



TESTIMONY
OF
LAWRENCE MONTREUIL
NATIONAL LEGISLATIVE DIVISION DIRECTOR
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

"PENDING AND DRAFT LEGISLATION"

MARCH 29, 2023

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Chairman Luttrell, Ranking Member Pappas, and distinguished members of the committee, on behalf of National Commander Vincent J. "Jim" Troiola and the 1.6 million dues-paying members of The American Legion, we thank you for inviting The American Legion to testify today.

The American Legion is directed by active Legionnaires who dedicate their time and resources to the continued service of veterans and their families. As a resolution-based organization, our positions are guided by more than 104 years of advocacy and resolutions that originate at the grassroots level of our organization. Every time The American Legion testifies, we offer a direct voice from the veteran community to Congress.

H.R. 234 – Gerald's Law Act

To amend title 38, United States Code, to provide a burial allowance for certain veterans who die at home while in receipt of hospice care furnished by the Department of Veterans Affairs.

If a veteran dies of a non-service-related cause, their survivors are entitled to a VA burial benefit, which provides \$300 toward burial and funeral expenses and a \$796 plot-interment allowance.¹ This benefit eases the financial burden of grieving families and ensures the veteran receives a proper burial. One of the requirements to receive this benefit is for the death to occur in either a VA hospital or nursing home, thereby excluding the increasing number of veterans who choose to pass away at home.²

As technology advances, aging at home is becoming a more appealing option for veterans, especially those living in rural areas whose families must travel long distances. The American Legion supports a veteran's choice of where to age so long as they receive quality care and are supported by an approved and accredited agency. Furthermore, veterans who choose to die at home

¹ "Burial Benefits." U.S. Department of Veterans Affairs. October 1, 2019. <https://www.benefits.va.gov/compensation/claims-special-burial.asp>. This and subsequent URLs cited have been accessed March 15, 2023.

² [38 U.S. Code § 2303](#)

shouldn't have to sacrifice their burial benefits. This legislation would expand VA burial benefits by allowing the survivors of veterans who died at home or other settings to receive a VA burial benefit. The American Legion Resolution No. 20: *Home and Community-Based Services and Veteran Choice to Age in Place* supports legislation to allow veterans to choose where to age in place.³

The American Legion supports H.R. 234 as currently written.

H.R. 854 – Captain James C. Edge Gold Star Spouse Equity Act

To amend titles 10 and 38, United States Code, to expand certain benefits for surviving spouses of members of the Armed Forces who die in line of duty, and for other purposes.

America's obligation to Gold Star families is embodied by the Department of Veteran Affairs' mission statement, "To fulfill President Lincoln's promise to care for those who have served in our nation's military and for their families, caregivers, and survivors." To honor this sacred obligation, Gold Star spouses who have lost their loved ones in the line of duty currently receive specialized benefits in the areas of compensation, health insurance, and education.

Current statutes hold that this benefit is terminated should a Gold Star spouse remarry before the age of 55, or in some cases, remarriage at any point:

- The Survivor Benefit Plan (SBP) is a Department of Defense program servicemembers and their families pay into to provide financial support to military spouses and family should the servicemember die while on duty or after retirement. If a spouse remarries before the age of 55, their annuity payments are stopped.⁴
- Dependency and Indemnity Compensation (DIC) is a tax-free benefit designed to support the surviving spouses and families of servicemembers who died as a result of military service or service-connected disability. If the spouse remarries before the age of 55, their compensation is terminated.⁵
- The Marine Gunnery Sergeant John David Fry Scholarship is an education benefit that allows surviving spouses to access the Post-9/11 GI Bill and attend school while receiving a basic allowance for housing. Surviving spouse eligibility expires either on the 15th anniversary of the servicemembers death or if they remarry..⁶

³ The American Legion Resolution No. 20 (2021): Home and Community-Based Services and Veteran Choice to Age in Place. <https://archive.legion.org/node/3579>.

