

**STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Runyan, Ranking Member Titus and Members of the Subcommittee:

Thank you for inviting the DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit veterans service organization comprised of 1.2 million wartime service-disabled veterans dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. DAV is pleased to be here today to present our views on the bills under consideration by the Subcommittee.

H.R. 569

H.R. 569, the Veterans' Compensation Cost-of-Living Adjustment Act of 2013, would increase, effective December 1, 2013, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. Although a cost-of-living adjustment (COLA) was passed last year at the modest increase of 1.7%, each of the past two years, there was no increase in the rates for compensation and DIC because the Social Security index used to measure the COLA did not increase. Many disabled veterans and their families rely heavily or solely on VA disability compensation or DIC as their only means of financial support have struggled during these difficult times. While the economy has faltered, their personal economic circumstances have been negatively affected by rising costs of many essential items, including food, medicines and gasoline. As inflation becomes a greater factor, it is imperative that veterans and their dependents receive a COLA and DAV supports this legislation; however, DAV is adamantly opposed to Section 2(c)(2) of the bill requiring the practice of rounding down COLA increases to the next lower whole dollar amount, which incrementally reduces the support to disabled veterans and their families. The practice of permanently rounding down a veteran's COLA to the next lower whole dollar amount can cause undue hardship for veterans and their survivors whose only support comes from these programs and it is time to end this practice.

H.R. 570

H.R. 570, the American Heroes COLA Act, would provide for annual COLAs to be made automatically by law each year for the rates of disability compensation for veterans with service-connected disabilities as well as the rates of DIC for survivors of certain service-connected disabled veterans. DAV supports this legislation; however, as mentioned, DAV is adamantly

opposed to the section of the bill requiring the practice of rounding down COLA increases to the next lower whole dollar amount.

H.R. 602

H.R. 602, the Veterans 2nd Amendment Protection Act, would clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes. An individual who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered mentally defective without the finding from a judge, magistrate, or other judicial authority of competent jurisdiction that such individual is a danger to himself or herself or to others. DAV has no resolution on this matter.

H.R. 671

H.R. 671, the Ruth Moore Act of 2013, would improve the disability compensation evaluation procedure of the Secretary of Veterans Affairs for veterans with mental health conditions related to military sexual trauma. DAV supports this legislation.

This bill would change the standard of proof required to establish service connection for veterans suffering from certain mental health conditions, including post-traumatic stress disorder (PTSD), resulting from military service or from military sexual trauma that occurred in service.

Essentially, H.R. 671 would eliminate the requirement of an in-service, verifiable stressor in conjunction with claims for PTSD. Under this change, VA would now be able to award entitlement to service connection for PTSD even when there is no official record of such incurrence or aggravation in service, provided there is a confirmed diagnosis of PTSD coupled with the veteran's written testimony that the PTSD is the result of an incident that occurred during military service, and a medical opinion supporting a nexus between the two.

In November 2010, VA modified its prior standard of proof for PTSD related to combat veterans by relaxing the evidentiary standards for establishing in-service stressors if it was related to a veteran's "fear of hostile military or terroristic activity." H.R. 671 would build upon that same concept and expands it to cover all environments in which a veteran experiences a stressor that can reasonably result in PTSD, regardless of whether it occurred in a combat zone, as long as it occurred when the veteran had been on active duty. The legislation would also remove the current requirement that the diagnosis and nexus opinion come only from VA or VA-contracted mental health professionals, but would instead allow any qualified mental health professional.

This legislation would also allow VA to award entitlement to service connection for certain mental health conditions, including PTSD, anxiety and depression, or other mental health diagnosis described in the current version of the Diagnostic and Statistical Manual for Mental Disorders (DSM), which a veteran claims was incurred or aggravated by military sexual trauma experienced in service, even in the absence of any official record of the claimed trauma. Similar to the evidentiary standard above for PTSD, the veteran must have a diagnosis of the covered

mental health condition together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such covered mental health condition is related to such military sexual trauma, if consistent with the circumstances, conditions, or hardships of such service even in the absence official record of such incurrence or aggravation in such service and if so all reasonable doubt will be resolved in favor of the claimant.

