STATEMENT OF
JOSEPH A. VIOLANTE
NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
ON BEHALF OF THE INDEPENDENT BUDGET
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JULY 14, 2010

Chairman Akaka, Ranking Member Burr and Members of the Committee:

Thank you for the opportunity to testify today on behalf of *The Independent Budget* (IB), which is comprised of four veterans service organizations: AMVETS (American Veterans), Disabled American Veterans (DAV), Paralyzed Veterans of America (PVA), and Veterans of Foreign Wars of the United States (VFW). For a quarter of a century, the IB co-authors have produced annual budget and policy recommendations to guide Congress and the Department of Veterans Affairs (VA) in developing, implementing and properly funding programs, services and benefits for America's veterans, dependents and their survivors.

We commend the Committee for holding this hearing on one of the most critical issues facing veterans today: receiving adequate, accurate and timely benefits, especially disability compensation. Today's hearing is focused on the Veterans Benefits Administration's (VBA's) ongoing pilot programs, especially the ones in Little Rock, Arkansas, Providence, Rhode Island, Pittsburgh, Pennsylvania, and the recently concluded Virtual Regional Office (VRO) in Baltimore, Maryland, which helped develop the business requirements for the Veterans Benefits Management System (VBMS). The hearing will also examine new legislation introduced last month, S. 3517, the "Claims Processing Improvement Act of 2010."

Mr. Chairman, as you know well, VBA has struggled for decades to provide timely and accurate adjudication of claims for veterans benefits, and the problem is only getting worse. The number of new claims for disability compensation, including both first-time claims for benefits and claims for increases or additional benefits, has risen to more than 1 million per year. In addition, both the average number of issues per claim and the complexity of claims have also increased as complicated new medical conditions, such as Traumatic Brain Injury (TBI), have become more prevalent.

To meet the rising workload over the past decade, the IB recommended, and Congress provided, significant new resources to VBA in order to increase their personnel levels. Yet despite the hiring of thousands of new employees in recent years, the number of pending claims for benefits, often referred to as the backlog, continues to grow. It seems that no matter how much money or personnel are thrown at this problem the backlog continues to climb ever higher.

Even as new laws are enacted, studies completed, and pilot programs implemented, one is hard-pressed to find objective evidence that the benefit claims processing system today is performing better than it was 5, 10 or 20 years ago.

To the contrary, as of July 12, 2010, there were 563,071 pending claims for disability compensation and pensions awaiting rating decisions by the VBA; 207,568 (37 percent) of the claims exceeded VBA's 125-day strategic goal. That's a 17 percent increase in pending claims (82,137) since the beginning of this year alone.

Worse, by VBA's own measurement the accuracy of disability compensation rating decisions for the 12-month period ending in March 2010 was just 83%, continuing a downward trend over the past several years. In addition, VA's Office of Inspector General (OIG) recently found that even those numbers were inaccurate, citing additional undetected or unreported errors within VBA's quality assurance program reviews, known as the Systematic Technical Accuracy Review, or STAR.

Earlier this year, Secretary Shinseki set an ambitious long term goal of zero claims pending over 125 days and all claims completed to a 98% accuracy standard. He has forcefully and repeatedly made clear his intention to "break the back of the backlog" this year. While we welcome his intention and applaud his ambition, we would caution that eliminating the backlog is not necessarily the same goal as reforming the claims processing system, nor does it guarantee that veterans are better served.

The backlog is not the problem, nor even the cause of the problem, rather it is just one symptom, albeit a very severe symptom, of a very large problem: too many veterans waiting too long to get decisions on claims for benefits that are too often wrong.

While a person with a fever can take an aspirin to reduce that symptom, the aspirin will not address the cause of the fever, nor prevent the fever from recurring in the future. So too with the backlog: if VBA focuses simply on getting the backlog number down, they can certainly achieve numeric success in the near term, but they will not have solved the underlying problems nor taken the steps necessary to prevent the backlog from eventually returning.

To achieve real success, VBA must focus on creating a veterans' benefits claims processing system designed to "get it done right the first time." Such a system would be based upon a modern, paperless IT and workflow system focused on quality, accuracy, efficiency and accountability. The foundation of this new system must be continuous improvement; VBA must evolve its corporate culture to focus on information gathering, systems analysis, identification of problems, creative solutions and rapid adjustments. This process must be a circle, not a series of lines with stop lights. While management must stress quality control and training, VBA must recognize that training is only part of the solution to improved quality. With sufficient resources, timeliness will improve and then production will increase, and only then can VBA achieve a sustained reduction and eventual elimination of the backlog.