⁴ "Understanding SBP, DIC and SSIA Webpage." Defense Finance and Accounting Service. Dec 31, 2022. <https://www.dfas.mil/RetiredMilitary/survivors/Understanding-SBP-DIC-SSIA>

⁵ "About VA DIC for spouses, dependents, and parents." U.S. Department of Veterans Affairs. October 12, 2022. <https://www.va.gov/disability/dependency-indemnity-compensation/>

⁶ "Fry Scholarships." U.S. Department of Veterans Affairs. February 14, 2023. <https://www.va.gov/education/survivor-dependent-benefits/fry-scholarship/>

- TRICARE Survivor Benefits provide health insurance at retiree pay rates for surviving spouses and their children. Should a spouse remarry, they will be disenrolled from the program and have their access to their children's accounts restricted.⁷

Forcing widows to forego remarriage to maintain survivor benefits is indefensible. The American Legion believes that it is essential to support Gold Star spouses throughout their lifetime, not just while they are unmarried. H.R. 854, the “*Captain James C. Edge Gold Star Spouse Equity Act*,” would begin to correct this by providing continued eligibility for SBP and DIC for surviving spouses of servicemembers who died in the line of duty.

The American Legion appreciates Congressman Waltz’s focus on equity for Gold Star spouses, but requests the consideration of five amendments to this legislation to address the totality of remarriage incongruities:

- 1) *Eliminate “...of members of the Armed Forces who die in the line of duty” from bill preamble.* Intended or otherwise, this preamble creates a distinct and uncalled-for division between retirees and those killed in the line of duty. The spouses of all servicemembers who have paid into SDP have the right to annuities after remarriage.
- 2) *Amend Paragraph (3) of section 101 of title 38, United States Code, to remove “a person of the opposite sex” in defining the term “surviving spouse.”*
- 3) *Amend Section 1062 of title 10, United States Code, to provide access to military exchanges and commissaries.*
- 4) *Strike section 311(f)(2)(B) of title 38, United States Code, to remove expiration on entitlement to Marine Gunnery Sergeant John David Fry Scholarships for surviving spouses*
- 5) *Amend Section 1072(2) of title 10, United States Code, to provide TRICARE eligibility to remarried spouses in the TRICARE program.*

These benefits are granted to help families honor the sacrifice made by their beloved by building a brighter future and to do so, love must live on. Through Resolution No. 36: *Prevent Gold Star Spouses Loss of Benefits*, The American Legion believes Gold Star spouses should not lose benefits when remarrying.⁸

The American Legion supports H.R. 854 with amendments.

H.R. 984 – Commitment to Veteran Support and Outreach Act

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to award grants to States to improve outreach to veterans, and for other purposes.

⁷ “Former Spouses.” TRICARE. November 17, 2017. <https://www.tricare.mil/Plans/Eligibility/FormerSpouses>

⁸ The American Legion Resolution No. 36 (2021): Prevent Gold Star Spouses Loss of Benefits. <https://archive.legion.org/node/630>

Native Americans serve in the U.S. Armed Services at a higher rate than any other group.⁹ Yet after they leave the service, they often face disparities in accessing their earned healthcare benefits, especially when it comes to specialty care.¹⁰ This is especially concerning considering that Native American veterans experience higher rates of posttraumatic stress disorder (PTSD), depression, and diabetes than their non-Native American veteran counterparts.¹¹

This legislation would establish a grant program to improve outreach to veterans and their families by hiring more county and Tribal veterans service officers who can help veterans receive their benefits. It would also allow the grants to be utilized to provide education and training to state, county, and tribal government employees in areas with critical shortages or high rates of veteran suicides.

The American Legion, as part of its “Be The One” campaign, is committed to decreasing the veteran suicide rate by expanding outreach to at-risk veterans and connecting them with life-saving mental health resources and support programs. The American Legion Resolution No. 201: *Service Officers Participation in the Transition Goals, Plans and Success Program* supports legislation to reduce veteran suicide by improving the awareness and filing of veterans’ earned benefits.¹²

The American Legion supports H.R. 984 as currently written.

H.R. 1139 – GUARD VA Benefits Act

To amend title 38, United States Code, to reinstate penalties for persons charging veterans unauthorized fees relating to claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

Unaccredited claims companies have increasingly targeted veterans through aggressive marketing campaigns while skirting Department of Veterans Affairs (VA) regulations.¹³ They have been known to charge veterans at rates upwards of 500 to 600 percent of the future increase in monthly benefits they receive – a violation of 38 USC 5301(a)(3)(A), which prohibits the payment of fees based on future benefits compensation – and in return offer what they refer to as “consulting services,” while still requiring their clients file the actual claim with VA in an attempt to avoid liability.