DAV supports H.R. 671, which is consistent with DAV Resolutions 30 and 204. DAV Resolution 204 states that, “[e]stablishing a causal relationship between injury and later disability can be daunting due to lack of records or certain human factors that obscure or prevent documentation of even basic investigation of such incidents after they occur...” and that, “[a]n absence of documentation of military sexual trauma in the personnel or military unit records of injured individuals prevents or obstructs adjudication of claims for disabilities for this deserving group of veterans injured during their service, and may prevent their care by VA once they become veterans...” Further, DAV Resolution 30 states that, “[p]roof of a causal relationship may often be difficult or impossible...” and that, “...current law equitably alleviates the onerous burden of establishing performance of duty or other causal connection as a prerequisite for service connection...” Enactment of H.R. 671 would provide a more equitable standard of proof for veterans who suffer from serious mental and physical traumas in environments that make it difficult to establish exact causal connections.

H.R. 679

H.R. 679, the Honor America’s Guard-Reserve Retirees Act, would recognize the service in the reserve components of certain persons entitled to receive retired pay under Chapter 1223 of title 10, United States Code, by honoring them with status as veterans under law. DAV has no resolution on this matter.

H.R. 733

H.R. 733, the Access to Veterans Benefits Improvement Act, would amend title 38, United States Code, to provide certain employees of Members of Congress and certain employees of State or local governmental agencies with access to case-tracking information of the VA.

DAV had concerns about this legislation when it was introduced in the 112th Congress. While we were supportive of the previous bill’s intent, we advanced our concerns about the broad language, which would have allowed certain individuals to gain unrestricted access to veterans’ claims information without accreditation or security permission. We are extremely pleased some of our suggestions were considered and the language changed in the previous bill and now carried forward in H.R. 733. DAV supports the intent of this legislation, as it would provide assistance to the veteran by keeping them informed as to the current status of their claim for benefits; especially important during a time when the time for a claim to be processed is averaging over 280 days.

DAV National Service Officers (NSOs) are accredited by the VA and given access to veterans’ records and computerized processing systems, but only for those in which we hold

power of attorney. DAV NSOs regularly interact with certain local government employees, such as County Veterans Service Officers (CVSOs), who provide local assistance to veterans. When the assistance desired involves obtaining an update as to the status of a pending claim, CVSOs generally are not able to access the information and they must contact the accredited representative of record, such as a veterans service organization (VSO) to obtain a status of the pending claim, and then inform the veteran. If the veteran does not have an accredited representative, such as a VSO, the CVSO is very limited as to the information that may be accessed. Likewise, an accredited representative only has access to those cases for which they hold power of attorney.

Allowing certain covered employees of Members of Congress or local government agencies to access the VA's case-tracking system to obtain a status of a claim submitted by a veteran without a properly executed power of attorney poses many serious questions. As a matter of privacy, veterans or other claimants must be protected from anyone without accreditation from being allowed to access VA's system and gain private information on the veteran or other claimant.

This legislation sets out to amend title 38, United States Code, by adding a new subsection 5906, which, as written, would allow virtually any covered employee to gain access to any veteran's private information; far greater access than afforded to an accredited representative, such as a DAV NSO. First, the bill should contain the explicit language contained in title 5, United States Code, section 552a(b), requiring the covered employee to have the written permission of the veteran or claimant requesting assistance from the covered employee. Without such request and written permission, the covered employee has no proprietary reason to access any veteran's information.

Secondly, as stated in H.R. 733, before the covered employee is able to access the VA's system, he or she is required to certify that such access is for official purposes only. While we certainly agree with this requirement, DAV believes that written consent to do so should be obtained from the veteran or claimant in order to access the status of the veteran's pending claim. Thirdly, the bill should plainly set forth the penalties for any violations, such as accessing or attempting to access the status of any pending claim without the expressed written consent of the veteran or claimant.

