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LEGISLATIVE HEARING ON H.R. 189, H.R. 216, H.R. 245, H.R. 280, AND H.R. 294

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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CONTENTS

Tuesday, January 27, 2015

Page

Legislative Hearing on H.R. 189, H.R. 216, H.R. 245, H.R. 280, and H.R. 294 1

OPENING STATEMENTS

Jeff Miller, Chairman 1
Prepared Statement 28
Corrine Brown, Ranking Member 2
Prepared Statement 31
Hon. Dr. Ralph Abraham 3

WITNESSES

Hon. Alan Grayson, Member of Congress 4
Prepared Statement 31
Mr. David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, VBA, U.S. Department of Veterans Affairs 6
Prepared Statement 33
Accompanied by:
Dr. Rajiv Jain, Assistant Deputy Under Secretary for Health for Patient Services, VHA, U.S. Department of Veterans Affairs
Ms. Susan Sullivan, Deputy Assistant Secretary for Policy, Office of Policy and Planning, U.S. Department of Veterans Affairs
And
Ms. Kim McLeod, Counsel, Office of General Counsel. U.S. Department of Veterans Affairs
Mr. Joseph A. Violante, National Legislative Director DAV 18
Prepared Statement 47
Mr. Aleks Morosky, Deputy Director National Legislative Service, VFW 19
Prepared Statement 53
Mr. Zachary Hearn, Claims of the Veterans Affairs and Rehabilitation Commission, The American Legion 21
Prepared Statement 57
Mr. Blake Ortner, Deputy Government Relations Director, PVA 22
Prepared Statement 63

FOR THE RECORD

Housing Policy Council 73

LEGISLATIVE HEARING ON H.R. 189, H.R. 216, H.R. 245, H.R. 280, AND H.R. 294

Tuesday, January 27, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:31 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [chairman of the committee] presiding.

Present: Representatives Miller, Lamborn, Bilirakis, Benishek, Coffman, Wenstrup, Abraham, Zeldin, Costello, Radewagen, Bost, Brown, Brownley, Ruiz, Kuster, and Rice.

OPENING STATEMENT OF CHAIRMAN JEFF MILLER

The CHAIRMAN. We are here to talk about five pieces of legislation this morning. In the interest of time, I am going to forego a lengthy opening statement and just briefly touch on two bills on the agenda which I am proud to have introduced before this Congress.

The first bill is H.R. 280. The language is similar to a bill that I introduced last Congress which passed favorably out of this committee. H.R. 280 would provide the secretary with the authority to rescind a bonus or performance award from any VA employee when the secretary deems it is appropriate.

Now, to ensure a fair process, the provision would also afford the employee an opportunity to have a hearing on the secretary's decision to recoup their bonus.

I proposed this legislation last Congress because VA had given this committee conflicting statements on whether or not it already had the ability rescind bonuses.

For example, former Secretary Shinseki rescinded the then Phoenix director, Sharon Hellman's 2013 bonus because it was paid based on an administrative error. Notwithstanding this limited authority, VA later confirmed it did not have the ability to rescind a bonus that was based on erroneous performance data.

I believe the ability to recoup a bonus based on that or manipulated performance data is a tool that the secretary needs and that the American public would expect.

Now, the second bill that I have introduced is H.R. 294, The Long-Term Care Veterans Choice Act. This would authorize VA for three years beginning October 1 of 2015 to enter into a contract on agreement with a certified medical foster home to pay for long-term care for certain veterans already eligible for VA paid nursing home care.

It would require that an eligible veteran could receive VA home health services as a component of such payments. Medical foster homes provide a non-institutional, long-term care alternative to veterans who prefer a smaller, more home-like and family-style setting than most traditional nursing homes are able to provide.

The VA has been helping place veterans in medical foster homes for more than a decade. VA does not currently have authority to pay for a veteran to receive care in a medical foster nursing home even if the veteran is eligible for VA paid nursing home care.

As a result, service-connected veterans who would prefer to receive care in a foster home must pay out of pocket using their own personal funds and many are unable to do so because of financial constraints.

Our veterans, particularly those who are service-connected and in need of long-term care, deserve to decide for themselves where they and how they receive the care they need. And H.R. 294 would allow them that opportunity.

Now, given that the average cost of a medical foster home is approximately half the monthly nursing home cost, H.R. 294 would also provide a cost-effective, long-term care option for the department.

And I would urge my colleagues to support both of these bills and look forward to discussing them with our witnesses this morning.

Ms. Brown has a bill on the agenda that I am proud to be a cosponsor of. And at this time, I will defer to her for her explanation and an opening statement.

OPENING STATEMENT OF RANKING MEMBER CORRINE BROWN

Ms. BROWN. Thank you, Mr. Chairman, and thank you for holding this hearing today.

This is the first legislative hearing of the 114th Congress. I look forward to this committee in our usual bipartisan fashion being, busy in looking at bills that will help our veterans, and assist the VA in its effort to accomplish its mission.

I am especially pleased that my bill, H.R. 216, was included today. H.R. 216 was introduced last Congress by the former ranking member and was approved by this committee as part of the advanced appropriation bill. I am looking forward to working with my colleagues and stakeholders to move this bill as fast as we can this year.

VA's financial management process often looks like budgeting-by-crisis. H.R. 216 would provide the framework to assist the VA in the steps it has already taken to reform its budget process. It is important that everyone have a copy of the rules and by putting these processes into statute, we will make sure that they do. Providing a road map each year so that VA, veterans, and Congress know where we are going is vital in reforming the VA.

My bill will ensure that the steps taken to come up with this road map are transparent and that all stakeholders are fully engaged in making sure that we provide the resources that we are committed to our veterans' demand.

So thank you, Mr. Chairman, for including H.R. 216 today. I am looking forward to hearing from our witnesses, and I also want to welcome my colleague from Florida, Mr. Grayson, who we joined each other in Orlando.

The CHAIRMAN. Thank you very much, Ms. Brown.

I want to recognize a new Member to the committee that wasted no time in introducing a bill that will affect positively the veterans of our country, Dr. Abraham, to discuss his bill that is before us today, H.R. 245.

Dr. Ralph Abraham, you are recognized.

Mr. ABRAHAM. Thank you, Mr. Chairman.

STATEMENT OF HON. RALPH ABRAHAM

I want to address a bill that I have offered, H.R. 245, to amend Title 38, United States Code to codify certain existing provisions of law related to effective dates for claims under the laws administered by the secretary of Veterans Affairs and for other purposes.

This bill is not only important to the veterans of my home state of Louisiana but also to millions of veterans nationwide, particularly those who live in rural areas or those who may be unfamiliar with the claims process of the VBA, Veterans Benefits Administration.

The department has devoted much of its time in recent months to devising means to cut time out of the claims process in furtherance of its goal to issue rating decisions within 125 days.

While all stakeholders are in favor of seeking process efficiency, we must remain cognizant that this system is at its core meant to be veteran friendly. While the appropriateness and the legality, equity of many of VBA's efforts to issue faster decisions must bear further scrutiny, this particular rule change on informal claims and inferred claims must be addressed now.

And H.R. 245 strikes a middle ground between the current operation of VBA and the desired standardization sought by VBA. Essentially my bill would provide that if a veteran sent a handwritten, informal claim to the VA, the department would track the claims as of the date of receipt of the veteran's correspondence.

The department would still send the veteran a standardized form for completion. Provided that the veteran returned the standardized form within 180 days of the date that the department furnished the form to the veteran, the date of the veteran's original submission will continue to be recognized as the veteran's effective date.

This protects the veteran as it ensures that any departmental administrative delay will not negatively affect the veteran's rights.

My bill also maintains identification of inferred claims with those who have the requisite expertise, who are the trained professionals of the Department of Veterans Affairs. I also understand that veterans may have but be unaware of service-connected conditions that may be evidence in their medical records but which may be absent from their formal claim.

For example, a veteran might claim a knee injury tied to a bad jump but be unaware that a more serious condition such as depression attributable to an event in service is also eligible for compensation and treatment.

Well, it is my belief that if a claim comes to the Department of Veterans Affairs and there is something the department can do to assist that veteran, the department should, in fact, assist that veteran.

There is surely a balance to be struck between department efficiency and veteran-friendly practice. And while I will agree that some standardization of process is necessary, it must also be accomplished in a manner that prioritizes the veteran over the bureaucrat. I believe my bill strikes that balance.

I thank the chairman for including H.R. 245 in our proceedings today and I urge my colleagues to support its passage. I yield back.

The CHAIRMAN. Thank you very much, Dr. Abraham.

At this time, I want to welcome our colleague from the 9th District of Florida, Mr. Alan Grayson, who is the sponsor of H.R. 189, The Servicemember Foreclosure Protections Extension Act of 2015.

Mr. Grayson, welcome to the committee. You are recognized for five minutes to explain your bill.

STATEMENT OF HON. ALAN GRAYSON

Mr. GRAYSON. Thank you, Chairman Miller, Ranking Member Brown. Thank you very much for inviting me to appear before you today.

I look forward to what this committee under the leadership of two Floridians will be able to accomplish for our Nation's veterans during the 114th Congress.

My bill, H.R. 189, The Servicemember Foreclosure Protections Extension Act of 2015, would extend for one calendar year the foreclosure and eviction protections that currently exist for active-duty members of our Military Forces and for veterans who have served in our Armed Forces within the previous year. These protections are scheduled to expire at the end of 2015 unless we act.

Historically Section 303 of The Servicemembers Civil Relief Act has protected servicemembers from foreclosure and eviction if an action is filed during or within 90 days after a period of military service.

Section 2203 of The Housing and Economic Recovery Act of 2008 extended the period of protection from 90 days to nine months.

And in 2012, Congress in a bill which you authored, Mr. Chairman, extended foreclosure and eviction protections further to one year.

My bill would ensure that this one-year protection period that currently exists is extended through the end of 2016.

Mr. Chairman, as you will recall, we began discussing this provision of law in September of last year after I noticed its omission from H.R. 5404, The Department of Veterans Affairs Expiring Authority Act of 2014, which was ultimately signed into law.

You voiced your general support for the current foreclosure and eviction protections, but you stated that you wished to a hold a legislative hearing on the measure prior to moving any extension to the floor.

I am pleased that Senator Sheldon Whitehouse was able to pass a clean one-year extension at the end of 2014 that lasts through the end of 2015 through the Senate during the closing days of the last session of Congress. And I am pleased that you have decided

to make an extension into 2016, one of the first pieces of legislation to consider before the committee in this Congress, demonstrating that not everything in Washington, D.C. has to wait until the last minute.

It is vitally important that we pass H.R. 189. Without this extension, at the end of this year, the period of foreclosure and eviction protections currently made available to servicemembers will revert from one year all the way back to the original 90-day period. A lapse in a full year's worth of protection would harm our young men and women returning from war.

Almost a year ago, the GAO issued a report entitled Servicemembers Civil Relief Act, Information on Mortgage Protections and Related Education Efforts. Page 13 of that report states as follows, quote: "Our analysis of one service source data suggests that all military borrowers, SCRA protected or not, had a higher likelihood of becoming delinquent in the first year after they left active duty than when in the military."

For example, in the loan level data from the institution that used the DMDC database to check the military status of its entire loan portfolio, all of its military borrowers had a higher likelihood of becoming delinquent in the first year after they left active duty than when in service. And that risk declines somewhat over the course of the year, but still remained significant.

Mr. Chairman, we currently protect recent veterans and soldiers from the unfortunate situation just described. Clearly it is a very real threat to the well-being of the young men and women who serve in the Armed Forces.

Respectfully I urge this committee to continue to ensure that the foreclosure and eviction protections that appear in the current law continue to exist in full measure throughout 2016. No soldier should ever have to fight abroad and return home only to find that home is no longer there.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Grayson. I do appreciate your tenacity and willingness to work with the committee. And I appreciate you bringing the legislation forward.

I will forego a round of questions for Mr. Grayson and I would ask that any questions that Members may have of Mr. Grayson be submitted for the record.

And I appreciate you being here today, Mr. Grayson, and you are excused.

Mr. GRAYSON. Thank you, Mr. Chairman.

The CHAIRMAN. And I would go ahead and invite the second panel to come forward and as you are coming forward to the table, we will temporarily recess this hearing and go into our official business meeting because we do, in fact, have a quorum.

[Whereupon, at 10:45 a.m., the committee proceeded to other business.]

The CHAIRMAN. Okay. We will bring back the hearing now on pieces of legislation.

Our second panel is at the table. We will hear from David McLenachen.

Mr. MCLENACHEN. Thank you.

The CHAIRMAN [continuing]. Acting Deputy Under Secretary for Disability Assistance for the Veterans Benefits Administration of the VA. He is accompanied by Mr. Rajiv——

Dr. Jain.

The CHAIRMAN. Jain——

Dr. JAIN. Yeah.

The CHAIRMAN [continuing]. Assistant Deputy Under Secretary for Health for Patient Services at VA's Health Administration; Ms. Susan Sullivan, I get that one pretty well, I think, Deputy Assistant Secretary for Policy at VA's Office of Policy and Planning; Kim McLeod, Counsel of the VA's Office of General Counsel.

Thank you all for being here today. I appreciate your attending.

Deputy Secretary, acting Deputy Under Secretary, you are recognized for five minutes.

STATEMENT OF DAVID R. MCLENACHEN, ACTING UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIR, ACCOMPANIED BY RAJIV JAIN, ASSISTANT DEPUTY UNDER SECRETARY FOR HEALTH FOR PATIENT SERVICES, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; SUSAN SULLIVAN, DEPUTY ASSISTANT SECRETARY FOR POLICY, OFFICE OF POLICY AND PLANNING, U.S. DEPARTMENT OF VETERANS AFFAIRS; KIM MCLEOD, COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. MCLENACHEN. Good morning, Chairman Miller, Ranking Member Brown, and Members of the committee. Thank you for the opportunity to present VA's views on several bills that are pending before the committee.

Joining me today are Dr. Jain, Assistant Deputy Under Secretary for Health and Patient Services; Ms. Susan Sullivan, Deputy Assistant Secretary for Policy; and Ms. Kim McLeod, Deputy Assistant General Counsel.

I want to first thank the committee for the opportunity to testify concerning the bill we support. H.R. 294, The Long-Term Care Veterans Choice Act, we strongly support the concepts provided in the bill which permits VA to pay for care for veterans transferred to medical foster homes and at the same time realize cost savings for a more effective manner of care.

Despite the strong support, we do have a few technical concerns with the approach outlined in the bill. We hope to work with the committee going forward to ensure VA is able to effectively implement the provisions of the bill.

We thank the ranking member for her efforts related to H.R. 216. We are happy to say that VA is undertaking many of the efforts outlined in the bill.

Over the last few years, VA incorporated forward-looking environmental scanning into our quadrennial strategic planning process. We have been in the process of implementing a planning, programming, budgeting, and execution resource allocation initiative modeled after similar efforts used in other federal agencies.

Under VA's current organizational structure, the Assistant Secretary for Policy and Planning performs the responsibilities described for the proposed chief strategy officer.

Additionally, to better serve veterans, the department has been evaluating our organizational structure as identified in VA's 2014 through 2020 strategic plan.

And through the My VA Task Force, VA has been actively working on addressing organizational, policy, procedural, perceptual, and cultural boundaries that could constrain our ability to coordinate, integrate, and deliver benefits and services.

We appreciate the committee's attention on the critical topic of VA's strategic planning and are eager to continue to discuss these efforts with the committee.

Mr. Chairman, at this time, the department does not have views on H.R. 280. We note that this legislation could change laws and policies beyond that of our department and as such, we are consulting with other federal government agencies. We will continue to coordinate views on this matter and upon completion submit them to the committee.

Finally, we cannot support H.R. 245 because its primary purpose appears to be to overrule VA's recent rule making and maintain the concept of informal claims. It would codify current rules that make it difficult to identify claims and unintentionally incentivize submission of claims in nonstandard formats that frustrate timely, accurate, and orderly claim processing.

Our final rule which is effective on March 24th is crucial to VA's long-term efforts to modernize the claims system for the benefit of all veterans. It would eliminate the concept of informal claims and replace it with submission of claims in a format more amenable to efficient processing while still allowing veterans to receive favorable, effective date treatment similar to what is available today under current rules.

Also, to process veterans' claims for benefits as accurately and efficiently as possible, VA is moving towards a paperless electronic system. An important component of that transition is that claims must originate on standardized inputs that can be easily identified and contain the core data needed to process the claim.

We believe that the final rule carefully and comprehensively balances the interest of modernizing the VA claims system with allowing claimants to easily initiate claims and preserve the most favorable effective dates.

VA strongly opposes H.R. 245 because it would run counter to VA's efforts to assist veterans by improving the efficiency of the claims process and would impair our ability to achieve and maintain our backlog reduction.

Mr. Chairman, this concludes my statement. We are happy to entertain any questions that you or the Members of the committee may have. Thank you.

[THE PREPARED STATEMENT OF DAVID R. MCLENACHEN APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much, and thank all the folks for being here today.

I have got a couple issues. I want to, Mr. McLenachen, talk about H.R. 280, which is the bonus rescission bill, but I want to ask in

a few questions about the current status, if you will, of the 2014 bonus of former director of the Phoenix VA Medical Center, Ms. Sharon Hellman, that was according to the department given in error.

It is my understanding that the recoupment of her bonus from 2013 has stopped because Ms. Hellman has attempted to appeal the recoupment to VA's debt management center.

Could you tell the committee, please, what is the status of her appeal and under VA's policy what happens if she loses this appeal now that she is no longer an employee of the department?

Mr. MCLENACHEN. Thank you, Mr. Chairman.

I will defer to Ms. McLeod to provide you a response to that question.