Mr. Chairman, despite all of the problems and challenges discussed above, the IB veterans service organizations (IBVSOs) do see many positive and hopeful signs of change.

Both VA and VBA leadership have been refreshingly open and candid in recent statements on the problems and need for reform. Over the past year, dozens of new pilots and initiatives have been launched, and a major new IT system is now under development. VBA has shared information with VSOs about their ongoing initiatives and welcomed our feedback and input on ways to improve these initiatives. These are all positive developments that we want to recognize and build on as we move forward.

Yet while we applaud 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. Mr. Chairman, 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 to develop and adjudicate veterans' claims. We would strongly encourage VBA to involve us during the earliest planning stages of new initiatives and pilots, as well as throughout the ongoing IT development.

As VBA officials have stated, there are over three dozen initiatives underway at Regional Offices (ROs) testing ways to increase the efficiency of the claims processing system. Some, such as the Fully Developed Claim (FDC) and Individual Claimant Checklist pilots, were mandated by Congress under Public Law 110-389. Others were developed by VA with support from contractors, including the pilots in Little Rock, Arkansas and Providence, Rhode Island. Still others, such as the Quick Pay Disabilities pilot in St. Petersburg, Florida, the Rapid Evaluation of Veterans' Claims pilot in Atlanta, Georgia, and the Case Management pilot in Pittsburgh, Pennsylvania, were initiated by VBA regional offices with central office approval.

Last year, VBA solicited new ideas through an Innovation Initiative, which received dozens of nominations from ROs around the country and resulted in 10 winners being selected, eight of which are currently being implemented as pilots. VBA also developed eight new "quick hit" ideas, including phone development and walk-in claims rating, from among hundreds proposed at a workshop for VBA's Regional Office Directors held earlier this Spring.

The IBVSOs have supported and promoted many of these approaches, especially the increased use of private medical evidence and assignment of interim ratings, and applaud VBA for embracing so many bold new ideas. We believe that VBA is right to undertake such experimentation and believe that many of these initiatives have yielded and will continue to yield important information and data to help reform the claims process.

However, we do have concerns about whether VBA will successfully extract and then integrate the best practices from so many ongoing initiatives, while simultaneously meeting the Secretary's ambitious goals with regards to "breaking the back of the backlog." With virtually every one of the 57 ROs engaged in one or more of these new initiatives, we would encourage the Committee to closely examine and monitor VBA's plans to synthesize the data and results of all this experimentation into a more efficient and accurate claims processing system. Moreover, given the enormous pressure to reduce the backlog, we are concerned that there could be a bias

towards process improvements that result in greater production over those that lead to greater quality and accuracy.

Over the past year, representatives of the IBVSOs have been briefed on or visited many of the more prominent pilot programs, including the ones at Little Rock, Providence and Pittsburgh, and we offer the following comments for the Committee.

The Little Rock pilot, developed under contract with Booz-Allen-Hamilton, sought to infuse Lean Six Sigma principles of continuous improvement and reduction of waste into the current claims processing system. This pilot re-organized a portion of the ROs workforce into "pods," or integrated teams, which included both Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs), working as one integrated unit on claims. The pilot also developed new changes to their mailroom operations as well as physical layout changes to improve oversight of workload. Although the contract is complete, the Little Rock "pod" pilot continues and is also being tried out in some additional locations, such as in San Diego.

Since moving to the current Claims Process Improvement (CPI) model of processing claims, based upon specialization of function, VBA has lost some of the benefits inherent in a team-based approach. For example, by mixing together more experienced RVSRs and VSRs in Little Rock with those less experienced, there has been a natural increase in mentoring and unofficial "on-the-job" training of newer employees. Over time we would expect a measureable improvement in quality decision making. This is a good thing. While we do not advocate that VBA simply replace the current CPI model with the "pod" model, we believe that VBA should continue to explore greater use of team approaches, whether in particular locations, or for specific types of claims.

