notify a claimant.

According to the VA website, there are over 600,000 claims pending that require development and a decision by a VBA claims processor. There are over 243,000 backlogged claims that have been pending more than 125 days.

DAV supports this draft bill in accordance with DAV Resolution No. 060, which calls for VA to modernize IT systems and improve digital sharing of information for disabled veterans.

Discussion Draft, the Modernizing Department of Veterans Affairs Disability Benefit Questionnaires Act

This bill would require that all disability benefit questionnaires (DBQs) completed by non-VA physicians to be transmitted to the VA in a machine-readable format. The VA will be required to issue standards for how the DBQs will be transmitted by non-VA physicians. The VA will be required to submit a plan to the full House and Senate

Veterans' Affairs Committees on how to modify the IT systems and process to enable non-VA physicians to submit completed DBQs back to the VA.

The VA's website notes that DBQs were developed as a specific means to collect the necessary medical information required in the processing of veterans disability claims. DBQs provide veterans with a way to submit medical evidence from their health care provider to support their claims for disability benefits.

It is intended that the DBQs will be completed by the veteran's health care provider. All clinician information blocks at the bottom of the DBQs must be completed and the form signed and dated by the clinician completing the DBQ. VA reserves the right to confirm the authenticity of *all* DBQs completed by health care providers. Information submitted is subject to verification through computer matching programs with other agencies or any other means deemed appropriate by VA.

DAV supports this draft bill in accordance with DAV Resolution No. 036, which calls on Congress and VBA to ensure that all proposals to streamline and automate the claims development and rating process fully protect veterans' rights and DAV Resolution No. 060, which calls for VA to modernize IT systems and improve digital sharing of information for disabled veterans.

Discussion Draft, the Expediting Temporary Ratings for Veterans Act

This draft bill would require the VA to provide an automatic temporary disability rating to veterans who have a service-connected disability that requires hospital treatment or observation in a VA or approved hospital for a period in excess of 21 days.

The VA will be required to determine if a veteran is eligible to continue on their temporary rating and process claims manually if the evidence of record is not sufficient to decide the claim or if the provided medical evidence is not in a format that is not compatible with the VA system that will be developed.

At present, the veteran has to submit information to the VA to receive a temporary disability rating while being in a VA hospital or other medical facility in excess of 21 days. This information is often received after the veteran has received treatment for his or her service-connected disability. In many cases, if a veteran is hospitalized for a period in excess of 21 days, their wages may be reduced and this could cause a financial hardship for them.

This legislation could avoid a veteran from being placed in a financial hardship by providing immediate income assistance during the timeframe they are in a medical facility.

DAV supports this draft bill in accordance with DAV Resolution No. 036, which calls on Congress and VBA to ensure that all proposals to streamline and automate the claims development and rating process fully protect veterans' rights and that automated

rating processes, such as automated decision letters, provide sufficient and specific information to inform veterans and their advocates about the reasons and bases for rating decisions.

Discussion Draft, to amend title 38, United States Code, to improve outreach by the Secretary of Veterans Affairs to dependents of deceased veterans

The purpose of this draft legislation is to increase outreach to survivors of veterans regarding potential benefits. If enacted, the VA would be required to reach out by telephone to each eligible dependent of a military veteran upon receipt of notification of death.

This outreach would include contact information for the Office of Survivor Assistance and information on how to file a claim for VA survivors' benefits. DAV does not have a resolution on this issue and takes no position on this draft legislation.

Madame Chair, this concludes my testimony and we thank you for the opportunity to provide our comments and recommendations on the legislation being considered by the Subcommittee.