Ms. MCLEOD. Mr. Chairman, right now once Ms. Hellman requested an appeal of the offset of her salary or the debt that she incurred, any offset on her salary had to be stopped and she was entitled to a hearing on that debt.

That hearing goes before a third-party United States Postal Service ALJ who will hear her request and will make a decision based on her request. So at this time, the VA is waiting to find out what the ALJ has done.

The CHAIRMAN. If she loses her appeal, how do you recoup the bonus that was given in error?

Ms. MCLEOD. If she loses her appeal, we will issue a debt like we already did and we will continue to receive the money back.

The CHAIRMAN. But she no longer receives a salary from the department. That is how you were doing it. You were recouping it by taking it out of her current salary.

So what is the mechanism then that VA has to recoup that debt?

Ms. MCLEOD. A debt will be issued and that will go to the essentially Treasury Department who will recoup that like they would recoup any debt from a citizen even though she is no longer employed by the VA.

The CHAIRMAN. Retirement pay?

Ms. MCLEOD. I am not sure, but I can take that back and bring it——

The CHAIRMAN. You have taken no formal position on H.R. 280, but I would like to know if, in fact, the secretary, if it is correct, that the secretary does not have the authority to rescind a bonus once it is given; is that correct?

Ms. MCLEOD. Have a very limited authority right now. To the extent an administrative error occurs, the agency can recoup money based on an administrative error. We have no other formal process to recoup performance awards.

The CHAIRMAN. What happens if there is criminal activity and somebody is charged with a crime, does the VA then have the ability to go back and recoup the bonus?

Ms. MCLEOD. Not that I am aware of, but we could certainly take that back and get back to the committee.

The CHAIRMAN. Would that be an appropriate tool for the VA to have because it appears from press reports and information that we have gathered that a crime may have been committed? And it is stunning to me that the VA does not have the ability to go in and recoup a bonus if a crime has been committed.

Ms. MCLEOD. I am not able to answer that for the department at this point.

The CHAIRMAN. Okay. Thank you very much.

One question about H.R. 245, Mr. McLenachen. One of the VSOs presented a note in their written testimony that the rule making suggests there would be a change in VA's treatment of inferred claims, that is claims reasonably raised by the contents of a veteran's record.

Previously if a veteran had a condition secondary to a condition claimed or even an unrelated condition that could be reasonably raised by the record, the veteran would be entitled to service connection if a nexus to his service was found.

Under the rule making set to take effect in March, it appears it would not. This system, I would hope is supposed to be pro veteran and I want to pose a hypothetical. And you can answer hopefully whether or not VA would adjudicate this claim under the rules.

A veteran files a formal claim for an elbow disability which he alleges is due to a fall he suffered while in boot camp. The veteran is scheduled for a VA examination to assess his elbow disability and arrives for the exam in a wheelchair. And it is clearly evident that both of the veteran's legs have been amputated.

The military service records in the veteran's VA file reflect that the veteran was injured in an explosive blast during deployment to Afghanistan and sustained a traumatic injury to both legs for which he received a Purple Heart.

Under the new rule making, would the VA adjudicate a claim for the right and left leg disabilities if the veteran only formally filed for his elbow condition?

Mr. MCLENACHEN. Mr. Chairman, I think there may be a misunderstanding regarding the final rule that we issued. We did not propose a policy change in this particular area. We currently adjudicate all claims to include secondary matters and ancillary benefits that arise that are within the scope of the claim that is filed.

So we did not propose a change to that. What was in the final rule was intended merely as a clarification regarding current policy. To directly answer your question, if it is determined at that examination and in adjudication of the claim that the conditions that were noted were within the scope of the claim that was filed, we would adjudicate that as a claim that is pending, yes.

The CHAIRMAN. Thank you.

Ms. Brown.

Ms. BROWN. I just have one quick question, Ms. McLeod, I guess.

Do you know whether any of the federal agencies have the authority to recoup bonuses?

Ms. MCLEOD. To my knowledge, no other federal agencies have that power to do that.

Ms. BROWN. Yes. I yield back my time. I have no other questions.

The CHAIRMAN. Thank you very much.

Mr. Lamborn.

Mr. LAMBORN. Thank you.

And also in connection with Ranking Member Brown's bill, I would like to ask will the future years' veteran program be made available online to the public? I know it is discussed internally within the VA, and that is for any one of you.

Ms. SULLIVAN. Good morning.

With the current legislation, it doesn't specify whether that is publicly available or not. The similar programs in Department of Defense and DHS do not provide those publicly. They do provide them to the Congress. I would assume that this would be implemented the same way.

Mr. LAMBORN. What if the bill isn't passed for whatever reason?

Ms. SULLIVAN. The programming, the future years' veteran plan is an internal tool and would remain as an internal tool. It informs our budget process but is, you know, separate from that. So we would continue to use it in that manner.

Mr. LAMBORN. So the only way it would be made available to the public would be if this legislation were to pass under current VA policy?

Ms. SULLIVAN. Under current policy, yes.

Mr. LAMBORN. Okay. Thank you.

Mr. Chairman, I yield back.

The CHAIRMAN. Ms. Brownley, no questions?

Ms. BROWNLEY. No questions.

The CHAIRMAN. Dr. Benishek.

Dr. BENISHEK. Thank you, Mr. Chairman.

I guess I don't understand what is the objection to H.R. 216 by the VA. I mean, it seems to me we would like to have transparency in this process of planning for the budget and the VA.

What is the downside?

Ms. SULLIVAN. Thank you for your interest in strategic planning in the department.

We do support the intent of the bill. We are right now evolving a lot of our processes, the planning, programming, budgeting, and execution process. We are in about our fourth year of going through that cycle.

Basically the objection is we think that it is too early to codify it in statute. We would really like to get the processes a little bit more mature before we know what is really going to work in the long term.

So we are doing pretty much everything that is in H.R. 216. It is the matter of how it is officially codified giving us the ability to continue to mature those processes over time.

Dr. BENISHEK. Is there some reason that we shouldn't be aware of what you are doing? I just don't understand the reasoning.

I mean, that is not a very good answer as far as I can tell, Ms. Sullivan, as to why Ms. Brown's idea of making sure that we are all aware of what is going on is a bad idea. I just don't understand your answer. I mean, we expect it to change with time. So I just don't understand that objection, but I guess that is the answer that we have.

I yield back the remainder of my time. Thank you.

The Chairman. Ms. Kuster.

Ms. KUSTER. No.

The CHAIRMAN. Dr. Abraham.

Mr. ABRAHAM. Yes, questions for Mr. McLenachen.

Your written testimony does represent VA's adamant opposition to H.R. 245 which in pertinent part seeks to preserve the ability

of veterans to establish dates of claim at the point where the veteran opts to pursue a disability claim.

One of our president stakeholders has noted in written testimony that VA's recent rule making on standard claims, an appeals form will, quote, "create a division between veterans with internet access and those without internet access."

You have also noted that VA, quote, "receives an enormous volume," end quote, of informal claims.

Considering the opposition to your rule making by the several VSOs present today, I find it difficult to overlook the fact that VA through its rule-making process ought to unilaterally roll back decades worth of pro-veteran policy regarding establishment of effective dates.

This is a ploy to make the VA's job easier and has the effect of taking monetary benefits from veterans who have earned them.

Please explain how you can possibly describe your rule making as, quote, "maintaining a pro-veteran process that is acceptable," end quote, when you will be making it harder for so many veterans, to use your words, quote, "an enormous volume," end quote, of veterans without internet access to establish an effective date at the point where the veteran opts to pursue a disability claim.

Mr. MCLENACHEN. Thank you, sir, for the question. And I am glad I have an opportunity to address this concern.

I want to be very frank with the committee that this was an opportunity to demonstrate to you how the rule-making process can really work to help veterans at the same time as helping VA. I assure you this is not a ploy by VA in any way.

When we issued our proposed rule, what we did is we proposed to incentivize the filing of electronic claims through our e-benefits system. That is what we initially proposed to do.

And in the rule-making process, we received comments saying essentially you are moving too fast. The primary concerns were that we were treating, just as you just suggested, we were treating paper claims differently than electronic claims. And we hadn't accounted for that and we were not providing the same effective date treatment for paper claims as electronic claims.

So what we did is we completely revamped the rule. What we proposed is not in our final rule. What is in our final rule is that we treat paper claims exactly the same as electronic claims for effective date purposes.

Secondly, we removed informal claims, but what we really did is we replaced it simply with, as one of the commenter suggested, why don't you just come up with a standard informal claim form. That is essentially what we did, sir.

We have an intent to file form which is a one-page document that does exactly the same thing as informal claims. It is just that it is on a standard form.

And I submit to each and every one the Members of the committee that your constituents deal with standard forms every day of their lives in every situation where they encounter private and public entities, just not at VA.

And so when we talk about striking the proper balance, sir, we really believe that we have done that in the rule-making process. We replaced the informal claim process with what we are now call-

ing intent to file. A one-page document can be submitted in three different ways and this is how you address the issue of people that don't have internet access.

We have gone so far as to make it even more liberal to file an intent to file form. The reason is under current law, you have to identify the disability, your symptoms. That is required by a court decision and we implemented that decision in our procedures.

Well, under the new regulations, we are not going to do that. All you have to do on this form is three things, tell us whether you want compensation pension or a survivor's benefit; two, provide us your identifying information; and, three, sign the form, either you or your representative. And that will establish your effective date.

Three ways you can do it. You can pick up the phone and call one of our call centers. You can walk into one of our offices and somebody will fill out the form for you and third you can start an electronic claim and when you start that electronic claim, it preserves the effective date for you.

So to address all of those concerns, sir, that you just mentioned, we did that in the final rule. So the only thing that is left is there is a one-page standard form. We essentially did what the commenters said, create a form for informal claims, and that is what we did.

So that really strikes that balance that you mentioned, sir, when you were describing your bill was the balance between allowing VA to easily identify claims and quickly process them versus spending resources needlessly trying to figure out whether something is a claim or not.

Mr. ABRAHAM. But what you have done is you have converted that informal claim all of a sudden to a standardized formal document and that resets the time clock for this veteran.

Mr. MCLENACHEN. Sir, it does the same thing as current rules for informal claims. It establishes an effective date. So you come into us and you say I want to apply for compensation. And if you walk in, we have an employee that is going to sit there and type that information in for you.

It establishes it in our systems and you get the same effective date that you would get under the informal claims process. There is absolutely no difference. The only distinction is it is either a walk in submitted on the standard paper form or you start it electronically.

Mr. ABRAHAM. How long will it take the VA then to respond or process that informal claim on the standardized form once they get it?

Mr. MCLENACHEN. Whether we are talking about informal claims today or intent to file under the new rules, that is not a claim. What happens is that that preserves the effective date if the claimant comes in within a year and files a claim.

Mr. ABRAHAM. And if they receive an informal letter?

Mr. MCLENACHEN. No. We have a statutory obligation when we receive an informal claim, and we will under the intent to file process, we have a statutory obligation to provide the claimant the application form.

So let's assume that you called the call center and you say I want to file for compensation. The call center logs in that intent to file.

It preserves your effective date and we have an obligation to send the proper application form and tell the claimant everything they have to do to complete that application. That is a statutory obligation today and it will be under the final rule.

Mr. ABRAHAM. I yield back, Mr. Chairman.

The CHAIRMAN. Ms. Rice, do you have any questions?

Miss RICE. No.

The CHAIRMAN. I have one quick one. In your testimony, you said the primary intent of this bill appears to be to overrule VA's current rule making?

Mr. MCLENACHEN. Yes, sir.

The CHAIRMAN. Does it offend you that Congress would attempt to overrule your rule making?

Mr. MCLENACHEN. No, sir, not at all. And let me just suggest to——

The CHAIRMAN. No. That is all I needed was——

Mr. MCLENACHEN. Okay.

The CHAIRMAN [continuing]. Just a yes or no. It appeared that you might have your feathers ruffled just a little bit and I didn't want that to be the case.

Mr. Costello is gone. Mr. Bost is gone.

Dr. Wenstrup.

Dr. WENSTRUP. Thank you, Mr. Chairman.

Mr. McLenachen, I understand the department has some issues with 294, H.R. 294, some technical issues with that, and you might have some suggestions for us on that Long-Term Veterans Choice Act.

And I think we all look forward to discussing some of those technicalities with you, but really what I am asking today is will you give us the assurance that you will work with us in a very timely fashion on those, on any technical corrections you may have so that we can move forward in a very timely fashion?

Mr. MCLENACHEN. Yes. Dr. Jain has a particular interest in doing that with you, so I will let him address it.

Dr. WENSTRUP. Okay. Thank you.

Dr. JAIN. Thank you, Congressman, for that question.

And I really want to thank Chairman Miller for really authoring this bill and also for the committee for considering it.

Just these are minor issues in some ways, but they could be challenging and we really want this program to function really well for our veterans.

For example, there is a term used in the bill for transfer to homes. And for many clinicians, that could mean that this will require an admission to a hospital bed before the veteran becomes eligible for this benefit, so rather than being directly admitted from the veteran's home to the foster home. So that is just one issue.

The other issue is the word contracts and we believe that there are some of our foster home operators that may have challenges with the contracting process. It can be pretty lengthy and complicated. So if there is a way to tweak some of that language, those are the only issues that we are talking about.

Dr. WENSTRUP. You mean a simpler contract of some type, is that——

Dr. JAIN. Or perhaps defining the agreements a little bit better, but I will defer to my counsel who may be able to clarify that issue.

Dr. WENSTRUP. Thank you, Doctor.

Ms. MCLEOD. We would have to take that back and bring it back to the committee, but we are happy to work with you all on that.

Dr. WENSTRUP. I appreciate it. Thank you.

And I yield back.

The CHAIRMAN. Dr. Ruiz, do you have any questions?

Mr. RUIZ. NO, SIR.

The CHAIRMAN. Mr. Bilirakis, you are recognized.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

Mr. McLenachen, I want to get back to H.R. 216, Ms. Brown's bill. I want to follow-up on Dr. Benishek's questions.

Again, the VA indicates its support for the principles and concepts of H.R. 216, but it hasn't embraced looking at those principles in statute. And, again, I want to give you another opportunity.

Why not in statute with respect to the legislation's requirement for VA to submit resource estimates over a five-year horizon that are in line with the department's goals and objectives for various programs? What is the problem with embracing the concept in statute if you agree with it in principle? And, again, you know, DoD does it. Why not the VA?

Mr. MCLENACHEN. I will defer to Ms. Sullivan on that because she is really the expert in this area.

Mr. BILIRAKIS. Okay. Ms. Sullivan, please.

Ms. SULLIVAN. Again, thank you in general for the support for the concept in the bill.

Again, we are still kind of working on it. DoD has had decades to put that process in place, work the process, and make sure everybody understands the pieces. We are in our fourth year. I think we need to work more and come and give you more information on what that process is and the types of things that we are working through.

There are several areas in the bill. The programming the future years' veteran plan is one, some of the issues there or the concerns are you kind of putting it together with the budget. Those are two separate processes. We don't want to confuse the two or constrain future budgets from what is in the five-year plan.

Some of the other areas looking at the quadrennial review, what that looks like for VA is very different from what that looks like for DoD or DHS. We actually take their quadrennial reviews as input to us. So there are some pieces on how we look at how those processes in those other departments really apply to VA.

Mr. BILIRAKIS. Okay. Well, would you agree to work with Ms. Brown on this particular issue?

Ms. SULLIVAN. Absolutely.

Mr. BILIRAKIS. I mean, accountability is so very important. These are taxpayer dollars. And, you know, Ms. Brown is a fellow Floridian and we care about our veterans first.

So would you agree to work with her and possibly invite me in the meeting as well because I think we need to get this done for our veterans?

Ms. SULLIVAN. Absolutely. Happy to work with the committee.

Mr. BILIRAKIS. All right. Very good. Thank you.

I yield back.

The CHAIRMAN. Ms. Sullivan, you said you have been working on it for four years. Do you think that putting that force of law behind it might encourage you to move a little quicker in establishing what Ms. Brown is trying to accomplish?

Ms. SULLIVAN. For some of these, they are annual processes, so it still is going to take one cycle per year. That can't go any faster. We did do a lot with the strategic plan that we developed that came out last year in 2014 and we will start on our next cycle for the strategic plan. Again, that is a four-year cycle in itself. Obviously anything in legislation is going to get attention. I don't know if that will help mature the process any faster.

The CHAIRMAN. I would hope it would. If it is in law, I would hope that it would encourage you to move quicker. I think Ms. Brown has got a great idea and it is something that everybody on this committee can get behind and support.

I mean, we give you enough time to do it without putting it in law and you still come forward opposing, agreeing with the concept, but opposing putting it in statute. And it is hard for some of us to understand that.

Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman.

And, Ms. McLeod, on House Bill 280, it is my understanding that Secretary McDonald has no position on that bill right now. Am I correct in that?

Ms. MCLEOD. That is correct.

Mr. COFFMAN. Okay. That really surprises me because he came onboard to clean up the VA from the scandals of its past that seem to continue to this day.

And so if I understand the bill right—first of all, in your testimony earlier, you made the statement that VA's only ability to claw back a bonus is if there has been an error and that it should have been—it was never authorized or for the amount that it was authorized for. Am I correct in that?

Ms. MCLEOD. Essentially, sir, yes. The only ability right now is a very narrow one when there has been an administrative error committed.

Mr. COFFMAN. Yeah. So we have had incidents that are well-known today in the VHA system where management was complicit in a coverup involving appointment wait times. And those same managers were given bonuses based on a false reporting of performance where veterans suffered from that.

Then the situation in my district where we have a hospital half built, hundreds of millions of dollars over budget, years behind schedule, along with other hospitals that have some of the same problems that are currently being built, major construction projects by the VA.