The Providence pilot begun in October 2009 is designated as VBA's Business Transformation Laboratory to provide a testing capability for future paperless processes in a live environment. In addition, they have begun testing a new phone development program. After the RO sends a veteran claimant a notification letter explaining the veterans rights and what the veteran needs to do in order to prove their claim, a VSR calls the veteran to answer any questions they may have about that letter as well as to assist them in fulfilling their required burden of development. In essence, VA employees help distill the boilerplate in development letters into something more understandable for veterans. As a result, Providence has been able to significantly shorten development and average days to complete claims.

The phone development program has shown promising results and we support continuing to explore this concept. It is imperative, however, that VBA develop and implement proper methods to notify and involve service officers and other POA-holders for claimants who are represented. Further, we believe that VBA might even consider ways that VSO service officers could augment this program.

The Pittsburgh RO has two major initiatives underway: one establishing distinct case-management teams and the other developing templates for private medical evidence that was borne out of VBA's Innovation Initiative. The IBVSOs have long advocated for the expanded

use of private medical evidence, which has too often been discounted because it was submitted in a multitude of non-standard formats, not always appropriate or sufficient for rating a disability under the Rating Schedule. These templates, constructed to solicit the information needed to address specific criteria in the Rating Schedule could, if given proper weight during the rating process, save VBA time and resources by eliminating unnecessary and redundant VA medical exams for claimants. We strongly encourage VBA to move forward expeditiously with this initiative and urge them to include electronic medical templates as a core component of the final VBMS.

Undoubtedly the most important new initiative underway at VBA is the VBMS, the first phase of which occurred in Baltimore where a prototype IT system was tested in a Virtual Regional Office (VRO) environment. While VBA has provided several briefings to the IBVSOs and other VSOs on the VRO and VBMS, we were dismayed that they did not seek our input nor consider the role of our service officers during the early phases of development of the VBMS system. When they first discussed plans for the VBMS, we were assured that service organizations and service officers would be involved in the development of this system. Regrettably, despite these assurances and public invitations to observe and participate in the VRO phase of the VBMS development, the VRO in Baltimore was completed without any VSO observation, participation or input.

VBA has since reached out to the IBVSOs and other VSOs to report on their progress and solicit comments. We do appreciate this consultation and have been impressed by many of the components expected to be included in the final VBMS at rollout. However, it remains imperative that input from VSOs be regularly and comprehensively integrated throughout the further development of the VBMS, as well as other new IT initiatives, including the Veterans Relationship Manager (VRM). As stated earlier, we not only have relevant expertise and perspectives that will benefit the development of these IT systems, we are also direct participants in the claims processing system and therefore must be integrated into their initial planning.

The IBVSOs would encourage VBA to develop regular and ongoing roles for VSO participation and input into future VBMS development. We understand that the VBMS is regularly reviewed by internal panels of subject matter experts (SMEs) and would urge VBA to include service officers on those SME panels.

The IBVSOs also have concerns about whether the VBMS is being rushed to meet self-imposed deadlines in order to show progress towards "breaking the back of the backlog." While we have long believed that VBA's IT infrastructure was insufficient, outdated and constantly falling farther behind modern software, web and cloud-based technology standards, we would be equally concerned about a rushed solution that ultimately produces an insufficiently robust IT system.

For example, in recent discussions with VBA officials, 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 later, perhaps years later, after rollout. We question whether VBA can achieve significant improvements in quality, accuracy and efficiency without taking full advantage of the processing capabilities offered by modern IT, such as 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 and suggest that it could be helpful to have an independent, outside, expert review of the VBMS system while it is still early enough in the development phase to make course corrections, should they be necessary.

The IBVSOs are also concerned about VBA's plans for transitioning legacy paper claims into the new VBMS environment. While VBA is committed to moving forward with a paperless system for new claims, they have not yet determined how they intend to handle re-opened paper claims; specifically whether, when or how they would be converted to digital files. Since a majority of claims processed each year are for re-opened or appealed claims, and since files can remain active for decades, until legacy claims are converted to digital, data files, VBA would be forced to continue paper processing, perhaps for decades. Requiring VBA employees to learn and master two different claims processing systems – one that is paper-based and the other digital – would add complexity and could negatively affect quality, accuracy and consistency.