⁹ “Veterans.” National Congress of American Indians. Accessed March 17, 2023. <https://www.ncai.org/policy-issues/education-health-human-services/veterans#:~:text=Natives%20Veterans%20are%20highly%20regarded,rate%20than%20any%20other%20group>.

¹⁰ Hale, Madison. “Disparities and Needs in Native American Veteran Populations Within Healthcare Services.” *TRIO McNair Scholars Research Journal XXI*, (2020): 29-36. Accessed March 17, 2023. <https://minds.wisconsin.edu/bitstream/handle/1793/81236/Hale%2C%20Madison.pdf?sequence=5&isAllowed=y>.

¹¹ Korshak, Lauren. “American Indian/Alaska Native Veterans Fact Sheet.” Office of Health Equity. Accessed March 17, 2023. https://www.va.gov/HEALTH/EQUITY/docs/American_Indian_Heritage_Month_Fact_Sheet.pdf.

¹² The American Legion Resolution No. 201 (2014): Service Officers Participation in the Transition Goals, Plans and Success Program. <https://archive.legion.org/node/269>

¹³ Department of Veterans Affairs, VA Claims and Appeals Modernization, Final Rule, 84 FR 138, 150 (Jan. 18, 2019). <https://www.govinfo.gov/content/pkg/FR-2019-01-18/pdf/2018-28350.pdf>

In April of 2022, The American Legion testified before this subcommittee in a hearing titled, “*At What Cost? - Ensuring Quality Representation in the Veteran Benefit Claims Process.*” The testimony highlighted the following key points regarding the crucial work done by VA-accredited Department Service Officers:

“The American Legion provides veterans with assistance in filing disability claims free of charge and with no membership requirement. Veterans will not be charged at any point while filing their claims and will be guided through the process by VA-accredited representatives who oftentimes have many years of experience. With a national network of more than 2,000 accredited representatives, The American Legion helped veterans secure more than \$14.8 billion in compensation from initial claims in Fiscal Year 2021, with an average monthly payment of \$1,428 per beneficiary.”

The testimony also highlighted the concerning practices of some unaccredited claims consulting companies:

“Claimants victimized by these predatory companies include a veteran who was compelled to file a lawsuit, alleging debt collection harassment after receiving at least 20 phone calls from the company; a widow who was talked into investing her benefits compensation before receiving it; clients being charged for medical opinions that had no supporting medical evidence; and the surviving spouse of a veteran who was charged a fee, but received no services.”

These companies are not accredited by VA; do not adhere to VA regulations; their activities cannot be monitored by VA’s Office of General Counsel; use aggressive marketing tactics; misleading statements; complicated contracts to profit from veterans receiving VA benefits; and cannot legally represent veterans nor can they be penalized for their actions.

The *GUARD VA Benefits Act* will impose fines on individuals for soliciting, contracting for, charging, or receiving any unauthorized fee or compensation with respect to the preparation, presentation, or prosecution of any claim for VA benefits. It is imperative that congress act swiftly to ensure that veterans and their families are not taken advantage of when attempting to access their earned benefits.

Through Resolution No. 38: *Predatory Claims Companies*, the American Legion urges Congress to oppose any legislation that seeks to elevate the standing of predatory claims companies by legitimizing practices that target veterans and their dependents – and to identify and prosecute such predatory claims companies to the fullest extent of the law.¹⁴

The American Legion supports H.R. 1139 as currently written.

H.R. 1329

¹⁴ <https://archive.legion.org/node/14491>

To amend title 38, United States Code, to provide for an increase in the maximum number of judges who may be appointed to the United States Court of Appeals for Veterans Claims.

The United States Court of Appeals for Veterans Claims (Veterans Court) is a federal court of record with exclusive jurisdiction to hear appeals of decisions from the Board of Veterans' Appeals (Board) independent of the Department of Veterans Affairs (VA).¹⁵ The Veterans Court is intended to serve as an impartial forum for the review of administrative decisions by the Board that are adverse to the appellant's claim of entitlement to benefits, and eliminates the bar to judicial review by allowing lawyers to represent veterans and their survivors in appeals of Board decisions.¹⁶

By federal statute, the Veterans Court is intended to be composed of "at least three and no more than seven judges" serving terms of 15 years.¹⁷ However, by 2002, the Veterans Court's rising case backlog resulted in Congress passing a three-year temporary expansion of the Court to nine Judges. By 2009, it was clear that the challenges of the appeals backlog would not disappear, and another temporary increase to nine judges was issued, effective through January 1, 2026.