The individual in charge of those projects within the leadership of the Veterans Administration received over $60,000 in bonuses since 2009, Glenn Haggstrom. So, you know, clearly he didn't meet the criteria of the goals that were established.

And so what you are saying is there is no mechanism under current law to claw back bonuses from somebody who clearly didn't meet when new information comes out and they clearly didn't meet

the goals that were expressed as a requirement to get the bonus or criminal conduct was committed during that period of time, that there was no mechanism to claw back and current law of that bonus. I am correct in that, right?

Ms. MCLEOD. You are correct.

Mr. COFFMAN. And so we have a secretary of the Veterans Affairs that can't make a decision on something so obvious. I mean, I think it is just extraordinary. And what it says to me and what it says to the veterans of this country is nothing has really changed, nothing has really changed in the Department of Veterans Affairs.

And I want you to take the message back to the secretary that he ought to make a decision on that and the decision ought to be to support this bill.

I yield back.

The CHAIRMAN. Thank you.

Ms. Brown.

Ms. BROWN. Thank you, Mr. Chairman. I do have a question for Ms. Sullivan.

I am a little confused. Did I hear you correctly that you are concerned with forward protection separate from the budget?

Ms. SULLIVAN. I am sorry. Can you repeat the question?

Ms. BROWN. Concerned with keeping the forward year protections separate from the budgetary process.

Ms. SULLIVAN. So the five-year look at the resource allocation is a tool that informs the budget. There is some concern if those are both out together that those future year projections would set expectations for future year budgets and not provide some of the flexibility to deal with emerging priorities, so almost setting that in stone for the five years out and not being able to go through the budget formulation process.

Ms. BROWN. Well, I think that is what we want. We want to know what are the plans?

Ms. SULLIVAN. As a plan, as long as it is able to then be adjusted during the budget cycle, not laying—for us to see five years in the future and lay that kind of in stone, it is a planning tool to look at those outward projections but not something that—again, the perception that that would then be the budget for that future year. There still is the budget process as a separate process.

Ms. BROWN. Why wouldn't you be able to adjust it if it is just a planning tool?

Ms. SULLIVAN. I think the look now is whether or not those that are receiving it are able to, you know, kind of give us that flexibility as we go into the budget formulation cycle to look back and say, well, four years ago, you said it was going to be this and now you are coming in with this budget. So, again, it is a planning tool. It informs the budget.

Ms. BROWN. I understand that but as you plan, different factors come. Maybe we will get additional veterans in certain categories or, you know, it is lots of factors that is going to affect that. But I think what we are trying to do is to see your road map so that we can have some idea as to your planning process also.

Ms. SULLIVAN. I understand.

Ms. BROWN. We clearly need to get together. Thank you.

The CHAIRMAN. Ms. Sullivan, if I could follow-up on what Ms. Brown was just asking. Shouldn't Congress have the ability to look at year two, three, four, and five to help determine how you arrived at the current budget year request? Again, what is the fear that VA has to putting a five-year plan out to the public?

Ms. SULLIVAN. I will have to take back some of the details, but, again, the other departments who do this, that is not public information. We are trying to, you know, look at similar processes to DoD and DHS. We obviously share our strategic plan and our planning processes. We do consult with Congress and the VSOs on doing that.

The CHAIRMAN. I serve on the Armed Services Committee and we get a five-year budget picture. I just don't understand what VA's problem is with giving Congress the information on which you base your current year's budget proposal on.

Ms. SULLIVAN. At this point, we are still maturing that process. I don't know if it is——

The CHAIRMAN. How long will that process take to become mature?

Ms. SULLIVAN. I can't answer that. I am sorry. I will have to take that back.

The CHAIRMAN. Okay. I would like an answer.

Ms. SULLIVAN. Okay.

The CHAIRMAN. Ms. Radewagen, do you have any questions?

Mrs. RADEWAGEN. No, I don't, Mr. Chairman. Thank you.

The CHAIRMAN. Ms. Brown, one final question.

Ms. BROWN. Thank you.

The CHAIRMAN. And then we will go to the third panel.

Ms. BROWN. To my understanding NASA does the forward budget and they make theirs public.

Ms. SULLIVAN. I will have to look into that. Thank you.

Ms. BROWN. Congress gave advance appropriations to VA. We do it and, you know, I was very involved and very instrumental in making sure that VA got advanced appropriations. What we are saying is we want to be a part of that planning process.

Ms. SULLIVAN. Appreciate that. Yes, we will come and meet with you and provide some more information and work with you on that.

Ms. BROWN. Thank you.

I yield back.

The CHAIRMAN. Yeah, I think it would be a good idea that we have you come back and talk with the entire committee about Ms. Brown's legislation. I think we would all be interested in knowing where the fear is from VA with making those numbers available to Congress.

I want to thank you all for being here today.

And we have got a third panel, so the second panel is excused and I would invite our third panel to please come to the witness table.

As they are coming forward, joining us today is Mr. Joe Violante, National Legislative Director for Disabled American Veterans; Aleks Morosky, Deputy Director of the National Legislative Service of the Veterans of Foreign Wars of the United States; Mr. Zachary Hearn, Deputy Director for Claims of the Veterans Affairs and Rehabilitation Commission for The American Legion; and Mr. Blake

Ortner, the Deputy Director of Government Relations for Paralyzed Veterans of America.

I appreciate you all being here. All of your complete written statements will be made a part of the record.

Mr. Violante, you are recognized for five minutes.

STATEMENT OF JOSEPH A. VIOLANTE

Mr. VIOLANTE. Thank you.

Mr. Chairman, Ranking Member Brown, Members of the committee, DAV appreciates the opportunity to testify before this committee on the various bills under consideration.

H.R. 216 would establish new planning and budgetary processes and make changes affecting VA's ability to develop and implement budgets and strategic plans. The bill directs the secretary to submit to Congress a future years' veterans' program and a quadrennial veterans' review modeled on similar procedures for DoD and Homeland Security. The legislation would also establish the new position of chief strategic officer.

Mr. Chairman, for decades, DAV and our partners in the Independent Budget have pointed out mismatches in funding for VA programs which became evident in last year's scheduling scandal and access crisis.

This legislation would help to address this problem by adding more transparency and rigor to VA's budget and planning process. DAV generally supports this legislation, although we do have a few concerns.

First, the legislation must make clear that both the quadrennial review and the future years' veterans' program are made publicly available when they are delivered to Congress.

Second, the bill gives OMB some ability to constrain VA's planning by setting guidance on the overall resources available to VA. It is vital that any long-range strategic planning process produce honest assessments of veterans' needs and the cost to meet them.

Third, the bill does not make clear how the chief strategic strategy officer will interact with VA's chief financial officer or the under secretaries. This might add a new dimension of bureaucracy that could complicate rather than improve budgeting.

Finally, we are concerned about the potential of diminishing the influence of veteran stakeholders when setting out VA's long-term missions and priorities.

H.R. 245 would reestablish certain safeguards for veterans who currently file informal claims. Under a VA rule that will take effect in March, claimants will no longer be able to file informal claims through written communications establishing only an intent to file a claim process that must be completed on standardized forms. As a result, veterans may lose some accrued benefits.

The bill seeks to remedy this situation by requiring that claimants who send written communications to VA indicating an intent to file a claim would be considered an informal claim and would have up to 180 days to complete the required forms to protect their effective date.

DAV supports the purpose of this provision. However, we strongly recommend that the informal claim period be restored to a full year, same as the new intent to file a claim procedure to ensure

that all veterans who file claims are treated equitably regardless of how they file them.

DAV supports H.R. 294. Some severely disabled veterans who are unable to live independently at home choose to reside in more intimate home-like alternatives to a nursing home called medical foster homes. While some veterans cannot afford medical foster homes, other veterans who can are required by law to pay the full cost out of their own pockets. Many of them are service connected veterans who could choose to live in a more expensive nursing home setting fully paid for by VA.

This measure would give VA a three-year authority to pay for veterans who want to reside in a VA approved medical foster home, saving tax payers money. However, despite the laudable aim of this measure we do not believe its goal will be successfully achieved unless Congress fixes VA's authority to use provider agreements. Since VA currently is unable to use its provider agreements authority to pay for medical foster homes, the alternative is to use contract vehicles.

The cost of the burdensome reporting and auditing requirements inherent in federal contracting, we believe some medical foster home providers would not be willing or capable of entering into complex contracts with VA. We urge the committee to pass these bills and we pledge to work with you and your staff to address our concerns. That concludes my testimony, I will be happy to answer any questions.

The CHAIRMAN. Thank you very much. Mr. Morosky, you're recognized for five minutes.

STATEMENT OF ALEKS MOROSKY

Mr. MOROSKY. Mr. Chairman and Members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States and our auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

The Service Member Foreclosure Protection Extension Act: The VFW supports this legislation which would continue for one year the extension of the period that veterans are protected from mortgage sale or foreclosure following their military service from 9 to 12 months. The VFW believes that veterans should be afforded the maximum opportunity to gain financial stability when transitioning from active duty to civilian life without the threat of losing their homes.

A January 2014 GAO report found that military borrowers were at a higher risk of mortgage delinquency in the first year after leaving active service. But with these protections in place we are more likely to resolve those delinquencies than others. Accordingly, the VFW believes that the one-year protection window should not only be extended, but we urge Congress to make this policy permanent.

The Department of Veterans Affairs Budget Planning Reform Act: This legislation would require VA to estimate and report to Congress its budgetary needs for four fiscal years. It would also establish a quadrennial veterans' review to ensure VA has a strategy to meet the future needs of our nation's veterans. The VFW strongly agrees that VA should constantly analyze veterans' needs and

develop a strategy that will enable it to address such needs, not just today and tomorrow, but for years to come.

The quadrennial review concept has been successful for DOD in prioritizing its strategic pillars to ensure it is able to protect America and advance our interests abroad. The VFW supports the concept of a quadrennial veterans' review, but we do not believe VA should prioritize veterans' benefits.

VA benefits and programs are vital to the veterans they serve. One benefit is not more important than the other and should not be treated as such. Instead, we suggest the quadrennial review analyze the fiscal demands of the full range of programs and capabilities. This would ensure VA adjusts its programs to fit emerging trends and maximizes its finite resources to meet veterans' needs.

The bill would also require VA to conduct a study to ensure its functions and organizational structure are effective, efficient, and economical. The VFW applauds Secretary Robert McDonald for realizing the VA's organizational structure needs to change.

In November he announced the My—VA Initiative to, among other things, reorganize the department's structure to better meet veterans' needs. VFW believes the VA should be given the opportunity to fully implement Secretary McDonald's reorganizational initiative.

H.R. 245: This bill makes two significant changes. First, the bill codifies the effective date for a claim to include the date VA receives an informal claim. This is a much needed provision that will provide clear understanding for a claimant's effective date of claim.

The second provision places a 180-day time limitation on veterans who have filed an informal claim to complete and return VA Form 21–526 to VA. The VFW opposes this provision. Current law provides claimants a full year to complete and return the application form other under circumstances. The VFW believes there should be parity between existing law, and recommends that claimants are afforded a full year to submit their formal claim. This does not place an additional burden on VA and will not count towards the time the claim takes to be adjudicated.

H.R. 280: The VFW supports this legislation. Employees receive bonuses as an incentive in recognition for superior work performance. But if a bonus is found after the fact to be awarded to an employee who manipulated data, put veterans at risk of harm, or in some other way defrauded the Government to receive that bonus, the Secretary should have the authority to recoup the bonus amount.

The Long Term Care Veterans Choice Act: The VFW supports this legislation which would allow enrolled veterans in nursing home care to transfer into adult foster home care at their request. Currently, veterans who choose to live in adult foster homes must do so at their own expense. To grant VA the authority to reimburse adult foster homes would provide veterans with an additional residency choice potentially improving the quality of life for those who would prefer this option.

The VFW strongly believes that all non-VA care services should be provided in conjunction with proper care coordination. The VHA medical foster home procedures handbook requires an interdisciplinary VA home care team to provide the veteran with primary care,

regularly communicate with the foster home caregiver, and monitor the care provided with frequent unannounced visits. The VFW feels that these would ensure adequate care coordination and recommends that the care coordination policies outlined in that document should be made permanent by adding them to the language of this legislation.

Mr. Chairman, this concludes my statement, and I will be happy to answer any questions you or other Members of the Committee may have.

The CHAIRMAN. Thank you very much. Mr. Hearn, you are recognized for five minutes.

STATEMENT OF ZACHARY HEARN

Mr. HEARN. Thank you. Good morning, Chairman Miller, Ranking Member Brown, and Members of the committee. On behalf of National Commander Helm and the 2.4 million members of The American Legion, we are honored to speak this morning regarding proposed bills impacting our nation's veterans.

Based on the slate of bills for consideration The American Legion supports the following bills.

H.R. 189, the Service Member Foreclosure Protection Act of 2015.

H.R. 216, the Department of Veterans Affairs Budget Planning and Reform Act of 2015.

H.R. 245, H.R. 280.

H.R. 289 addresses alternative solutions to veterans incapable of independent living. Currently, The American Legion does not have a position pertaining to this bill, however, we are continuing to consider the solutions the bill provides. A complete discussion of The American Legion's position can be found in our written testimony that you have before you today.

The American Legion supports H.R. 245. In recent years the Veterans Benefits Administration has taken steps to improve its efficiency in the adjudication of claims. One much publicized effort was the virtual transformation in the claims process. Another effort was the VA's issuance of regulations that would change a decades old policy regarding the submission of informal claims. The American Legion opposes this change.

Historically, veterans were permitted to submit written correspondence to VA indicating their intent to file a claim for disability benefits. This process did not require a specified form, it simply required a written communication indicating a desire to file for disability benefits for a particular condition.

In September 2014 VA issued regulations that would go into effect in March 2015 that would eliminate the informal written claim as a marker for an effective date of benefits. Instead, veterans were directed to submit claims electronically, orally to a VA employee, or through a new VA form to protect the earliest possible effective date.

Veterans who name the benefit they seek in a written communication to the VA are punished because that communication under the new regulations would not protect the earliest effective date. What really is happening is that the BVA is using the new regulations to artificially reduce the number of pending claims. It is

counterintuitive for veterans to not mention the benefit that they seek.

Compelling veterans to file via electronic means could be detrimental. The National Center for Veterans Analysis and Statistics reported the average male veteran was 64 years old in 2011, and the census bureau reports that less than half of Americans over 65 years old have access to the Internet.

If a sizable portion of the veteran population does not have regular access to the means necessary to file and then complete application, is VA adequately serving the veteran population? It should be mentioned that the issue of expediency on the front end of the claims process isn't the only reason why VA pursued this policy.

Another justification for this process was that a number of inferred claims hadn't been recognized by VA at the regional offices. It was only when a claim was appealed to the Board of Veterans Appeals that a BVA judge recognized the nature of the claim.

VA's requirement for the standardized form suggests that instead of embracing its responsibility to properly train its employees, VA opted to advocate its responsibility to both its employees and the veteran community through removing the policy altogether. Ultimately, VA's policy pertaining to the electronic submission of claims will have a deleterious effect upon effective dates.

If veterans, regardless of age, do not have access to the Internet then they may have to endure additional steps to file a claim losing their effective date, and ultimately the payment of their disability benefits.

H.R. 245 codifies a longstanding practice of VA permitting informal claims without the requirement of a standardized form or electronic submission. Moreover, it permits veterans to maximize the benefits earned through their dedicated service to this nation.

Again, on behalf of National Commander Helm, and 2.4 million members that comprise The American Legion, we thank the committee for hearing our testimony today. And I will be happy to answer any questions that this Committee may have.

The CHAIRMAN. Thank you, Mr. Hearn. Mr. Ortner, you are recognized for five minutes.

STATEMENT OF BLAKE ORTNER

Mr. ORTNER. Chairman Miller, Ranking Member Brown, and Members of the committee, Paralyzed Veterans of America would like to thank you for the opportunity to testify today on the legislation before the committee. PVA supports H.R. 189. It is our belief that the extension of this foreclosure protection should have been included with other extenders that were passed in the 113th Congress and that was inadvertently left out.

PVA generally supports the intent, however, we have concerns regarding H.R. 216, similar to those expressed in 2013 when PVA testified on similar draft legislation. This legislation establishes new planning and budgeting processes as well as study and make organizational changes affecting VA's ability to develop and implement budgets and strategic plans. Our concerns are similar to those expressed by the panel today.

Long range strategic planning is vitally important and VA does and must continue to do this. VA annually prepares and submits

to Congress and the public a performance and accountability report to show how well VA's strategic goals are being met. In addition, VA's annual budget submission lays out in great detail the programs and policies designed to achieve VA's strategic goals. VA also supports two dozen ongoing advisory committees to provide outside perspective and Congress has authorized commissions and task forces to look at major issues.

It is not yet clear how or if the creation of a quadrennial veterans' review would improve on these ongoing strategic planning processes. Similarly, it is not clear whether the creation of a future years veterans' program would lead to either more transparent or more accurate budgets or appropriations. And based on Ms. Sullivan's testimony, transparency does not appear to be a goal.

There are also questions about the creation of the new Chief Strategy Officer. The language of the legislation gives the CSO significant independence in overseeing all planning and programing throughout VA. Would the CSO have overlapping authority with the under secretaries? How would the CSO and the CFO interact during preparation of VA's budget? Are they co-equal? And how would disagreements between them be settled? Would this lead to greater harmony or conflict within VA's budget formulation process?

We also have questions about the role of veterans' service organizations and the development of the QVR. As organizations with great experience and expertise in dealing with veterans, will this Board consultation process dilute our input? VSOs are not idle stakeholders. We are concerned about putting us on par with less interested, informed, and involved stakeholders during the consultation process. Although we do have questions about this legislation, I want to emphasize we have no questions about the sincere intentions and aims of the sponsors to this legislation.