Lastly, DAV believes the bill should also contain an additional safeguard provision wherein the veteran or claimant is notified when his or her record is being accessed by a covered employee. This would further assure the veteran or claimant, especially those without representation, has authorized the covered employee to perform such action on their behalf and is aware when it is occurring. This would also alert VA when a covered employee is attempting to gain access without the express written consent of the veteran or claimant.

Again, the intent of this bill is to help veterans by providing these covered employees limited access to VA's electronic database solely for the purpose of obtaining the status of a claim. DAV believes this could be very beneficial to all parties in the process, including DAV NSOs when DAV is the accredited representative of record. DAV simply wants to ensure that proper security measures are in place to protect the privacy of veterans and claimants. As such,

DAV supports the intent of the bill, but we recommend the aforementioned changes in the bill's language in order for us to be able to fully support H.R. 733. We feel the bill's current language is not explicit enough to ensure the privacy of a veteran or claimant is safeguarded; however, DAV would be pleased to work with the Subcommittee to make these necessary changes in the bill's language.

H.R. 894

H.R. 894 would improve the supervision of fiduciaries of veterans under laws administered by the Secretary of Veterans Affairs. Our understanding of the bill's primary intent seems to be a restructuring of existing law with improved protection of a beneficiary's benefits from abusive, fraudulent or illegal activity by an appointed fiduciary, while allowing the beneficiary to be more engaged in the process when a fiduciary is appointment. While DAV does not have a resolution on this particular matter, we are supportive of the intent of this legislation.

H.R. 1405

H.R. 1405 would require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought. Initially we note the term "appeals form" in this legislation is apparently referring to a forthcoming standardized VA form for the purpose of a notice of disagreement, not a VA Form 9, Appeal to the Board of Veterans' Appeals. Currently, there is no prescribed or standardized form for a claimant to utilize when filing a notice of disagreement, which is the first step in the appellate process. It should be noted while there is no requirement for a claimant to utilize a VA Form 9 for a substantive appeal, it does make it easier for all parties involved by clearly laying out what is being contested, whether a hearing is being requested and specific contentions for each issue being contested.

We believe a standardized form to be used for the purpose of a notice of disagreement makes equal sense to that of a VA Form 9, which is used for perfecting a substantive appeal. However, VA must still be required to accept written disagreement or appeal in another form, provided it clearly identifies the benefit(s) being sought.

As stated, a standardized form to be used for a formal Notice of Disagreement (NOD) would be extremely beneficial to a veteran in many ways. For example, currently when a decision is sent to a claimant from the VA it simply provides appeal rights, which means claimants often send in their written disagreement by way of letter or by using a VA Form 21-4138, Statement in Support of Claim. However, many claimants do not clearly identify the correspondence as being an NOD to a particular decision. Many claimants mistakenly utilize an appeal form (VA Form 9), to express their disagreement, not knowing the first step in the appellate process is the NOD. Confusion begins when an appeal form is filed without their being an NOD of record. This prompts VA to accept the appeal form as the NOD, so when the claimant actually receives the appeal form included in the Statement of the Case, further confusion occurs. Many claimants do not understand they must complete the form again, because the first one submitted is actually an NOD. As such, the claimant fails to complete and submit a second appeal form, eventually leading to the appeal period expiring and being closed.

Having a standardized VA form to be included with the notice of decision may alleviate these occurrences.

DAV supports the intent of this legislation, but we feel the language is far too simplified and broad. We recommend a modest reworking of the language so it would alleviate any confusion as to the purpose of this bill or what is intended by “appeals form” or “a form that may be used to file an appeal...” as proposed in Section 1, which would amend section 5104(b) of title 38. If it is a form to be used to submit a notice of disagreement, then it should clearly state such, rather than confusing it with a currently utilized appeal form.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions from you or members of the Subcommittee.