There are very difficult technical questions to be answered about the most efficient manner of transitioning to all-digital processing, particular involving legacy paper files. One way forward would be to leave paper files as they are in their current format unless or until there is new activity. At the time a paper file is pulled, it could be sent to a conversion center which would scan and enter data into the new VBMS system. The important element would be that it be completely converted into usable digital data, not flat images. Whether this is technically, logistically or financially feasible in the near term remains to be fully explored and reviewed by experts. However, the IBVSOs believe that VBA should do all it can to shorten the length of time this transition takes to complete, and that they should provide a clear roadmap for eliminating legacy paper files, one that includes timelines and resource requirements.

Mr. Chairman, you also asked us to review new legislation, S. 3517, the "Claims Processing Improvement Act of 2010", which you introduced last month. This legislation includes 2 titles with 14 sections that address a number of the issues and problems discussed above, and we greatly appreciate your continuing efforts to improve and reform the claims processing system. We offer the following comments and recommendations on the various sections of the legislation.

Title I – Pilot Program on Rating Service Connected Disabilities of the Musculoskeletal System

Section 101 would create a pilot program to establish a new rating system for service-connected disabilities of the musculoskeletal system. The pilot would be conducted at six to ten regional offices for veterans whose claims are first filed more than one year after separation from the military. The proposed new rating system would establish a new standard for veterans disability compensation: "residual functional capacity", which would be measured using a "residual functional capacity assessment tool" based upon the severity, frequency and duration of

symptoms. Rather than provide a rating for each musculoskeletal condition as is currently done, veterans would receive a single overall musculoskeletal rating, which would then be combined with other ratings for other conditions.

The pilot program would require that VBA use International Classification of Diseases (ICD) codes to identify disabilities in order to standardize medical terminology. In addition, the pilot would require VBA to develop a "separate searchable electronic file" for each veteran. VBA would have 240 days to develop this wholly new rating system and would have to publish the regulation in the Federal Register, but would waive Administrative Procedure Act requirements, including public comment.

Mr. Chairman, our understanding is that the purpose of this pilot program is to address several deficiencies in the current claims development and rating system, including the lack of contemporary and standard medical nomenclature; the failure to consider frequency, severity and duration of symptoms when rating musculoskeletal conditions; the failure to address flare-ups of symptoms in rating disabilities; the rate of denial for veterans who wait more than one year after separation before applying for benefits; and the disorganization of the current claims filing system.

Although we agree that VBA must make improvements in each of these areas, and in fact they have initiatives addressing many of them ongoing right now, the IBVSOs oppose this pilot program for numerous reasons.

First, we have grave concerns about creating a brand new system for determining how much compensation a disabled veteran is entitled to receive using a standard that was developed for workmen's compensation and the Social Security Disability Insurance program. Veterans disability compensation is not the same as, nor substantially similar to these two civilian programs. Permanent injuries and disabilities suffered by veterans must be connected to their military service in order to qualify for VA disability compensation. To compare service-connected disabilities to civilian injuries or disabilities fails to value the history and purpose of the veterans' disability compensation system.

Second, we have grave concerns about implementing this pilot program using real claims made by disabled veterans while providing only 240 days for VBA to develop a brand new, untested rating system, without any prior study of its effect on veterans compensation or the claims processing system – both intended and unintended – and without the benefit of any input or comment from stakeholders or the public, and with a waiver of the Administrative Procedures Acts. While we appreciate the urgency of the claims processing problems and the growing impatience with VBA's progress, we believe there are better ways to address the issues for which this pilot was proposed, many of which are already under development or should be.

For example, VBA has already announced that they will be updating the rating schedule for the musculoskeletal system beginning later this year as part of their commitment to update the entire rating schedule every five years. Another approach was put forward by the congressionally mandated Veterans Disability Benefits Commission (VDBC), established by the National Defense Authorization Act of 2004, which spent more than two years examining how

the rating schedule might be modernized and updated. Reflecting the recommendations of a comprehensive study of the disability rating system by the Institute of Medicine (IOM), the VDBC in its final report issued in 2007 recommended that:

> *"The veterans disability compensation program should compensate for three consequences of service-connected injuries and diseases: work disability, loss of ability to engage in usual life activities other than work, and loss of quality of life."*

To help implement the recommendations of the VDBC, Congress in Public Law 110-389 established the Advisory Committee on Disability Compensation (ACDC) to advise the Secretary on "…the effectiveness of the schedule for rating disabilities… and … provide on-going advice on the most appropriate means of responding to the needs of veterans relating to disability compensation in the future." The law required the Advisory Committee to report to the Secretary this October, and every two years thereafter with their recommendations. We understand that the ACDC is preparing those recommendations right now, which will include both ideas on how to update the current rating schedule as well as how to provide compensation for loss of quality of life and other non-economic loss suffered by disabled veterans. The IBVSOs urge the Committee to look to the VDBC recommendations, the upcoming ACDC report, and the pending VBA update of the rating schedule before considering a complete replacement of the disability compensation rating system and schedule.