PVA supports H.R. 245 to codify existing provisions of law relating to effective dates of claims, in particular the informal claim procedures. Because the veterans may not realize the intricacies of claiming benefits, some may submit claims on their own which might simply consist of a letter presenting their case. PVA welcomes provisions requiring the Secretary to provide a claims application form when the informal claim is received, but agree that the informal claim continue with the same weight of law, unbiased consideration, and receipt date had it been a formal claim.

PVA is not opposed to provisions of H.R. 280 and believes giving the Secretary some kind of leverage to hold senior staff more accountable is valuable. However, it is critical that the Secretary not enjoy any sort of carte blanche authority to strip bonuses. Concerning the time frame, PVA does not believe that this authority should continue in perpetuity, but be of sufficient length to ensure that behavior discovered in the future can be acted upon. Let us also be very clear, we do not feel that this limit should apply in cases of clear fraud or criminal activity.

A second concern regards the rights of the employee for a review of the recoupment. PVA is not certain a hearing with the Secretary is the best or most fair venue for the review as it would establish the Secretary as the arbiter of his or her own decision.

PVA generally supports H.R. 294 regarding the transfer of veterans to non-VA adult foster homes. PVA believes that VA's primary obligation involving long-term support services is to provide veterans with quality medical care in a healthy and safe environment. It is PVA's position that adult foster homes are only appropriate for disabled veterans who do not require regular monitoring by licensed providers, but rather have a catastrophic injury or disability and are able to sustain a high level of independence.

When these veterans are transferred to adult foster homes, care coordination with VA specialized systems of care is vital and the veteran must be regularly evaluated by specialized providers trained to meet the needs of their specific conditions. Mr. Chairman, this concludes my statement and I would be happy to answer any questions.

Mr. CHAIRMAN. Thank you, Mr. Ortner, very much and I would like to go ahead and yield for questions to the Chairman of the Sub Committee, Dr. Abraham.

Mr. ABRAHAM. Thank you, Mr. Chairman. Mr. Ortner, your testimony on H.R. 245 noted that as VA tries to reduce its claims' backlog there is a risk that the department will look for methods to avoid claims that are difficult to complete. I am very concerned by the state of affairs as "difficult claims" may be those of our most serious, severely disabled veterans. Would you elaborate, please, on this concern that you and I share a bit more about how the 2015 goal to eliminate the claims' backlog may actually create reverse incentives for VVA to strategize methods to avoid hard claims?

Mr. ORTNER. Yes, sir, I think in our full testimony we discuss a little bit about the concerns of both trying to avoid some of those claims that are possibly more difficult. And the informal claim is one of those that you definitely run into a problem with because of the requirement to collect the evidence. Probably of greater concern is the risk of those claims being pushed off as we discussed in a hearing last week have to do with becoming grounds for more appeals.

So I think that is our concern. I think the stress or the sword of Damocles hanging over the heads regarding the 2015 requirements can potentially push people into trying to speed things along or trying to avoid those issues that may complicate them meeting that goal.

Mr. ABRAHAM. Thank you. One more question. Mr. Violante, your testimony recommend that the informal claim period be expanded beyond that which is currently set forth in H.R. 245 and extend to a full year. Tell me again why your organization believes that that full year is necessary as opposed to the 180 days.

Mr. VIOLANTE. Well, currently the law allows for one year for a veteran to file it. Under their proposed rule change the VA has, they would also allow one year from the intent to file a claim for a veteran to file his formal appeal. So we believe, number one, one year gives a veteran sufficient time. There is a lot of medical problems sometimes that arise that keep him from filing these claims, but it would also keep the same time that is in place now as well as what VA intends to do with their intent to file.

Mr. ABRAHAM. Thank you. I have one other question. Mr. Hearn, good to see you again, you are on the sub-committee. Your testi-

mony on H.R. 245 noted that The American Legion does not agree with the department's rule-making as it regards to "inferred" claims. Did The American Legion state its opinion to the VA during the rule-making process? And, if so, to what extent did dialog occur on these concerns?

Mr. HEARN. The period to comment, I think it opened up in late 2013, The American Legion submitted their comments regarding this issue. I think December 31st was the deadline to submit the comments pertaining to this. We have had our concerns about this going back over the last 12 months. I have a copy of those comments if you would like to see them. But the VSOs were open and VA allowed for these comments to be made and right from the very beginning we had concerns and we had very sincere concerns regarding this, and regardless VA continued to move down the path.

Mr. ABRAHAM. I yield back.

Mr. CHAIRMAN. Ms. Brown.

Ms. BROWN. I think Ms. Brownley has a question.

Mr. CHAIRMAN. Ms. Brownley.

Ms. BROWNLEY. Yes, just quickly. I certainly agree with the argument that there should never be a rule that would prevent or delay in any way veterans from getting their benefits. And, Mr. Hearn, in your testimony it seemed as though, and correct me from the other VSOs if I am summarizing incorrectly, but it seems as though the issue for most VSOs is about the time frame it is not necessarily about the standardized form.

But, Mr. Hearn, in your testimony you do highlight the issue around the informal claim and not going to a standardized form in addition to the not going 180 days but going for the full year. So could you just describe to me sort of in what form how many informal claims are we getting from veterans at this particular point in time and what do they sort of look like?

Mr. HEARN. An informal claim, it can be submitted on line paper, on any sort of document. It is just a level of written correspondence to VA indicating that there is an intent to file for a particular medical condition. As far as the numbers I would have to go back and get those for you. But the problem with this is that there is a standardized form that is ultimately going to be submitted when a veteran files the formal claim aspect, it is maintaining the effective date that we have concerns.

One, when this issue was first brought up, and VA mentioned it today, that we use standardized forms in everything. Which is correct, we do. And what they pointed to so much was IRS. Well, tax season is just from January 1 through April 15. Veteran season is January 1 through December 31st. And so we can't set up tax prepare or veteran prepare operations in every strip mall and corner of America like you see during tax season. It is not realistic. And we want to make sure that all veterans have access to receive those benefits that they receive and our fear is that if we continue down this path that has been proposed that those veterans' benefits are going to be reduced if not eliminated.

Ms. BROWNLEY. Thank you. And I yield back.

Mr. CHAIRMAN. Mr. Coffman.

Mr. COFFMAN. Mr. Chairman, just a question for all members of the panel. On H.R. 280 that involves what we call the calling back

of bonuses that were given, either that where we find out that the recipient lacked merit for the bonus based on the record of performance after the fact that it was found out or that there was criminality involved during the duration that the bonus was given. What H.R. 280 does is it authorizes the Secretary of the VA to be able to call back those bonuses. And right now under current law it is only if in fact there was an administrative error in awarding the bonus the only ability to call back.

Given the abuses that occurred in the VHA system with the employment wait times where there were instances where management was complicit in that and received bonuses for allegedly bringing down the wait times which we know was at the expense of our veterans or the construction of veterans hospitals that are hundreds of millions of dollars over budget, years behind schedule, that the leadership involved in that received bonuses. I would like to know if any of you have any reservations on the bill, I would like each one of you to state your position. Organization and state your position on that legislation.

Mr. MCLENACHEN. Congressman, DAV does not have an official position on that piece of legislation.

Mr. MOROSKY. Congressman, the VFW supports the legislation. We feel like bonuses should be awarded for exceptional performance. Clearly, anybody who is putting veterans at risk, manipulating data, or defrauding the Government is not performing exceptionally and it is a disservice to the American taxpayer and veterans to allow them to keep their bonuses, so we support the legislation.

Mr. HEARN. Congressman, The American Legion supports it. As many know that we established veterans' crisis command centers last year and went out into the field. And for those representatives of VA that essentially fraudulently received those bonuses, it is not right that they do. Just as was stated earlier, these bonuses should be based upon merit, not off of manipulated data.

Mr. ORTNER. Congressman, the only real concerns PVA had with it is that time frame. Do we have a situation where somebody goes back 10 years, 12 years? And in our written testimony we do indicate that we are not sure what that time frame should be. But that concern and then also just the fact that the Secretary is ruling on their own decision in a recoupment review. But other than that, we don't have any significant problems——

Mr. COFFMAN. Mr. Ortner, I guess my question then would be to you then, but the decision is fairly subjective to begin with. The fact that there is criteria that is drawn up in terms of when someone merits a bonus, I mean that is done by the leadership of the Veterans Committee. You and I assume you served in the military, am I correct in that?

Mr. ORTNER. Yes, sir.

Mr. COFFMAN. I know people are going to get bonuses, I mean unless they wanted to re-up for a longer period of time, but you were written up positively or negatively, and if you did a good job you were promoted, if you didn't do a good job, you were demoted or relieved of command or whatever was relative to your position. And so here we have a problem of excessive bonuses for people not

doing their work. And so what I sense in your position is some reservation about the Secretary's ability to call back those bonuses.

Mr. ORTNER. Actually, it is more of a reservation about the justification of the Secretary going back. I think in our discussion there was a little concern, especially about the time frame. Do we have a Secretary that attempts to recoup a bonus based on a policy disagreement, based on a political disagreement, or something like that. Which is also why we go into the idea of saying if there is a case of fraud or criminal activity, obviously that is a given.

So that is really our reservation, exactly what are the grounds for that, the bonus being recouped. And so you sort of backed up our concerns with saying, well, geez, it is kind of arbitrary on sometimes how those bonuses are given. So we don't want to get in the situation where it is arbitrary on how they are also pulled back due to some other disagreement.

Mr. COFFMAN. Mr. Chairman, I yield back.

Mr. CHAIRMAN. Thank you very much, Mr. Coffman. And I think if I am correct, Brigadier General?

Mr. ORTNER. Yes, sir.

Mr. CHAIRMAN. Thank you, sir. Any other comments or questions? Miss Rice.

Miss RICE. Thank you, Mr. Chairman. Mr. Ortner, do you have an estimate of how many veterans suffering from catastrophic injury or disability would actually be able to benefit from the Long Term Care Veterans Choice Act?

Mr. ORTNER. No, ma'am, I don't. But I would be happy to take that for the record and have our staff look into it.

Miss RICE. That would be great. And I just have a general question for all of you. In what ways are your organizations able to help veterans through this claims process to ensure that they get the benefits that they need?

Mr. VIOLANTE. DAV has a corp of about 270 National Service Officers, about 34 transition service officers. We are located at all the VA regional offices as well as some of the military bases where military members are coming out. So we are available to them at those offices. We also have roughly about 2,000 service officers out in the field with chapters and departments that are points of contact that refer them to our national service officers.

Mr. MOROSKY. Congresswoman, the VFW has similar services. We have service officers at each VA regional office. We have representatives at military bases for the benefits at discharge system, and we provide those services as well.

Mr. HEARN. The American Legion has over 3,000 accredited representatives nationwide designed and they are professionally trained to help veterans, and we also have representatives at the regional offices and at the Board of Veterans Appeals.

Mr. ORTNER. PVA is similar to the other groups. We have about 70 service officers which handle claims. Their trained service officers who go through extensive training similar to DAV and the other VSOs. And they help all veterans, not just those with catastrophic injuries.

Miss RICE. I applaud all of your organizations because as you all know you are very often the first line of defense for helping your

colleagues get the benefits that they deserve, so I thank you all for that. And I yield back my time, Mr. Chairman, thank you.

Mr. CHAIRMAN. Thank you very much. Members, any other questions?

[No response.]

Mr. CHAIRMAN. With that, we probably will each have questions for the record that we will follow up. We thank you for your testimony today. I would ask that all Members would have five legislative days with which to revise and extend their remarks, without objection, so ordered. And with that, this hearing is adjourned.

[Whereupon, at 11:59 a.m., the committee was adjourned.]

PREPARED STATEMENT OF CHAIRMAN JEFF MILLER

Good Morning, Thank you all for being here today.

Today we are having a legislative hearing on five pieces of legislation.

In the interest of time, I am going to forgo a lengthy opening statement and just briefly touch on two bills on the agenda which I am proud to have introduced.

The first bill is H.R. 280.

The language is similar to a bill I introduced last Congress which passed favorably out of this committee.

H.R. 280 would provide the secretary the authority to rescind a bonus or performance award from any VA employee when the secretary deems it appropriate.

To ensure a fair process, the provision would also afford the employee an opportunity to have a hearing on the secretary's decision to recoup their bonus.

I proposed this legislation last congress because VA had given this committee conflicting statements on whether or not it already had the ability to rescind bonuses.

For example, former Secretary Shinseki rescinded then—Phoenix Director Sharon Helman's 2013 bonus because it was paid based on an administrative error.

Notwithstanding this limited authority, VA later confirmed it did not have the ability to rescind a bonus that was based on erroneous performance data.

I believe the ability to recoup a bonus based on bad or manipulated performance data, is a tool that the secretary needs, and that the American public would expect.

My second bill is H.R. 294, the Long-Term Care Veterans Choice Act.

It would authorize VA, for three years beginning on October 1, 2015, to enter into a contract or agreement with a certified medical foster home to pay for Long-Term Care For Certain Veterans already eligible for VA paid nursing home care.

It would also require an eligible veteran to receive VA home health services as a component of such payment.

Medical foster homes provide a non-institutional Long-Term Care alternative to veterans who prefer a smaller, more home—like and family—style setting than most traditional nursing homes are able to provide.

Though VA has been helping place veterans in medical foster homes for more than a decade, VA does not currently have authority to pay for a veteran to receive care in a medical foster home, even if the veteran is eligible for VA paid nursing home care.

As a result, service-connected veterans who would prefer to receive care in a foster home must pay out of pocket using personal funds, and many are unable to do so because of financial constraints.

Our veterans—particularly those who are service-connected and in need of long-term care-deserve to decide for themselves where and how to receive the care they need and H.R. 294 would allow them that opportunity.

Given that the average cost of a medical foster home is approximately half the monthly cost of a nursing home, H.R. 294 would also provide a cost effective long-term care option for the department.

I urge my colleagues to support both of these bills and look forward to discussing them with our witnesses this morning.

Ms. Brown has a bill on the agenda that I am proud to cosponsor, and at this time I'll defer to her for its explanation and for her opening statement.

Ms. Brown.

Thank You Ms. Brown.

I now recognize Dr. Abraham to discuss his bill that is before us today, H.R. 245.

Thank You Dr. Abraham.

At this time, I would like to welcome to the witness table our colleague from the ninth district of Florida, Mr. Alan Grayson, who is the sponsor of H.R. 189, The Servicemember Foreclosure Protections Extension Act of 2015.

Mr. Grayson, you are now recognized for five minutes.

Thank You Mr. Grayson.

We will forgo a round of questions for Mr. Grayson, and any questions that anyone may have for our colleague may be submitted for the record.

On behalf of the committee, I thank you for joining us today and for your testimony on your bill.

You are now excused.

I now ask our second panel to come to the table.

On this panel we will hear from Mr. David Mclenachen [Mik-Len-A-Kin], Acting Deputy Under Secretary For Disability Assistance for the Veterans Benefits Administration at VA.

He is accompanied by Dr. Rajiv Jain, Assistant Deputy Under Secretary for Health for Patient Services at VA's Veterans Health Administration;

Ms. Susan Sullivan, Deputy Assistant Secretary for Policy at VA's Office of Policy and Planning; and Ms. Kim Mcleod Counsel in VA's Office of General Counsel.

Thank you all for being here today.

Mr. Mclenachen, you are now recognized for five minutes.

Thank You.

On behalf of the committee, I thank you for your testimony and for being here today.

The second panel is now excused.

I now invite our third and final panel to the witness table.

Joining us today on the third panel is Mr. Joseph Violante, the National Legislative Director for the Disabled American Veterans;

Mr. Aleks [Alex] Morosky, the Deputy Director of the National Legislative Service for the Veterans of Foreign Wars of the United States;

Mr. Zachary Hearn [Hurn], the Deputy Director for Claims of the Veterans Affairs and Rehabilitation Commission for the American Legion;

Mr. Blake Ortner, the Deputy Director of Government Relations for Paralyzed Veterans of America.

Thank you all for being here today.

All of your complete written statements will be made part of the hearing record.

Mr. Violante, you are now recognized for five minutes.

Mr. Morosky, you are now recognized for five minutes.

Mr. Hearn, you are now recognized for give minutes.

Mr. Ortner, you are now recognized for five minutes.

Thank you all for your testimony.

I will begin with questions.

On behalf of the committee, I thank each of you for your testimony.

We look forward to working with you in the future on these bills, as well as on a wide range of challenges facing our nation's veterans.

If there are no further questions, the witnesses are excused.

I now ask unanimous consent that statements from the Vietnam Veterans of America and the housing policy council be submitted for the record.

Hearing no objection, so ordered.

And I ask unanimous consent that all members have five legislative days to revise and extend their remarks and include extraneous material.

Hearing no objection so ordered.

I thank the members and the witnesses for their attendance and participation today.

This hearing is now adjourned.

APPENDIX

PREPARED STATEMENT OF RANKING MEMBER CORRINE BROWN

Mr. Chairman, thank you for holding the Committee's first legislative hearing of the 114th Congress.

I look forward to this Committee, in our usual bipartisan fashion, being busy in looking at bills that will help our veterans, and assist the VA in its efforts to accomplish its mission.

I am especially pleased that my bill, H.R. 216, was included today.

H.R. 216 was introduced last Congress by former Ranking Member Michaud, and was approved by the Committee as part of the advance appropriations bill. I look forward to working with my colleagues and stakeholders to move this bill as fast as we can this year.

VA's financial management process often looks like budgeting-by-crisis. H.R. 216 would provide the framework to assist the VA in the steps it has already taken to reform its budget process. It's important that everyone have a copy of the rules and by putting these processes into statute we'll make sure that they do.

Providing a roadmap each year so that VA, veterans, and Congress know where we are going is vital in reforming the VA.

My bill will ensure that the steps taken to come up with this roadmap are transparent, and that all stakeholders are fully engaged in making sure that we provide the resources that our commitment to our veterans demands.

So thank you, Mr. Chairman, for including H.R. 216 today. I look forward to hearing from our witnesses on this, and our other bills, and I yield back the balance of my time.

PREPARED STATEMENT OF ALAN GRAYSON

Chairman Miller, Ranking Member Brown, thank you for inviting me to appear before you today. I look forward to what this committee, under the leadership of two Floridians, will be able to accomplish for our nation's veterans during the 114th Congress.

As you know, my bill, H.R. 189: the 'Servicemember Foreclosure Protections Extension Act of 2015', would extend for one calendar year the foreclosure and eviction protections that currently exist for active duty members of our military forces and veterans who have served in our armed forces within the past year. These protections are scheduled to expire at the end of 2015.

Historically, Section 303 of the 'Servicemembers Civil Relief Act' ("SCRA") (50 U.S.C. App. 533) has protected servicemembers from foreclosure and eviction if an action is filed during, or within 90 days after, a period of military service. Section 2203 of the 'Housing and Economic Recovery Act of 2008' extended the period of protection from 90 days to nine months. In 2012, Congress—in a bill which you authored, Mr. Chairman—extended foreclosure and eviction protections further to one year (see Section 710 of the 'Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012' (P.L. 112–154)). Again, my bill would ensure that the one-year protection period that currently exists is extended.

As you will recall, Mr. Chairman, we began discussing this provision of law in September of last year, after I noticed its omission from H.R. 5404: the 'Department of Veterans Affairs Expiring Authority Act of 2014' which was ultimately signed into law. You voiced your support for its extension, but stated that you wished to hold a legislative hearing on a measure prior to moving an extension to the floor. I am pleased that Senator Sheldon Whitehouse was able to pass a clean one-year extension through the Senate during the closing days of the last session of Congress, and I am pleased that you have decided to make this one of the first pieces of legislation to consider before the committee this Congress.

It is vitally important that we pass H.R. 189. Without this extension, the period of foreclosure and eviction protections currently made available to servicemembers will revert from one year all the way back to the original 90 day period (see Section 710(d)(3) of P.L. 112–154). On January 28, 2014, GAO issued Report No. GAO–14–221 entitled 'Servicemembers Civil Relief Act: Information on Mortgage Protections and Related Education Efforts'. Page 13 of that report states:

Our analysis of one servicer's data suggests that all military borrowers—SCRA-protected or not—had a higher likelihood of becoming delinquent in the first year after they left active duty than when in the military. For example, in the loan-level data from an institution that used the DMDC database to check the military status of

its entire loan portfolio, all of its military borrowers had a higher likelihood of becoming delinquent in the first year after they left active duty than when in service, with that risk declining somewhat over the course of the year for non-SCRA-protected military borrowers.

Mr. Chairman, we currently protect recent veterans and soldiers from the unfortunate situation just described; and, respectfully, I urge this committee to continue to do so. No soldier should ever have to fight abroad and return home, only to find that it is no longer there.

STATEMENT OF
DAVID R. MCLENACHEN
ACTING DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS

January 27, 2015

Good Morning Chairman Miller, Ranking Member Brown, and Members of the Committee. Thank you for inviting me here today to present our views on several bills that would affect the Department's benefit programs and services. Joining me today are Dr. Rajiv Jain Assistant Deputy Under Secretary for Health for Patient Services, Veterans Health Administration, Ms. Susan Sullivan, Deputy Assistant Secretary for Policy in the Office of Policy and Planning, and Ms. Kim McLeod, Counsel, Office of General Counsel.

VA is still in the process of formulating views on H.R. 280, a bill to recoup bonuses and awards paid to VA employees, for which VA received a draft on January 9, 2015.

H.R. 189 Servicemember Foreclosure Protections Extension Act of 2015

H.R. 189 would extend certain provisions of the Servicemembers Civil Relief Act, as amended by Pub.L.113-286. VA defers to the Department of Defense (DoD) and the Department of Justice as to the merits of this bill.

H.R. 294 Long-Term Care Veterans Choice Act

The Long-Term Care Veterans Choice Act would amend section 1720 of title 38 U.S.C. to add the authority for the Secretary to pay for long-term care for certain Veterans in medical foster homes (MFHs). Specifically, the draft bill would allow Veterans, for whom VA is required to provide nursing home care by law, to be transferred to homes designed to provide non-institutional long-term supportive care for Veterans who are unable to live independently and prefer to live in a family setting. VA would pay MFH expenses by a contract or agreement with the home. One condition of providing support for care in a MFH would be the Veteran's agreement to accept home health care services furnished by VA.

VA endorses the concept of using MFHs for Veterans who meet the appropriateness criteria to receive such care in a more personal home setting. VA endorsed this idea in its Fiscal Year (FY) 2014 and 2015 budget submissions and appreciates the Committee's consideration of this concept. Our experience has shown that VA-approved MFHs can offer safe, highly Veteran-centric care that is preferred by many Veterans at a lower cost than traditional nursing home care. VHA currently manages the MFH program at over two-thirds of our VA medical centers; partnering with homes in the community to provide care to nearly 900 Veterans every day, an increase of 27 percent over the prior year. Our experience also shows that MFHs can be used to increase access and promote Veteran choice-of-care options.

While VA fully supports the MFH concept, we would look forward to working with you to resolve a few technical issues in this bill. VA would like to work with the Committee to

ensure VA can effectively incorporate MFHs into the continuum of authorized long-term services and support available to Veterans. We are happy to provide the Committee with technical assistance on this matter and are available for further discussion.

VA estimates enactment of this legislation would result in cost savings totaling $6.8 million in the first year, $49 million over five years, and $160 million over ten years.

H.R. 216 Department of Veterans Affairs Budget Planning Reform Act of 2015

In general, VA believes H.R. 216 has a great deal in common with VA's ongoing and future strategic planning, programming, and evaluation initiatives. We are excited about this work to make sure VA's planning and Department-level resource allocation processes are systematic and look beyond the horizon so that our Nation's Veterans can be accorded the best benefits, services, and support VA can offer. We therefore greatly appreciate the concepts put forward in the bill. We are eager to discuss those efforts with the Committee, but we are hesitant to lock down these concepts in statute.

Over the last few years, VA has been in the process of implementing a Planning, Programming, Budget and Execution (PPBE) initiative modeled after similar efforts used in other Federal agencies such as DoD, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, the Department of Homeland Security, and others. VA believes PPBE has potential to more systematically improve VA's ability to anticipate and strategically prepare for the future needs of

Veterans and their families. We also believe this effort can better meet the needs of the VA workforce and buttress their dedication to serve Veterans, as well as improve resource allocation and enable VA to get the best value for scarce resources. The PPBE cycle implements a multi-year analytical framework beginning with FY 2015 to ensure the requirements of VA's healthcare delivery, benefits, and memorial services are fully vetted.

There are many elements of the draft legislation that reflect these PPBE principles, and the direction VA is going in its strategic planning and programming efforts.

Section two of the bill would require VA to submit annually at or about the time of its regular budget submission a "Future Years Veterans Program" that would include for the next five years (including the budget year submitted) estimated expenditures and proposed appropriations, as well as a VA five-year strategy regarding the Department's commitment to Veterans and the resources to meet those commitments.

Section two would also mandate a Quadrennial Veterans Review (QVR), with the first such review conducted in FY 2019. The bill sets forth detailed requirements and elements for the conduct of this review, and ties it to a 'strategy for meeting the Nation's commitment to Veterans' with a component regarding VA's cooperation with other Federal agencies, and State, local, and tribal governments.

Consistent with these concepts, the Department has embarked on its own Quadrennial Strategic Planning Process (QSPP), which we believe is consistent with the aims of the draft bill to institute a more formalized strategic planning process to inform and drive the five-year programming process and the near-term budgeting process. The final results of our initial QSPP, the current VA strategic plan for FY 2014-2020, was published in February 2014. VA is kicking off its next quadrennial strategic planning process cycle this year toward development of VA's 2018-2024 strategic plan. We look forward to engaging congress in the process.

VA's QSPP includes an environmental scanning and analysis phase, and has some of the same general goals as DoD's Quadrennial Defense Review (QDR). VA is concerned about expectations that the bill's QVR should be as extensive and detailed as DoD's QDR. VA believes an attempt to replicate the QDR is not appropriate for the Department and would have serious staffing and resource implications.

VA has been working towards building a multi-year programming capability and established the Office of Corporate Analysis and Evaluation (CAE) within the Office of Policy and Planning to lead that effort. The Secretary signed the first Future Years Veterans Plan, covering FY 2015-2019, on April 30, 2013 to document the results of our first true programming effort. We continue to mature the process and currently developing the plan for FY 2017-2021. This effort has in common the same concepts as the legislation in providing an additional tool for VA to provide a more strategic

longer-term view to ensure that capabilities are well-defined and balanced with VA's resource requests.

While we believe the general intent of section two will be met with the emerging PPBE process within VA, we do have significant reservations about any mandate to publish specific dollar and FTE projections beyond the budget year. The strategic planning and programming processes are tools used to align vision and resources to capabilities, programs, and activities, to be distinguished from VA's budget formulation process. A requirement to publish the programming-generated expenditure and appropriation figures along with VA's budget, as required by the bill, could create confusion between those two functions. That in turn could limit flexibility in developing and executing the Department's budget to meet emergent requirements and opportunities.

As noted above, the QVR would require a broader role for VA in developing a National Veterans Strategy that identifies and prioritizes the full range of programs, services, benefits and outcomes regarding Veterans provided by the Federal government. VA believes that its ongoing development and work in "futures" analysis and planning have common aims with this aspect of the QVR proposal, and will be glad to discuss this with the Committee, although a National Veterans Strategy would require broad analysis and policy development that would go well beyond just the VA.

Section two of the bill would also require the Secretary to provide annual "written policy guidance for the preparation and review of the planning and program recommendations

and budget proposals of the elements of the Department." It is current practice for the Secretary or Deputy Secretary to issue such guidance as necessary elements of implementing the Department's planning, programming, and budgeting processes. VA, thus, believes this provision is unnecessary.

Section three of the draft bill would designate the Assistant Secretary whose functions include planning, studies and evaluations as the Chief Strategy Officer of VA. The draft bill goes on to provide in significant detail the responsibilities of the Chief Strategy Officer. VA strongly supports the direction set out in this section, as those areas delineated in the bill are being performed by the Assistant Secretary for Policy and Planning. However, VA is reluctant to codify those responsibilities in legislation, so that those responsibilities can be adjusted as required in the future. VA would like to brief the Committees on the work of the Office of Policy and Planning as it relates to the concepts set out in section three.

Section four of the draft bill would require VA to conduct a study of the functions and organizational structure of the Office of the Secretary as well as the entire Department. It also would require VA to engage a contractor to perform a separate parallel review of those same topics. VA recognizes there is always more to do, but believes our existing planning processes are adequate to consider beneficial organizational changes. One of the strategies in our strategic plan is to rethink our operations as a Department, to identify and address any internal organizational, policy, procedural, perceptual, and cultural boundaries that constrain our ability to coordinate, integrate, and deliver

benefits and services. And we are actively working on changes. The MyVA reorganization plan will establish a new VA-wide customer service organization. We are establishing a single regional framework that will simplify internal coordination, facilitate partnering and enhance Veteran experience. We are working with our partners to establish a national network of Community Veteran Advisory Councils to coordinate better service delivery with local, State and community partners. And, we are Identifying opportunities for VA to realign its internal business processes into a shared services model in which organizations across VA leverage the same support services, to improve efficiency, reduce costs and increase productivity across VA. Rather than conducting a study, we are making changes and will be continuously studying the results of those changes and continuously improving our structure and processes. The MyVA Team has had and will continue to have consultations with the associated Committees and staff throughout Congress.

We appreciate the Committee's attention on the critical topic of VA strategic planning. It is an integral to our drive to continue improving the health care, compensation benefits, memorial honors, and other support and services we provide to the Nation's Veterans.

H.R. 245 Bill Concerning Claims and Effective Dates

This draft bill would codify several current VA regulations that are effective until March 24, 2015, and add other provisions to title 38 relating to effective dates for claims received by VA. Section 1(a) of the bill would amend 38 U.S.C. § 5100, which currently

defines the term "claimant," to add definitions for "claim," "formal claim," "informal claim," and "reasonably raised claim." Section 1(b) would amend 38 U.S.C. § 5101(a) to codify VA's current "informal claim" regulation, which VA removed effective March 24, 2015, in favor of a standard "intent to file" process. If added, 5101(a)(3)(A) would invalidate VA's recent rulemaking which requires claims to be filed on standard forms, by requiring VA to accept informal claims submitted "in a format other than on an application form prescribed by the Secretary." Section 1(c) of the bill would amend 38 U.S.C. § 5110(a), regarding effective dates for VA's award of benefits, by essentially codifying VA's current regulation on effective dates for informal claims. The new provision at 5110(a)(2) would invalidate VA's recent rulemaking by requiring VA to establish an effective date for benefits based upon a claimant's non-standard, informal communication, as long as the claimant files an application by not later than 180 days after the date VA furnishes the person the required application form. Finally, section 1(d) of the bill would amend title 38 to create new section 5103B and require VA to identify, address, and adjudicate "reasonably raised" claims in the course of addressing and adjudicating any claim as part of a formal claim. The amendments made by this bill would take effect on the date of the enactment and apply with respect to a claim submitted on or after such date.

VA strongly opposes this bill because it would invalidate a key component of VA's plan to eliminate the disability compensation claims backlog, and will result in continued delay and frustration for hundreds of thousands of Veterans seeking disability compensation. The primary intent of this bill appears to be to overrule VA's recent

rulemaking and maintain the current concept of the "informal claim" for purposes of establishing an effective date for an award of benefits when VA adjudicates a claim. The new rule is crucial to VA's long term efforts to modernize the claim system for the benefit of all Veterans, while maintaining a pro-Veteran process that is accessible to individual Veterans and their families.

In order to process Veterans' claims for benefits as accurately and efficiently as possible, VA is moving toward a paperless electronic claims processing system. A crucial component of that transition is that claims must originate on standardized inputs that can be easily identified and contain the core data needed to process the claim. As an indispensable part of this process, on October 31, 2013, VA published a notice of proposed rulemaking to improve the quality and timeliness of its processing of Veterans' claims for benefits (RIN 2900-AO81, Standard Claims and Appeals Forms). VA intended that these changes would modernize the claim process so that all Veterans receive more timely and accurate adjudication of their claims. As VA noted in issuing its proposed rule, it receives an enormous volume of non-standard submissions under its current rules. Current rules make it difficult to identify claims and unintentionally incentivize submission of claims in non-standard formats that frustrate timely, accurate, and orderly claims processing. To improve claim processing for all Veterans, VA proposed to eliminate the concept of an "informal claim" and replace it with a process that would incentivize the submission of claims in a format more amenable to efficient processing, while still allowing Veterans to receive favorable effective date treatment

similar to that available under current "informal claim" rules. This rulemaking is a key component of VA's plan to improve delivery of benefits to Veterans.

The Final Rule, published on September 25, 2014, carefully and comprehensively balances the interests of modernizing the VA claims system to facilitate accurate and timely adjudications for all Veterans with allowing claimants to easily initiate claims and preserve the most favorable effective date. VA, among other things, addressed the comments it received by replacing the non-standard informal claim process with a standardized process that retains many liberalizing features of VA's current regulations. The Final Rule allows claimants and their representatives to preserve a favorable effective date by submitting minimal information and establishing an "intent to file" a claim. This process enables claimants to submit an "intent to file" via a one-page standard paper form, through initiating and saving an electronic application for benefits, or by an oral intent communicated to designated VA personnel who record such intent in the claimant's record. The Final Rule prescribes an effective date based upon submission of the "intent to file" if VA receives a complete claim on the prescribed form within one year of the date it received the intent to file. The submission of an intent to file serves as an effective date placeholder for claimants who ultimately submit a complete application in the same manner as the informal claim regulations that are effective until March 24, 2015. However, unlike the provision in H.R. 245, which would allow a claimant 180 days to submit a formal claim, VA's Final Rule affords claimants up to one year to file a complete application.

VA opposes the bill because it would run counter to VA's efforts to assist Veterans by improving the efficiency of the claims process and would impair VA's ability to achieve and maintain progress on our backlog reduction. It would obviate the careful balancing of interests reflected in VA's Final Rule, and instead would codify in statute rules that have proven to be antiquated, inefficient, and general barriers to modernization efforts on behalf of all Veterans. In crafting its Final Rule, VA addressed the public commenters' primary concerns by preserving a liberal effective date policy for claimants, regardless of whether they file electronically or on a paper application. While the Final Rule does require a standardized input in order to establish an effective date, VA took great care to make these standardized inputs as permissive and accessible to Veterans as possible, extending the "intent to file" process even to oral contacts with designated personnel. The Final Rule preserves the effective date treatment afforded to Veterans under current rules, while also preserving the overall intent of VA's rulemaking, which was to enhance efficiency and accuracy of claims processing for all Veterans by requiring submission of standard forms. Further, because VA's rule carefully preserves core pro-Veteran features of the current regulations, this bill would have little if any offsetting benefit in terms of maintaining the openness and accessibility of the claims process.

Additionally, VA opposes this bill because the provisions pertaining to informal claims and reasonably raised claims would require VA to continuously review mail and records for putative claims that a claimant may have raised in non-standard communications and submissions, which would entail not only inefficiency and delay, but also a

likelihood of inconsistency and dispute over whether a particular communication constitutes a claim. That requirement would undermine VA's carefully considered efforts to improve the timeliness of claims processing for all claimants while ensuring that the application process is as simple as possible and preserving the beneficial effective-date features that have long been a feature of the VA claims process.