Similarly, there are other means of addressing the pilot's goal of ensuring that VBA employees properly address the frequency, severity and duration of symptoms during evaluations and rating decisions. Under current law, these factors are already part of the rating criteria at 38 C.F.R § 4.10 and 4.40, and would be better addressed through greater training and oversight of existing regulations. The use of standardized medical evidence templates, such as those under development at the Pittsburgh RO, will also help to ensure that this criterion is more consistently fulfilled. Moreover, during development of the VBMS, a software rule can be established to ensure that frequency, severity and duration of symptoms must be completed in order for the VBMS to accept medical evidence and move the claim forward.

Mr. Chairman, we appreciate your willingness to seek "out-of-the-box" solutions to help improve the benefits claims processing system, and we greatly value all of your efforts to reform the claims processing system, however we cannot support the proposed pilot in Section 101.

Title II – Adjudication and Appeals Matters

Section 201

This section would create a new requirement that the Secretary assign partial ratings to veterans who submit a claim for more than one condition whenever the Secretary determines that a rating for one or more conditions can be made without further development. The purpose of this section is to provide veterans with at least some of the disability compensation to which they are entitled more quickly, however as drafted it could have unintended detrimental consequences.

Under this section, the Secretary would be required to assign a disability rating without further development for any condition for which a rating is assigned. However, it does not require that the maximum rating be assigned, nor that if less than the maximum rating be assigned, further development should continue to determine if a higher rating can be assigned.

Under current law, there already exists authority to assign "interim" or "deferred" ratings, which are not permanent. In this situation, the Secretary assigns the minimum rating for which the evidence of record already qualifies the veteran, thereby speeding compensation and eligibility for other VA programs, while requiring that development continue to ensure that the veteran gets the full rating to which they are entitled under the law. Rather than create a new program for "partial" ratings, we would recommend that the Committee work with VBA to encourage greater use of "interim" and "deferred" ratings.

Section 202

This section proposes to allow the Secretary to waive notice to claimants for claims that are complete or substantially complete and do not require any additional information or medical or lay evidence to process. This would be a change from current law, which requires the Secretary to provide notice in all claims, regardless of whether any additional information is needed.

While the IBVSOs continue to seek ways to reduce delays when there are unnecessary steps in the claims process, it is unclear how the Secretary would determine whether additional evidence is required to properly rate a claim. For example, it is possible that a claim could contain all evidence necessary to establish service connection, but there might exist unsubmitted evidence unknown to the Secretary which if developed would entitle the veteran to a higher disability rating. If this provision were enacted, the Secretary could waive notice and proceed with development and issue a rating decision, despite the fact that the veteran could have been entitled to a higher rating. This would then leave the veteran only with recourse to appeal the initial disability rating or file a claim for an increased disability rating. We believe that the better way to address cases where notice is unnecessary would be to allow the veteran, not the Secretary, to waive such notice since he or she would know best if any additional evidence is available. As such, we oppose this section as it is currently written.

Section 203

This section would require the Secretary to give deference to private medical opinions equal to that given to opinions provided by VA health care providers. Further, should VA determine that a private medical opinion is not adequate for rating purposes, any further opinions obtained from VA health care providers must be obtained from a provider whose qualifications are at least equal to those of the provider of the private medical opinion.

We have always encouraged VA to use private medical evidence when making its decisions, as it saves the veteran time in development and VA the cost of unnecessary examinations. We are concerned, however, that as drafted, this provision would apply only "… for purposes of assigning a disability rating…", and not with regard to whether a veteran is

entitled to service connection. By modifying the language of this section to account for both the establishment of service connection *and* determination of the proper disability rating, private medical evidence will be given the weight it deserves, saving both veterans and VA time and cost. With this change, the IBVSOs support this section.

Section 204

This section would require VA to make specific changes in personnel organization and procedure while processing claims. First, the proposed language would require VA to assign "experienced" employees to a preliminary review of initial claims in order to create a "Fast Track Claim Review Process." Under this process, priority would be given to claims that could be adjudicated quickly, could be assigned a temporary rating, or would otherwise qualify for priority treatment under four conditions: claims by homeless veterans, claims by terminally ill veterans, claims by veterans suffering severe financial hardship, and claims that are already partially adjudicated.

Second, this section would create a fully developed claims process in order to expedite claims that do not require additional development by VA. This provision is similar to the Fully Developed Claims (FDC) pilot program mandated by P.L. 110-389, which was recently rolled out to all ROs by VBA earlier this year.

While the IBVSOs generally support the initiatives described in this section, we would not support codifying them as proposed in this section. VA currently expedites processing of priority claims as part of its internal procedures, however they also have additional priorities that are not included in this section. We also question why partially adjudicated claims would be elevated to a priority, since those claimants by definition are already receiving some compensation and would have some eligibility for other VA benefits and services by virtue of their interim rating.

VA's recently-launched FDC program is substantially similar to the program in this section, which we generally support, however the program outlined in this section may be missing key protections for veterans. First, there is no provision specifying how a veteran could file an informal claim to protect their effective date before submitting a FDC application. Under the current claims system, a veteran may submit an informal claim before beginning development to secure an earlier effective date for a disability rating. The FDC program, while quicker once adjudication begins, might not protect this earlier date, forcing a veteran to choose either an earlier effective date or quicker claims processing. Second, while a veteran who elects to participate in the FDC program currently must waive 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. Also, as currently drafted, the Secretary will not undertake development of a claim until he determines that the claim is fully developed, which would itself be problematic and create additional delay in rating the claim.

For these reasons, the IBVSOs do not support this section as drafted, but would support a new provision to require the existing Fully Developed Claim program to allow for informal

claims filing to establish an effective date and require that claims removed from the FDC program must then be accorded full VCAA notice.

Section 205

This section would require VA to provide, at the time an RO decision is sent to a veteran, a form that could be used to file a notice of disagreement with the decision. Currently, there is no standardized form for veterans to use when filing notices of disagreement with RO decisions, leading to both confusion for veterans and misunderstandings by VA as to what a veteran wanted to appeal.

The IBVSOs believe that the idea of a standardized form is a good one, as it would provide guidance to veterans on what information to provide, but that construction of the form should be careful and deliberate to meet the needs of all participants in the appeals process. Any such form should be developed in close consultation with VSOs to ensure not only that veterans are provided with the guidance that they need in crafting their appeals but also that VA receives the information it needs to expedite the processing of appeals. With the inclusion of the additional requirements discussed above, the IBVSOs would support this section.

Section 206

This section would shorten the filing period for notices of disagreement from one year to 180 days. It would also allow the Board to grant good cause extensions of an additional 180 days in cases where a veteran's disabilities prevented filing within the original period, when natural disaster or geographic location significantly delayed delivery of decisions, or when a veteran's eligibility for benefits and services changed due to a change in financial circumstances.

The IBVSOs support the addition of a good cause exception provision, and believe that this section provides a reasonable list of such exceptions. However, we do not support reduction of the one-year filing period at this time.

Section 207

This section would limit the time allowed for a veteran to file a substantive appeal after receiving a statement of the case (SOC) to sixty days, with some good cause exceptions. Under the current system, a veteran has until the later date of either sixty days after the SOC is issued or one year after the original RO decision is issued to file a substantive appeal. Depending on how quickly VA issues a statement of the case, this section could significantly reduce the amount of time a veteran has to file a substantive appeal. For example, if an RO issues a decision on January 1, 2010, and, after the veteran submits a notice of disagreement, subsequently issues a statement of the case on May 1, 2010, the veteran would have until January 1, 2011 to file a substantive appeal under the current system but only until June 30, 2010 to do so under the new system—a six-month difference.

Additionally, this section would require veterans to allege specific errors of fact or law made by the RO. This requirement is, particularly for pro se veterans who lack legal training and

experience in the VA claims process, a heavy burden and could prevent veterans from successfully appealing decisions that they otherwise might. Further, we believe this section would create a potential conflict of interest since it is VBA which is tasked with deciding what are properly stated issues and reasons for appeal. There is no mechanism save an appeal to the BVA which protects appellants from capricious decisions by VBA.