VA's Final Rule also strikes an appropriate balance between the goal of ensuring timely, accurate, and fair decisions for all Veterans and the interest in addressing claims reasonably raised by a claimant's submissions. VA's Final Rule clarifies that it will continue to adjudicate as part of the claim entitlement to any ancillary benefits that arise as a result of its decision on a claim. It prescribes that a claimant may, but need not, assert entitlement to ancillary benefits at the time that he or she submits a complete claim. It also clarifies that VA will consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition, as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in VA's Schedule for Rating Disabilities. Under the Final Rule, VA is required to identify and adjudicate all issues reasonably within the scope of the issues raised in the complete claim, based upon a broad and sympathetic reading of the record and the claimant's submissions. Similarly, VA's decision on an issue within a claim implies that VA has determined that evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues addressed in that decision.

For the reasons stated above, the Department has determined that this legislation could harm Veterans by adding inefficiency, uncertainty, and cause excessive delays to the claims process.

Costs related to this bill are not available at this time.

We appreciate the opportunity to present our views on these bills and look forward to working with the Committee.

FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

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STATEMENT OF
JOSEPH A. VIOLANTE
NATIONAL LEGISLATIVE DIRECTOR
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENATIVES
JANUARY 27, 2015

Mr. Chairman and Members of the Committee:

Thank you for inviting the DAV (Disabled American Veterans) to testify at this legislative hearing of the House Veterans' Affairs Committee. As you know, DAV is a non-profit veterans service organization comprised of 1.2 million wartime service-disabled veterans that is 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 Committee.

H.R. 189

H.R. 189, the Servicemember Foreclosure Protections Extension Act of 2015, introduced by Representative Grayson, would extend foreclosure and eviction protections for service members.

DAV has no resolution from our membership concerning this issue; thus, we take no formal position on this matter.

H.R. 216

H.R. 216, the Department of Veterans Affairs Budget Planning Reform Act of 2015, introduced by Ranking Member Brown, would direct the Secretary of Veterans Affairs to submit to Congress a Future-Years Veterans Program and a quadrennial veterans review, to establish in the VA a Chief Strategy Officer. H.R. 216 would establish new planning and budgeting processes, as well as study and make organizational changes affecting VA's ability to develop and implement budgets and strategic plans. The legislation would establish five new processes to accomplish these purposes.

First, the bill, beginning in 2019, would require VA to conduct a Quadrennial Veterans Review (QVR) every four years, modeled after the Quadrennial Defense Review (QDR) and

Quadrennial Homeland Security Review (QHSR) currently required by law. The QVR would study and report a strategy for meeting the nation's commitment to veterans and the resources required to meet that commitment. The QVR is intended to be a futures-based look at opportunities, challenges, policies and strategies related to meeting veterans' needs. The report would also examine the priorities for veterans programs and assess the effectiveness of VA's organizational structure.

The bill requires that VA conduct its review in consultation with other federal agencies, as well as a wide range of stakeholders, "including State, local, and tribal government officials, members of Congress, veterans service organizations, private sector representatives, academics, and other policy experts."

Second, the bill would require VA to develop and submit annually a Future-Years Veterans Program (FYVP), which is modeled after the Future-Years Defense Program (FYDP) and the Future-Years Homeland Security Program (FYHSP). The FYVP would lay out a five-year plan for meeting the nation's commitment to veterans as well as delineate the resources necessary to meet that commitment. The FYVP would include five-year estimates of the budget and appropriations levels on a program element basis in order to ensure that resources properly align with outcome-based plans and programs. The FYVP would be submitted concurrent with VA's annual budget submission and the bill would require that it be consistent with funding requests contained in the Administration's budget submission. The bill would also require that the FYVP be coordinated with the QVR, which serves as the foundation for developing the FYVP's five-year plans.

Third, the bill would require the Secretary to annually provide certain policy guidance to VA planning, programming and budgeting officials throughout VA responsible for developing individual program budget recommendations. The policy guidance from the Secretary would be required to be based on the most recent QVR and FYVP, as well as estimates of the "resource levels projected to be available" in future years.

Fourth, the bill would create the position of Chief Strategy Officer (CSO) to be filled by the Assistant Secretary for Policy and Planning, or if there is a subsequent reorganization, the Assistant Secretary responsible for agency planning. The CSO would have broad responsibilities for overseeing the planning, programming, budgeting and execution functions Department-wide, to include health care, benefit and cemetery programs. The CSO would have significant independent authority, reporting only to the Secretary. The CSO's responsibilities for budgeting would be on the same level as VA's Chief Financial Officer (CFO), a role designated for the Assistant Secretary for Management. The CSO would be chiefly responsible for managing the new QVR, FYVP and policy guidance requirements contained in this bill.

Fifth, the bill would require VA to undertake a comprehensive one-year study of the organizational structure of the Secretary's office and the Department as a whole. In addition, the bill would require that an independent contractor conduct a parallel study of the organizational structure of the Secretary's office and of the Department. The independent study would be included within the report submitted by the Secretary to Congress.

H.R. 216 has a number of intended purposes, which would include the following:

- To strengthen VA's capacity to plan for near- and long-term future needs of veterans;
- To ensure that strategic planning is future-looking and outcome-based;
- To create a more unified planning, programming, budgeting and execution process;
- To better align VA's plans with their resource requests; and
- To increase the transparency of VA's planning and budgeting processes.

Over the past year, in which a VA health care scheduling scandal led to a VA health care access crisis, it has become apparent that the connection between VA's needs and VA's resources to meet those needs do not align properly. For years, DAV and our partners in *The Independent Budget* have pointed out such mismatches in funding for VA medical care, construction, claims processing and many other VA programs and benefits. The proposed legislation could help to address this problem by adding more transparency and rigor to VA's budget and planning process. DAV generally supports this legislation, although we do have a few concerns that we would like to see addressed during the legislative process.

First, although the QDR and QHR are readily available online, and we would assume that the QVR would be equally accessible, it does not appear that the FYDP or the FYHSP are similarly available. Although it is understandable that both DOD and DHS would keep classified programs' budgeting and planning information shielded from public view, there appears to be no part of their Future-Years Programs that is publicly available for review, even for their many unclassified programs and budgets. As such, we recommended last year that the legislation be amended to require that both the QVR and the FYVP be made publicly available at the same time they are delivered to Congress.

We also have concerns about the role of the Office of Management and Budget (OMB) in this new planning and budgeting process. Since the bill requires that the Administration's budget be "consistent" with the FYVP budget estimates, would OMB have a direct or indirect ability to revise or constrain the budget and appropriations levels contained in the FYVP? In setting out "policy guidance" to the individual program offices, the Secretary is required to inform them of "resource levels projected to be available" as they make their budget estimates; would these levels come directly or indirectly from OMB?

In addition, we have concerns about the creation of a new CSO inside VA. The language of the bill would give the CSO significant independence in overseeing all planning and programming throughout VA, including that done within the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA) and the National Cemetery Administration (NCA). Would the CSO have overlapping authority with the Under Secretaries of these administrations? In preparation of the budget, the CSO also would play a significant role and possess final approving authority according to the bill's language. How would the CSO and the CFO interact during preparation of VA's budget; are they co-equal and how would disagreements between them be settled? Would this lead to greater harmony or conflict within VA's budget formulation process?

Finally, we have concerns about the role veterans service organizations would play in the development of the QVR. The bill would require VA to consult with a wide range of stakeholders, both governmental and nongovernmental. As organizations that have not only great interest in veterans' policies, but great experience and expertise in dealing with them, we have concerns about whether this broad consultation process would dilute our input. While there is always a role for outside perspectives to ensure fresh thinking within public agencies, VSOs are not idle stakeholders; collectively we provide direct assistance to VA and veterans in many areas, and particularly in representing veterans in their claims for benefits and services. We all have service officers who work inside VA facilities and behind information technology (IT) firewalls, playing an integral role in the claims processing system and serving veterans as attorneys-in-fact. We are concerned about the bill's potential of diminishing our influence and putting us on par with less interested, involved or informed stakeholders during the consultation process.

We look forward to working with the Committee to address these concerns in order to fully support this legislation.

H.R. 245

H.R. 245, introduced by Representative Ralph Abraham, would codify certain existing provisions of law relating to effective dates for claims under the laws administered by the Secretary of Veterans Affairs. H.R. 245 has two major provisions; the first would re-establish certain safeguards for claimants who currently file informal claims in order to protect their effective dates. Under a VA rule that is set to take effect in March, claimants will no longer be able to file informal claims; instead, the rule establishes a new "Intent to File a Claim" procedure and requires that claimants must file both an "Intent to File a Claim," as well as the actual claim itself only on standardized written forms, online or through VA's call centers. For those veterans who send VA a written communication in which they indicate their intention to file a claim, VA will treat that written communication only as a request for a claims application. As a result, the earliest effective date for those claims would be the date they returned the properly completed VA form, not the date of their initial correspondence, as is done currently.

By contrast, a veteran who begins an electronically filed claim will have the date they initiate that electronic claim as the effective date. Similarly, a veteran who calls VA to indicate their intention to file a claim will have an "Intent to File a Claim" form filled out by a VA representative and filed to protect their effective date. Only written communications on non-standard forms are penalized by potential reduction of accrued benefits.

H.R. 245 would seek to remedy this situation by requiring that claimants who send written communications to VA indicating an intent to file a claim would be considered an informal claim and would have up to 180 days to complete the required form to protect their effective date. This legislation would restore most of the informal claims process as it exists today. However, currently a veteran has one year to formalize their claim, which is the same time period allowed under the new "Intent to File a Claim" procedure.

DAV and many other veterans service organizations and stakeholders expressed serious concerns during the comment period on the new rule when it was first proposed. We noted during the comment period that a penalty was being imposed upon those that attempted to make their filings through written communications not on standard forms. We understand and recognize the need for standardization; however, VA's March 2015 rules go too far and are too stringent. By not offering some measure of protection for those claimants that are either unaware of VA's filing requirements, or fail to meet VA's standards for other reasons, which could include severe disability, age, or lack of resources, VA would not be treating all veterans equitably.

DAV supports the purpose of this provision, to protect the rights of veterans; however, we strongly recommend that the informal claim period be restored to a full year, same as the new "Intent to File a Claim" procedure. Such a change would ensure that veterans who file claims in different manners are treated equitably.

The bill's second provision would also require the Secretary to identify, address and adjudicate reasonably raised claims that are placed at issue in the course of addressing or adjudicating any claim, including evidence relating to entirely separate conditions never identified as part of a formal claim. This provision addresses another part of the new rule set to take effect in March that would change current rules requiring VA to treat examination reports indicating a disability or worsening disability as an informal claim for such conditions, thereby triggering VA's duty to assist the veterans in that claim. Further, H.R. 245 would clarify that VA must also perform a sympathetic reading of the claim to determine if there are any other conditions that are "reasonably raised" in in the evidentiary record. DAV supports this provision.

H.R. 280

H.R. 280, introduced by Chairman Miller, would authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the VA. The bill amends title 38, United States Code, by adding a section that allows the Secretary to issue and order directing an employee to repay the amount, or a portion of the amount, of any award or bonus paid to an employee. Prior to repayment, the employee would be afforded notice and an opportunity for a hearing conducted by the Secretary; however, the decision by the Secretary would be final and not reviewable by any other agency or court.

DAV has no resolution from our membership concerning this issue; thus, we take no formal position on this matter.

H.R. 294

This measure would provide severely ill or injured veterans, who are no longer able to care for themselves in their own homes, a more intimate, homelike alternative to nursing home care. Established in 2000, VA's Medical Foster Home (MFH) program offers 24-hour care to

such veterans in single-family residences. MFHs are limited to no more than three eligible[1] veteran residents each; caregiver support is provided by the MFH attendant; and, health care supervision is provided through VA's Home-Based Primary Care program or VA spinal cord injury home care program.

Patient participation in the MFH program is voluntary and veteran residents report very high satisfaction ratings. In 2013, the administrative costs for VA were less than $10 per day, and the cost of Home Based Primary Care, medications and supplies averaged less than $50 per day. However, veterans who qualify for nursing home care fully paid for by the government,[2,3] must pay the full cost out of their own pocket to live in a MFH. Veterans who are unable to pay approximately $1,500 to $4,000 per month to MFH are not able to avail themselves of this benefit, so many are placed in nursing homes at much greater cost to VA. This measure would address this inequity by giving VA a three-year authority to pay for veterans, who would qualify for VA-paid nursing home care placement, to reside in a VA-approved MFH.

Despite the laudable aim of and our strong support for this measure, we do not believe its goal will be successfully achieved unless Congress alters VA's authority to use "provider agreements" to support MFH placements under this bill. Since VA is not able to use provider agreements to pay for MFH care according to this legislation, the alternative is to use contract vehicles. Because of burdensome reporting and auditing requirements inherent in federal contracting, we believe MFH providers, most of whom are single-home operators using basic business tools, would not be willing or capable of entering into complex contracts with VA.

The longer Congress takes to reform VA's provider agreement authority, the less access and choice severely ill and injured veterans will have to an array of non-VA home- and community-based service providers such as MFHs that cost less to the taxpayer than expensive nursing home care placements. We urge the Subcommittee to pass this legislation and reform VA's provider agreement authority.

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[1] (1) The veteran is unable to live independently safely or is in need of nursing home level care; (2) The veteran must be enrolled in, or agree to be enrolled in, either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and (3) The medical foster home has been approved in accordance with 38 C.F.R. § 17.73(d).

[2] VA's policy on nursing home eligibility required that VISNs provide nursing home care to veterans with 60 percent service-connected disability ratings who are also classified as unemployable or permanent and total disabled.

[3] P.L. 106-117, 113 Stat. 1545 (1999) required that through December 31, 2003, VA provide nursing home care to those veterans with a service-connected disability rated at 70 percent or greater, those requiring nursing home care because of a condition related to their military service who do not have a service-connected disability rating of 70 percent or greater, and those who were admitted to VA nursing homes on or before the effective date of the act. Subsequent law extended these provisions.

STATEMENT OF

ALEKS MOROSKY, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 189, H.R. 216, H.R. 245, H.R. 280, H.R. 294

WASHINGTON, D.C. January 27, 2015

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on today's pending legislation.

H.R. 189, Servicemember Foreclosure Protections Extension Act of 2015:

The VFW supports this legislation which would continue, for one additional year, the extension of the period that veterans are protected from mortgage sale or foreclosure following their military service, from nine to twelve months. The VFW supported this as a provision of the *Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012* (PL 112-154), believing that veterans should be afforded the maximum opportunity to gain financial stability when transitioning from Active Duty to civilian life, without the threat of losing their homes. The January 2014 GAO report, also mandated by PL 112-154, found that, although data was limited, military borrowers were at a higher risk of mortgage delinquency in the first year after leaving active service, but those with these protections in place were more likely to resolve those delinquencies than others. Accordingly, the VFW believes that the one year protection window should not only be extended, but we urge Congress to make this policy permanent.

H.R. 216, Department of Veterans Affairs Budget Planning Reform Act of 2015:

This legislation would require the Department of Veterans Affairs (VA) to estimate and report to Congress its budgetary needs for four fiscal years. It would also establish a Quadrennial Veterans Review to ensure VA has a strategy to meet the future needs of our nation's veterans. Last summer, in his testimony before this Committee, Deputy Secretary Sloan Gibson admitted that VA has historically "managed to a budget number, as opposed to managing to requirements." In so doing, veterans suffered because VA failed to build the capacity and organizational structure needed to provide them the high-quality benefits and service they

deserve. The VFW strongly agrees that VA should constantly analyze veterans' needs and develop a strategy that will enable it to address such needs – not just today and tomorrow, but for years to come.

Establishing a quadrennial view would ensure VA is ready and capable to meet the changing needs of our veterans. This concept has been successful for the Department of Defense (DOD) in prioritizing its strategic pillars to ensure it is able to protect America and advance her interest abroad. The VFW supports the concept of a Quadrennial Veterans Review, but we do not believe VA should prioritize veteran benefits. VA benefits and programs are vital to the veterans they serve – one benefit is not more important than the other and should not be treated as such. Instead, we suggest the quadrennial review analyze the fiscal demands of the full range of programs and capabilities the Department administers. This would ensure VA adjusts its programs to fit emerging trends and maximizes its finite resources to meet veteran needs.

This bill would also require VA to conduct a study to ensure its functions and organizational structure are effective, efficient, and economical. The VFW applauds Secretary Robert McDonald for realizing that VA's organizational structure needs to change. In November, he announced the MyVA initiative to, among other things, reorganize the Department's structure to better meet veteran needs. The VFW believes that this bill's organizational structure study would be duplicative of Secretary McDonald's efforts.

H.R. 245, To amend title 38, United States Code, to codify certain existing provisions of law relating to effective dates for claims under the laws administrated by the Secretary of Veterans Affairs:

H.R. 245 makes two substantive changes to existing code. First, the bill codifies the effective date for a claim to include the date the Department of Veterans Affairs receives an informal claim. The informal claim is defined as "a communication in writing requesting a termination of entitlement or evidencing a belief in entitlement to a benefit under the law…". The bill then outlines the steps VA must take to ensure the claimant receives the formal application form, VA Form 21-526. This is a much needed provision that will provide clear understanding for a claimant's effective date of claim.

The second provision places a 180-day time limitation on veterans who have filed an informal claim to complete and return the VA Form 21-526 to VA. Section 5102, title 38, U.S.C., provides claimants a full year to complete and return the application form under other circumstances. The VFW adamantly opposes this provision. The VFW believes there should be parity between the existing law and this proposal and recommends that claimants are afforded a full year to submit their formal claim after receipt of VA Form 21-526. This does not place additional burden on VA and will not count toward the time the claim takes to be adjudicated.

H.R. 280, To authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs:

The VFW agrees with this legislation. Employees receive bonuses as an incentive and recognition for their superior work performance. But if a bonus is found, after the fact, to be awarded to an employee who manipulated data, put veterans at risk of harm or in some other way

defrauded the government to receive that bonus, the Secretary should have the authority to recoup the bonus amount.

H.R. 294, Long-Term Care Veterans Choice Act:

The VFW supports this legislation, which would add language to Section 1720 of Title 38 to allow veterans who receive VA care and require a protracted period of nursing home care to transfer into an adult foster home at their request. Under the bill, such homes must be "designed to provide non-institutional, long-term, supportive care for veterans who are unable to live independently and prefer a family setting." VA currently has the authority to reimburse institutional care facilities such as nursing homes for long-term domiciliary care, but veterans who choose to live in adult foster homes must do so at their own expense. To grant VA the authority to reimburse adult foster homes would provide veterans with an additional residency choice, potentially improving the quality of life for those who would prefer this option.

The VFW strongly believes that all non-VA services should be provided in conjunction with proper care coordination. VHA Handbook 1141.02, Medical Foster Home Procedures, establishes the policies and standards of VA care coordination for veterans who choose to live in medical foster home settings. It requires an interdisciplinary VA Home Care Team to provide the veteran with primary care, regularly communicate with the foster home caregiver, and monitor the care provided by the foster home with frequent unannounced visits. The VFW feels that these would ensure adequate care coordination for veterans who chose to participate in a fully-funded adult foster care program. However, VHA Handbook 1411.02 is still awaiting recertification, originally scheduled for November 2014. The VFW recommends that the care coordination policies outlined in that document should be made permanent by adding them to the language of this legislation.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you or the Committee members may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, VFW has not received any federal grants in Fiscal Year 2014, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.

STATEMENT OF
ZACK HEARN, DEPUTY DIRECTOR FOR CLAIMS OF THE VETERANS AFFAIRS AND REHABILITATION COMMISSION OF THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
PENDING LEGISLATION

JANUARY 27, 2015

H.R. 189: The Servicemember Foreclosure Protections Extension Act of 2015

To extend foreclosure and eviction protections for servicemembers, and for other purposes.

Despite the overall economic recovery across our nation, some military service members, particularly those leaving active duty, continue to face financial challenges.

Those challenges may include the need to find new employment after leaving active duty service, among other things. Additionally, a slow recovering real estate market in some areas of the country can make it difficult for military members to sell their homes or purchase new ones upon receiving new orders. These financial challenges still exist for many service members, particularly those re-acclimating to civilian life after serving abroad.

The Servicemembers Civil Relief Act (SCRA) provides financial services protections such as interest rate relief and foreclosure protection for military personnel serving on active duty. Some of these financial services protections extend for a period of time post-active service including the current one year protection from foreclosure for military homeowners that originated their mortgage prior to their active service.

The American Legion believes the protections provided in SCRA are essential to safeguarding those who serve, and their families, from unnecessary financial stress and peril[1].

The American Legion supports the passage of this legislation.

H.R. 216: The Department of Veterans Affairs Budget Planning and Reform Act of 2015

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to submit to Congress a Future-Years Veterans Program and a quadrennial veterans review, to establish in the Department of Veterans Affairs a Chief Strategy Officer, and for other purposes.

This legislation, broad in scope, seeks to formalize planning procedures and develop tools for use, both within VA and by outside but vital stakeholders such as Congress and Veteran Service

[1] American Legion Resolution No. 324: *Support and Strengthen the Servicemembers Civil Relief Act (SCRA)* – AUG 2014

Organizations (VSOs), to determine whether VA budgeting is on track to meet their goals and deliver benefits and services to the nation's veterans. The intention of the legislation is admirable, as more transparency and access to more data is helpful for all stakeholders to ensure VA is moving forward in the direction that will best meet the needs of veterans. The very important concepts outlined in this legislation merit discussion on a section by section basis, and the following points should be considered if this legislation moves forward.

Future-Years Program: This section outlines the mission for VA to create a "Future-Years Veterans Program" to coincide with the annual budget submission. The Future-Years program would be similar to the budget, but would also cover expected expenses over a five year period. The first two years of the Future-Years program would exactly mirror the budget submission (which presumably would cover two years in anticipation of advanced appropriations) but would also contain out year projections to meet the goals of VA in seeing to the needs of the nation's veterans. This process potentially could be useful to outside observers, as if VA were to suddenly lower funding from a key project in one year's budget, and not reflect a down the road increase, it would immediately raise red flags as to how they still intended to meet the outcome down the road with drastically reduced funding.

Furthermore, by comparing the Future-Year plans from year to year, within a brief period, any budgetary legerdemain would presumably become glaringly obvious. An example of this type of behavior can be seen with recent underfunding of VA's Construction budgets. Despite the fact that VA has a Strategic Capital Investment Planning (SCIP) program to determine long term construction needs, the budget request for Major and Minor Construction over the past few years were low. As noted by past National Vice Commander of The American Legion William Schrier before the Senate Veterans' Affairs Committee[2], VA's SCIP plan called for $65 billion in projects over the next ten years, which should have amortized to approximately $6.5 billion a year in construction costs, yet VA's own ask was less than $2 billion. This glimpse into the longer term picture was what prompted The American Legion to push for more funding for Construction so VA would not fall behind their SCIP program needs. Sadly, the budget was not increased, but perhaps with better tools to see the discrepancies, Congress will also be able to recognize these shortfalls and help adjust VA's budget upwards when critical goals are in danger of not being met.

Quadrennial Veterans Review: This would require, starting in Fiscal Year (FY) 2017 and every four years thereafter, a review of the commitments of the United States to veterans and a determination of what resources are necessary to deliver on those commitments. This review would be comprehensive in scope, would examine all policies and strategies, and would require consultation not only within the Department, but with other governmental bodies, as well as State and local governments, tribal officials, private sector and academic concerns, and importantly members of VSOs.

Herein lies a major concern of The American Legion, as the full role of VSOs is not clearly delineated, and it is unclear what is meant by re-examining the commitments of the United States to veterans. In certain cycles, when the blood sacrifices of our nation's veterans are less

[2] Statement of William F. Schrier, Department of Washington on behalf of The American Legion before the Committee on Veterans Affairs, United States Senate, February 29, 2012

prominent on the nightly news, there are forces that rise to question why we provide compensation to our veterans. Though the devastating effects of exposure to the chemical defoliant Agent Orange were only brought to light by the tireless efforts of advocates like The American Legion, there are those who would roll back the clock on hard fought gains for those Vietnam veterans who have suffered devastating effects and terrible disabilities because of exposure. When the eyes of the nation are not squarely on the wounded veterans, there are those would question the entire system of VA disability.

The rise of such attitudes and how they might factor in to "a re-examination of the commitments of the United States to its veterans" is deeply troubling to The American Legion. The American Legion strongly opposes any administrative or legislative proposals to dilute or eliminate any provision of the disability compensation program[3]. In order to ensure the voice of those most important to an overview of VA commitments, the veterans who would be affected, is not lost there would have to be clearer direction about the nature of VSO involvement in the evaluation process.

Already VSOs contribute greatly to the tools Congress and VA have at their disposal to evaluate the effectiveness of VA programs. The American Legion provides annual "System Worth Saving" reports on the effectiveness of health care delivery in the VHA system, as well as "Regional Office Action Review" assessments of VBA claims processing. VSOs are clear experts in VA programs, and their essential role in the evaluation of VA should be reflected.

Section III: This section would designate a Chief Strategy Officer (CSO) for the Department of Veterans Affairs. The CSO would be a principal advisor to the Secretary, and would advise on long range strategic planning and the implications of such planning. This would include, but not be limited to, such tasks as cost estimation, integration of planning, analysis on the planning and programming phases of the new system, and developing and executing the Future-Years Program. This would be done to give this new system appropriate heft and weight within the Department, and ensure the work of planning the future programs was not circumvented by other concerns.

Section IV: This section provides for a study on the functions and organizational structure of the office of the Secretary of Veterans Affairs and of VA in general. As with any major change in scope to an organization's long range planning mechanisms, a study of the existing systems in place is warranted. The study mandated by this legislation will take place no later than one year after the enactment of the legislation.

Overall, the importance of ensuring VA has proper tools in place for long range strategic planning is something The American Legion supports. We are continuing to study and evaluate the matter, and are working with our membership and leadership to analyze the legislation as it evolves to develop a position that reflects what is best for the veterans of America. We appreciate the Ranking Member's diligence and attention to VA's resources in bringing the legislation forward, and hope to continue to work with Ms. Brown and the committee to ensure the best outcome for America's veterans.

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[3] American Legion Resolution 18: *Department of Veterans Affairs (VA) Disability Compensation,* AUG 2014

The American Legion supports the passage of this legislation.

H.R. 245:

To amend title 38, United States Code, to codify certain existing provisions of law relating to effective dates for claims under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

A little over a year ago, in the Federal Register, VA promulgated a proposed rule change[4] which, though potentially innocuous on the surface, could negatively impact veterans. The change, insisting that all initial claims *must* be filed on a specific VA form, effectively eliminates the current "informal claim" which has been important for protecting the effective dates of veterans' claims.

Through the elimination of the traditional informal claim, VA eliminates the opportunity to create an effective date at the point where the veteran opts to pursue a disability claim. Our understanding of the proposed regulation affects only the veterans seeking disability compensation through non-electronic means. If a veteran applies for disability compensation through electronic means through the submission of an "incomplete application", VA will establish an effective date at the time of the incomplete application submission as long as the veteran submits a complete application within one year.

Through adoption of these changes, VA will essentially create a division between veterans with internet access and those without internet access. According to the National Center for Veterans Analysis and Statistics, the average age of male veterans was 64 years old in 2011[5]; the United States Census Bureau reported that only 45.5 percent of Americans (veteran and non-veteran) age 65 and older have access to the internet from any location[6]. Assuming these statistics are similar in the veteran community as the non-veteran community regarding internet accessibility, VA could be potentially eliminating for millions of veterans an appropriate effective date simply by virtue of whether the veteran has access to the internet.

Beyond the issue surrounding informal claims is the status of inferred claims. The proposed regulation suggests that the veteran would no longer be permitted to receive a grant for service connection based upon an inferred claim as the veteran never filed for the claim. Frequently, a veteran may have secondary or aggravated conditions by a service connected condition the veteran is seeking. If the veteran receives the appropriate nexus statement supporting this relationship either from a VA medical professional or an outside medical professional, the veteran under current regulations is entitled to receive these benefits; however, under this proposal, this would not occur.

Ultimately, The American Legion is concerned VA is sacrificing veterans' choices and options in the interest of making the claims system easier for VA to work with. However, the disability

[4] "RIN 2900-AO81—Standard Claims and Appeals Forms" - 78 Fed. Reg. 65,490 (October 31, 2013)

[5] http://www.va.gov/vetdata/docs/SpecialReports/Profile_of_Veterans_2011.pdf
[6] http://www.census.gov/prod/2013pubs/p20-569.pdf

claims system does not exist to serve VA; it exists to serve the veterans disabled through service to their country.

While it may be beneficial, both for veterans and the VA, to have veterans submit claims in a certain fashion, such as through the Fully Developed Claims (FDC) process or through the eBenefits portal, not every veteran is going to find that choice in their best interest or find that choice to be the one that meets their particular set of needs. There are better ways to approach channeling veterans towards the proper path for receiving benefits.

The system for adjudicating claims for disability benefits for veterans is different and it has been recognized that "the character of the veterans' benefits statutes is strongly and uniquely pro-claimant.[7]" Indeed the core mission and goal of the Department of Veterans Affairs (VA) is to care for and assist veterans through that process. This legislation singles out and reinforces VA's commitment to two key components of that commitment. We cannot take away veterans' rights to choose the options for their claims that best suit their needs. To eliminate or substantially reduce informal and inferred or "reasonably raised" claims would be a dilution of longstanding appellate rights in the veterans' claims system, a concept that is anathema to The American Legion which strongly opposes any administrative or legislative proposal to dilute or eliminate any provision of the disability compensation system[8].

The American Legion supports the passage of this legislation.

H.R. 280:

To authorize the Secretary of Veterans Affairs to recoup bonuses and awards paid to employees of the Department of Veterans Affairs.

The Department of Veterans Affairs (VA) has come under scrutiny by Congress, veteran service organizations, media and in the veterans community for its failures in leadership performance and accountability which has resulted in numerous quality of care issues, patient safety issues and veteran deaths, yet, VA executives who presided over the mismanagement and negligence were more often than not to have received a bonus.

When an executive receives a bonus after overseeing a system that failed veterans and caused suffering, it erodes the confidence of those veterans in the system meant to serve them. The problem is relatively widespread as "more than $380,000 in bonuses were awarded last year [2013] to directors and top executives at 38 VA hospitals where investigators are looking into claims of falsified appointment records or where there have been excessive delays in patient care[9]." Furthermore, in Pittsburgh, a VA regional director famously received a $63,000 bonus

[7] Hodge v. West, 155 F.3d 1356, 1362 (Fed. Cir. 1998); see also Hayre v. West, 188 F.3d 1327, 1333-34 (Fed. Cir. 1999) (pointing out Congress' recognition of "the strongly and uniquely pro-claimant system of awarding benefits to veterans")

[8] American Legion Resolution 18: *Department of Veterans Affairs (VA) Disability Compensation* – AUG 2014

[9] "VA Bonuses went to Officials at Delay-Prone Hospitals," – USA Today, July 4, 2014

despite at least five veterans dying from exposure to a *Legionella* bacterium outbreak in the Pittsburgh VA medical system he oversaw[10].

The American Legion strongly believes accountability is critical to establishing and maintaining trust with the veterans' community. The American Legion supports the use of special prosecutors to investigate and vigorously prosecute any VA employees engaged in fraudulent practices designed to improperly award bonuses or other financial or meritorious awards to the perpetrator[11]. Furthermore, The American Legion believes all VA bonuses must be based on transparent, public, qualitative and quantitative measures[12]. Where this is found not to be the case, these employees should not benefit at the expense of veterans.

The American Legion supports the passage of this legislation.

H.R. 294: The Long Term Care Veterans Choice Act

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to enter into contracts and agreements for the transfer of veterans to non-Department medical foster homes for certain veterans who are unable to live independently.

Adult Foster Care homes are homes that provide veterans with an alternative setting to traditional nursing home elder care. Adult Foster Care homes are single family homes which provide room, board and supervision, and personal care services.

The American Legion has no resolutions addressing the efficacy of these living arrangements as opposed to more traditional nursing care, therefore The American Legion neither supports, nor opposes these homes at this time.

The American Legion has no position on this legislation.

[10] "Pittsburgh victims' kin outraged over VA official's award"- Pittsburgh Post-Gazette, May 2, 2013

[11] American Legion Resolution No. 107: *Prosecution of VA Employees Engaged in Fraudulent Practices in the Department of Veterans Affairs* – AUG 2014

[12] American Legion Resolution No. 128: *Increase the Transparency of the Veterans Benefits Administration's Claims Processing* – AUG 2014

STATEMENT OF BLAKE ORTNER
DEPUTY GOVERNMENT RELATIONS DIRECTOR
PARALYZED VETERANS OF AMERICA
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
CONCERNING
PENDING LEGISLATION

JANUARY 27, 2015

Chairman Miller, Ranking Member Brown, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to testify today on pending legislation before the Committee.

H.R. 189, the "Servicemember Foreclosure Protection Extension Act of 2015"

PVA supports H.R. 189, the "Servicemember Foreclosure Protection Extension Act of 2015." It is our belief that the extension of this foreclosure protection should have been included with the other extenders that were passed in the 113th Congress and were inadvertently left out. While actions were taken to extend the provision to December 31, 2015, this critical safety measure is a necessary protection for our servicemembers and should not be allowed to expire this year.

H.R. 216, the "Department of Veterans Affairs Budget Planning Reform Act of 2015"

PVA generally supports the intent, however, we have concerns regarding H.R. 216, the "Department of Veterans Affairs Budget Planning Reform Act of 2015" similar to those

expressed in 2013 when PVA testified on a similar legislative discussion draft bill. This legislation would establish new planning and budgeting processes, as well as study and make organizational changes affecting VA's ability to develop and implement budgets and strategic plans. The legislation establishes five new processes to accomplish these purposes.

First, the legislation requires VA to develop and submit annually a Future-Years Veterans Program (FYVP), which is modeled after the Future-Years Defense Program (FYDP) and the Future-Years Homeland Security Program (FYHSP). The FYVP would lay out a five-year plan for meeting the nation's commitment to veterans as well as delineate the resources necessary to meet that commitment. The FYVP would include five-year estimates of the budget and appropriations levels on a program element basis in order to ensure that resources properly align with outcome-based plans and programs. The FYVP would be submitted concurrent with VA's annual budget submission and this legislation requires that it be consistent with funding requests contained in the Administration's budget submission. It also requires that the Future-Years Veterans Program be coordinated with the Quadrennial Veterans Review, which serves as the foundation for developing the FYVP's five-year plans.

Second, the legislation directs that not later than 2019 VA would be required to conduct a Quadrennial Veterans Review (QVR) every four years, modeled after the Quadrennial Defense Review (QDR) and Quadrennial Homeland Security Review (QHSR) currently required by law. The Quadrennial Veterans Review would study and report a strategy for meeting the nation's commitment to veterans and the resources required to meet that commitment. The QVR is intended to be a futures-based look at opportunities, challenges, policies and strategies related to meeting veterans needs. The report would also examine the priorities for veterans programs and assess the effectiveness of VA's organizational structure. The legislation also requires that VA conduct its review in consultation with other Federal agencies, as well as a wide range of stakeholders, "including State, local, and tribal government officials, members of Congress, Veterans

Service Organizations, private sector representatives, academics, and other policy experts."