Because the provisions of this section have the potential to limit veterans' ability to appeal, the IBVSOs strongly oppose this provision.

Section 208

This section would eliminate the current requirement that ROs issue a statement of the case after a veteran files a notice of disagreement, and instead replace it with a "post-notice of disagreement decision" that would set out in "plain language" the facts used by the RO in reaching its decision, including citations to pertinent law, and the reasons for the RO's decision. These provisions are in many ways similar to current requirements for statements of the case; the main difference is the requirement that the decision be written in plain language.

While the IBVSOs understand the desire to make the appeals process easier for veterans to understand, we do have a concern about this provision. RO decisions typically involve the interpretation of often-complex statutory, regulatory, and case law, and this kind of analysis is not always easily reduced to "plain language." Attempting to compose a decision in this manner could, potentially, do a veteran a greater disservice by omitting specific—but technical—information needed to successfully continue an appeal. For this reason, we do not support this section.

Section 209

This section would modify the appeals procedure so that, if a veteran submitted new evidence after his or her appeal had been certified to the Board of Veterans' Appeals (Board), that evidence would be considered by the Board by default rather than remanded to an RO for consideration. A veteran could still request that new evidence first be considered by an RO. Under current procedure, the reverse is true—new evidence is considered by an RO, not the Board, unless the veteran waives RO consideration. If the RO decides that the new evidence is not sufficient to grant the benefit sought on appeal, it must issue a supplemental statement of the case (SSOC) before the appeal can proceed to the Board, often leading to significant delays of the veteran's appeal. The proposed procedure allows appellants who believe new evidence is sufficient to warrant a grant to waive RO review and significantly shorten the appeals process.

The IBVSOs support this section with the addition of a requirement that VA provide sufficient notice to a veteran that new evidence may be considered at the RO level should the veteran so desire. Further, a veteran should be able to provide electronic notice of his or her decision, rather than adding the time and expense of mailing a response.

Section 210

This section would allow the Board to choose the place and manner of hearings before it, a decision currently made by the veterans requesting the hearings. While the IBVSOs support the use of technology and other efficiencies in the benefits system, and do not object to providing veterans with accurate information on how long various hearing options would take, the choice of how a veteran makes his or her case to the Board—the closest many veterans get to a "day in court" on deeply personal issues—should remain with the veteran. We therefore oppose this section.

Section 211

This section would require the U.S. Court of Appeals for Veterans Claims (CAVC) to render a decision on every issue raised by an appellant when reviewing decisions of the Board. This provision appears to address the numerous instances in which the CAVC has remanded a case on a procedural issue that is then re-adjudicated by the Board, re-appealed by the veteran, and again remanded by the Court on another issue that could have been decided during the original appeal. At the same time, there are also instances in which such procedural remands accrue to the benefit of veterans, such as when a more favorable resolution of the issue that caused the remand at the Board or RO would provide a stronger basis for the Court, the Board or RO to render more favorable decisions on the remaining issues. While language could be added to narrow the scope of this provision, the *Independent Budget* VSOs have no common position on this section.

Section 212

This section would allow the CAVC to grant an extension to the period for filing a notice of appeal for veterans who can show good cause for such an extension. As the section is currently written, it would be left to the CAVC to determine what did or did not constitute good cause, which would likely impose an additional burden on the Clerk of the Court.

The IBVSOs strongly support this section. Some Congressional guidance on the kinds of things that could constitute good cause, like that under Section 206(a)(3)(B) of this bill, would help to direct the CAVC's decision-making process and alleviate some of the additional burden on Court personnel. More importantly, giving veterans the tools they need to successfully navigate the appeals process is essential to making sure they receive the aid that they deserve.

Section 213

This section would establish a pilot program to assess the feasibility of programs to improve the quality of claims for disability compensation by members of tribal organizations who have service connected disabilities. The IBVSOs do not oppose enactment of this provision.

Mr. Chairman, the IBVSOs thank you for the opportunity to offer testimony before the Committee today. We also want to thank you, Ranking Member Burr and this Committee for the good work you have done to improve the lives of America's veterans, including enactment of two historic bills during this Congress: advance appropriations for VA health care and the new caregiver benefit program.

We look forward to continuing to work together with you to address problems within the veterans benefits claims processing system as well as other unmet needs of America's veterans. I would be happy to answer any questions the Committee may have.