Third, the legislation would require the Secretary to annually provide certain policy guidance to VA planning, programming and budgeting officials throughout VA responsible for developing individual program budget recommendations. The policy guidance from the Secretary would be required to be based on the most recent QVR and FYVP, as well as estimates of the "resource levels projected to be available" in future years.

Fourth, the legislation requires the Secretary to designate the Assistant Secretary whose functions include planning, studies, and evaluations as the Chief Strategy Officer (CSO) of the Department. The CSO would have broad responsibilities for overseeing the planning, programming, budgeting and execution functions Department-wide, to include health care, benefit and cemetery programs. The CSO would have significant independent authority, reporting only to the Secretary or Deputy Secretary. The CSO's responsibilities for budgeting appear to be on the same level as VA's Chief Financial Officer (CFO), a role designated for the Assistant Secretary for Management. The CSO would be chiefly responsible for managing the new QVR, FYVP and policy guidance requirements contained in this legislation.

Fifth, the legislation requires VA to undertake a comprehensive one-year study of the organizational structure of the Secretary's office and the Department as a whole. In addition, the legislation requires that an independent contractor conduct a parallel study of the organizational structure of the Secretary's office and of the Department. The independent study would be included within the report submitted by the Secretary to Congress.

Long range strategic planning is vitally important and VA does and must continue to do so. VA annually prepares and submits to Congress and the public a *Performance and Accountability Report* to show how well VA's strategic goals are being met through

regular assessment of objective criteria. In addition, VA's annual budget submission lays out in great detail the programs and policies designed to achieve VA's strategic goals, including analyses of resources dedicated to meeting each goal.

VA also supports two dozen ongoing advisory committees to provide outside perspectives on specific needs, such as for disability compensation, education, prosthetics, geriatrics, homeless veterans and women veterans. Congress has also authorized commissions and task forces from time-to-time to take comprehensive, in-depth looks at major issues or challenges, such as in mental health programs, disability benefits, vocational rehabilitation and health care funding, to name only a few. It is not yet clear how or if the creation of a Quadrennial Veterans Review would improve on these ongoing strategic planning processes. Would it ultimately combine, supplant, or supplement these activities?

Similarly, it is not clear whether the creation of a Future-Years Veterans Program would lead to either more transparent or more accurate budgets or appropriations. Although the QDR and QHR are readily available online, it does not appear that the FYDP or the FYHSP are similarly available. Although it is understandable that both DOD and DHS would keep classified programs' budgeting and planning information shielded from public view, there appears to be no part of their Future-Years Programs that is publicly available for review, even for their many unclassified programs and budgets. Will the information in the FYVP be transparent? Without the ability to review, we are challenged to determine how or whether this approach has changed their budgeting processes, and specifically whether the programs are better aligned with budgets and long-term plans.

Another significant unanswered question concerns the role of the Office of Management and Budget (OMB) in this new planning and budgeting process. Since the legislation requires that the Administration's budget be "consistent" with the FYVP budget estimates, would OMB have a direct or indirect ability to revise or constrain the budget and appropriations levels contained in the FYVP? In setting out "policy guidance" to the

individual program offices, the Secretary is required to inform them of "resource levels projected to be available" as they make their budget estimates; would these levels come directly or indirectly from OMB?

There are also questions about the creation of a new CSO inside VA. The language of the legislation would give the CSO significant independence in overseeing all, planning and programming throughout VA, including that done within the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA) and the National Cemetery Administration (NCA). Would the CSO have overlapping authority with the Under Secretaries of these administrations? How would the CSO and the CFO interact during preparation of VA's budget; are they co-equal and how would disagreements between them be settled? Would this lead to greater harmony or conflict within VA's budget formulation process?

We also have questions about the role of Veterans Service Organizations in the development of the QVR. The legislation requires VA to consult with a wide range of stakeholders, both governmental and nongovernmental. As organizations that have not only great interest in veterans policies, but great experience and expertise in dealing with them, we have concerns about whether this broad consultation process would dilute our input. While there is always a role for outside perspectives to ensure fresh thinking within public agencies, VSOs are not idle stakeholders; collectively we provide direct assistance to VA and veterans in many areas, and particularly in representing veterans in their claims for benefits and services. We all have service officers who work inside VA facilities and behind information technology (IT) firewalls, playing an integral role in the claims processing system and serving veterans as attorneys-in-fact. We are concerned about the potential of diminishing our influence and putting us on par with less interested, involved or informed stakeholders during the consultation process.

Although we have important questions about the effects of this legislation, the details of some of its provisions, and how it might be implemented, we have no questions about the sincere intentions of the sponsors. We agree that VA's strategic planning and

budgeting processes ought to be consistently and openly aligned to achieve our shared goals in support of America's veterans. We also agree that more transparent, honest and detailed information can build greater confidence in VA, increase the effectiveness and efficiency of veterans programs, and improve the outcomes for veterans who need support, services and care. However, planning processes or structures in one agency are not necessarily appropriate for every other agency. History shows that Congressional intent is not always faithfully implemented. For all of the above reasons, we believe it is important to raise and resolve these questions and concerns now, to help prevent any unwanted and unintended negative consequences before this legislation were to move forward.

H.R. 245

PVA supports H.R. 245 to codify existing provisions of law relating to effective dates for claims, in particular, the informal claim procedures. While VA has always been willing to accept informal claims, there has been a desire by VA as part of its efforts to improve efficiency to reduce informal claims. While this is understandable, the most important issue is to provide for our veterans and support their claims due to service. In addition, as VA tries to reduce its claims backlog, there is a risk that they will begin to look for methods to avoid claims that may be more difficult to complete.

Due to the complicated process for submitting claims, PVA has always encouraged veterans to seek representation from Veterans Service Organizations to complete and submit a claim. Because veterans are not familiar with the process or simply do not realize the intricacies of claiming benefits, some may submit claims on their own which might simply consist of a letter presenting their case. PVA welcomes the provisions of H.R. 245 that will require the Secretary to provide the claimant with a claims application form when an informal claim is received. We support this not to help VA, but to provide the veteran an opportunity to submit a formal claim that will hopefully help them reach an adjudication more quickly and accurately. However, we also agree that if the veteran chooses not to submit the formal claim, that the informal claim continue with the same weight of law, unbiased consideration, and receipt date had it been a formal claim.

H.R. 280

PVA is not opposed to the provisions of H.R. 280, and believes giving the Secretary some kind of leverage to hold senior staff more accountable is valuable. It is also important to note that while bonuses are ostensibly rewards for a job well done, they can also incentivize bad behavior. The ability to force VA employees to repay them after the fact may help limit this behavior. However, it is critical that the Secretary not enjoy carte blanche authority to strip bonuses. This is where we have some concern.

Of particular concern is the timeframe for the Secretary to exercise the action to recoup a bonus. Is there a limit on how many years in the past the Secretary can reach? PVA does not believe that this authority should continue in perpetuity, but be of sufficient length to ensure that behavior discovered in the future can be acted upon. We admit we do not know what this timeframe should be. But a greater concern is that a Secretary for a future administration may take actions to recoup bonuses from an employee due to political or policy changes. Let us also be clear, we do not feel that this limit should apply in cases of clear fraud or criminal activity.

A second concern regards the rights of the employee for a review of the recoupment. The legislation indicates that the employee be afforded an opportunity for a hearing conducted by the Secretary. PVA is not certain this is the best nor most fair venue for the review as it would establish the Secretary as the arbiter of his or her own decision. PVA supports the intent of the legislation, but wishes to be sure it will be applied fairly, appropriately and with due process protections for VA employees.

H.R. 294, the "Long-Term Care Veterans Choice Act"

PVA generally supports H.R. 294, the "Long-Term Care Veterans Choice Act." This bill proposes to amend title 38, United States Code to authorize the Department of Veterans Affairs (VA) to enter into contracts or agreements for the transfer of veterans to non-VA adult foster homes for certain veterans who are unable to live independently. PVA believes that VA's primary obligation involving long-term support services is to provide veterans with quality medical care in a healthy and safe environment.

As it relates to veterans with a catastrophic injury or disability, it is PVA's position that adult foster homes are only appropriate for disabled veterans who do not require regular monitoring by licensed providers, but rather have a catastrophic injury or disability and are able to sustain a high level of independence. When these veterans are transferred to adult foster homes, care coordination with VA specialized systems of care is vital to the veterans' overall health and well-being. The drafted text of this bill requires the veteran to receive VA home health services as a condition to be transferred. As such, PVA believes that if a veteran with a spinal cord injury or disorder (SCI/D) is eligible and willing to be transferred to an adult foster home, the VA must have an established system in place that requires the VA home based primary care team to coordinate care with the VA SCI/D Center and the SCI/D primary care team that is within the closest proximity to the adult foster home. When caring for a veteran with a catastrophic injury or disability this specialized expertise is extremely important to prevent and treat associated illnesses that can quickly manifest and jeopardize the health of the veteran.

When catastrophically injured or disabled veterans who receive services from one of the VA's specialized systems of care are placed in a non-VA adult foster home they must be regularly evaluated by specialized providers who are trained to meet the needs of their specific conditions. PVA also believes that as this draft legislation is aptly titled the, "Long Term Care Veterans Choice Act," veterans should only be transferred from a VA facility to a non-VA adult foster home with the full consent of the veteran, pursuant to title 38 U.S.C., Section 1710A(b)(1).

Mr. Chairman and members of the Committee, we appreciate your commitment to ensuring that veterans receive the best health care available. We also appreciate the fact that this Committee has functioned in a generally bipartisan manner over the years. We look forward to working with the Committee as we continue to provide the best care for our veterans.

This concludes my statement. I would be happy to answer any questions that you may have.

Information Required by Rule XI 2(g)(4) of the House of Representatives

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2014

No federal grants or contracts received.

Fiscal Year 2013

National Council on Disability — Contract for Services — $35,000.

Disclosure of Foreign Payments

"Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies."

Blake C. Ortner
Deputy Government Relations Director
Paralyzed Veterans of America
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Blake Ortner is the Deputy Government Relations Director with Paralyzed Veterans of America (PVA) at PVA's National Office in Washington, D.C. He is responsible for federal legislation and government relations, as well as veterans' budget, benefits and appropriations analysis. He has represented PVA to federal agencies including the Department of Labor, Office of Personnel Management, Department of Defense, HUD and the VA. In addition, he is PVA's representative on issues such as Gulf War Illness and he coordinates issues with other Veteran Service Organizations.

He has served as the Chair for the Subcommittee on Disabled Veterans (SODV) of the President's Committee on the Employment of People with Disabilities (PCEPD) and was a member of the Department of Labor's Advisory Committee on Veterans' Employment and Training (VETS) and the Veterans Organizations Homeless Council (VOHC).

A native of Moorhead, Minnesota, he attended the University of Minnesota in Minneapolis on an Army Reserve Officer Training Corps (ROTC) scholarship. He graduated in 1983 with an International Relations degree and was commissioned as a Regular Army Infantry Second Lieutenant. He was stationed at Ft. Lewis, WA, where he served with the 9th Infantry Division and the Army's elite 2nd Ranger Battalion. He left active duty in September 1987.

He continues his military service as a Brigadier General in the Virginia Army National Guard and is a 2010 graduate of the US Army War College. From 2001-2002, he served as Chief of Operations - Multi-National Division North for peacekeeping missions in Bosnia-Herzegovina, from 2004-2005 he commanded an Infantry Battalion Task Force in Afghanistan earning 2 Bronze Star Medals, from 2007 to 2008 he served in Iraq as the Chief of Operations - Multi-National Force – Iraq earning a Bronze Star Medal and a Joint Commendation Medal, and from 2011-2012 he commanded a NATO Infantry Brigade Combined Combat Team in Afghanistan earning a Bronze Star Medal and Meritorious Unit Citation. Additional awards include the Legion of Merit, the Combat Infantryman Badge, Combat Action Badge, Ranger Tab, Military Free Fall Parachutist Badge and the Parachutist Badge. He currently serves as the Assistant Division Commander of the 29th Infantry Division for the Virginia Army National Guard.

Mr. Ortner resides in Stafford, VA with his wife Kristen, daughter Erika and son Alexander.



January 22, 2015

HOUSING POLICY COUNCIL OF THE FINANCIAL SERVICES ROUNDTABLE

STATEMENT FOR THE RECORD

H.R.189, SERVICEMEMBER FORECLOSURE PROTECTION EXTENSION ACT OF 2015

Dear Chairman Miller, Ranking Member Brown and Members to the Committee:

The Housing Policy Council of the Financial Services Roundtable[1] is pleased to respond to the committee's request for written testimony for the record on H.R. 189, the "Servicemember Foreclosure Protections Extension Act of 2015."

The Housing Policy Council supports extending the one year protection from foreclosure for military personnel leaving active duty under the Servicemembers Civil Relief Act (SCRA). The current one-year protection from foreclosure will expire at the end of this year and revert back to the original 90 day protection under the SCRA. We support the purpose of H.R. 189 to extend the foreclosure moratorium for an additional year set to expire as of January 1, 2017. As the Committee knows, with the on-going personnel transitions in all U.S. military branch services, there is a continuing need for the one-year protection.

In addition, we strongly encourage the Committee to examine the feasibility of making the one-year protection from foreclosure permanent law. Service members in the active Armed Forces, as well as National Guard and Reserve personnel, face unique challenges when transitioning from active duty. Congress should examine whether the one-year protection should be made permanent. From the perspective of mortgage lenders and servicers, a permanent change in law would set a clear and permanent standard that all industry members could incorporate into their systems and procedures, which many already have. A permanent change in law would also provide clear guidance to investors such as the Government Sponsored Enterprises, who are likely to follow statutory requirements versus recognizing individual company policies that may continue to provide a one-year protection from foreclosure rather than revert back to the original 90 days of protection upon sunset of the current one-year provision.

As you know, in 2012 Congress extended the SCRA protection against foreclosure and eviction for military personnel to one-year post-active military service to allow service members and military

[1] The Housing Policy Council of The Financial Services Roundtable consists of thirty-two of the leading national mortgage finance companies. HPC members originate, service, and insure mortgages. We estimate that HPC member companies originate approximately 75% and service two-thirds of mortgages in the United States. HPC's mission is to promote the mortgage and housing marketplace interests of member companies in legislative, regulatory, and judicial forums.

families sufficient time to get on their feet, and to avoid the stress of potentially losing their home as the service member transitions from active duty to civilian life. Some service members, particularly those leaving active-duty and re-acclimating to civilian life, continue to face financial challenges and those challenges are likely to continue for the foreseeable future. Also, slow recoveries in real-estate markets in some areas of the country, particularly in areas surrounding military bases, may continue and make it difficult for military members to sell their homes and find new housing upon receiving new orders resulting from a Permanent Change of Station (PCS). Therefore, many of our member companies have established the one-year protection from foreclosure as standard company policy, and we would urge the Committee to fully examine whether or not a permanent extension of the one-year protection from foreclosure is the right policy. Maintaining the one-year protection would benefit many military customers and would also maintain continuity in the policies and operating systems for all lender/servicers at a time when new standards are being implemented to comply with new industry regulations.

Additionally, as the Committee examines issues such as the foreclosure protection pertaining to SCRA, we urge the Committee to consider the ongoing challenges that the financial services industry faces in complying with the law. The Department of Defenses' Defense Manpower Data Center (DMDC) has become a critical resource to enable financial services companies to identify the active-duty status of their military customers and apply SCRA protections in a timely manner. The use of the DMDC system has been recognized by federal and state regulators in various agreements as an important tool to enhance industry compliance with SCRA and provide these protections to eligible individuals as quickly and efficiently as possible.

In 2014 several major mortgage servicers who are members of the Housing Policy Council entered into voluntary agreements with the Obama Administration[2] to better enhance efforts to proactively contact service members. These voluntary agreements included applying the SCRA interest rate cap to eligible service members in a timelier, more efficient and less burdensome manner. These voluntary agreements require quarterly interface of a servicer's mortgage portfolio against the DOD's DMDC-SCRA database system to determine active status of military customers on a company's portfolio. Once active status is determined based off of a quarterly interface with DOD's DMDC-SCRA database system, a servicer is required to proactively notify the eligible military customer of the benefits they are entitled to and apply the appropriate SCRA protections. These enhancements were designed to lessen the burden of the requirement that a service member submit a written request and official military orders to their servicer to avail themselves of SCRA protections, and instead recognize a positive query from the DMDC-SCRA system as sufficient evidence to proactively communicate to eligible service members the benefits to which they are entitled. Because the industry continues to increase its reliance on the DMDC-SCRA system for the

[2] http://fsroundtable.org/banks-can-back-nations-military-heroes/

purposes of compliance with SCRA, it is important to continue and explore ways to improve the accuracy, reliability and efficiency of DOD database systems. FSR and HPC continue to urge DOD to consider developing a User's Advisory Council[3] of lenders, retailers, veteran service organizations and consumer groups to facilitate collaboration on ways to improve DOD database systems.

We appreciate the committee's interest in addressing military consumer financial services issues, and we are eager to continue to work with you and your staff on ways to accomplish this mutual goal. Thank you for your service to our country and your dedication to improving the lives of military service members.

Sincerely,

John H. Dalton
President
Housing Policy Council of the Financial Services Roundtable

[3] http://fsroundtable.org/fsr-hpc-file-comment-letter-dods-proposed-mla-safe-harbor-rule/