Less than three years from the expiration of this temporary expansion, we must acknowledge that a permanent nine-Judge Veterans Court is required to meet the needs of our veterans. In 2008, the last year with a 7-judge cap, the average time from filing to disposition at the Court of Veterans rose to over 466 days.¹⁸ The latest report from FY 2021 shows this average time level at 248 days,¹⁹ and we must not set conditions that exacerbate this wait time a day further.

H.R. 1329 would permanently increase the maximum Judges to nine, and with it discard the notion that seven judges alone can meet the demand of Board appeals.

Through Resolution Resolution No. 12: *Appointment of Judges with Veterans Law Expertise to the U. S. Court of Appeals for the Federal Circuit*, The American Legion supports considering judges with experience in veterans' law for appointment to the U.S. Court of Appeals for the Federal Circuit.²⁰

The American Legion supports H.R. 1329 as currently written.

H.R. 1378 – Veterans' Appeals Backlog Improvement Act

To amend title 38, United States Code, to establish an internship program within the Board of Veterans' Appeals, and for other purposes.

¹⁵ "U.S. Court of Appeals for Veterans Claims: A Brief Introduction." Congressional Research Service. April 22, 2021. <https://crsreports.congress.gov/product/pdf/IF/IF11365>.

¹⁶ "Court History." United States Court of Appeals for Veterans Claims. <http://www.uscourts.cavc.gov/history.php>.

¹⁷ "38 U.S. Code § 7253 - Composition." <https://www.law.cornell.edu/uscode/text/38/7253>.

¹⁸ "Annual Reports 1999-2008." U.S. Court of Appeals for Veterans Claims.

http://www.uscourts.cavc.gov/documents/Annual_Report_-_20081.pdf.

¹⁹ "Fiscal Year 2021 Annual Report." U.S. Court of Appeals for Veterans Claims.

<http://www.uscourts.cavc.gov/documents/FY2021AnnualReport.pdf>.

²⁰ The American Legion Resolution No. 12 (2022): Appointment of Judges with Veterans Law Expertise to the U. S. Court of Appeals for the Federal Circuit

The Veterans Benefits Administration (VBA) reports more than 777,000 disability compensation and pension claims currently in their inventory and a subset backlog of more than 200,00 pending for more than 125 days since receipt.²¹

The Veterans' Appeals Backlog Improvement Act seeks to reduce the backlog by establishing a nine-year competitive honors internship pilot program within the Department of Veterans Affairs (VA) for high-achieving law school students, recent law school graduates, and entry level attorneys for employment who are in good standing and accredited by the American Bar Association to supplement and gain experience with the Board.

The pilot program would provide student loan repayment benefits under section 5379 of title 5, United States Code, to each participant who agrees to remain in the program of not less than three years, unless involuntarily separated for misconduct or voluntarily separated before the end of the specified period would then be required to repay any benefits they received. Each participant would be assigned a managerial VA employee mentor outside their chain of command and have at least one rotational assignment within the Office of General Counsel to further their professional development.

VA estimates there will be approximately 6-7 million new disability claims filed as a result of eligibility expansion under the PACT Act and anticipates the claims backlog will increase to about 450,000 by October 2023. There is a high degree of likelihood that this influx in claims will result in additional demands at BVA.

This legislation would require the VA Secretary to submit a report on recommendations for improving access to hearings before the Board of Veterans' Appeals held by picture and voice transmission; establishing a permanent competitive honors program; and legislative or administrative action to improve recruitment and retention of VA staff.

Through Resolution No. 9: *Expanded Use of Virtual Hearings by the Board of Veterans Appeals*, the American Legion supports the expanded use of virtual of effective tools that will help to reduce the number of appeals and hearings pending before the Board of Veterans Appeals.²²

The American Legion support H.R.1378 as currently written.

H.R. 1529 – Veterans' Compensation Cost-of-Living Adjustment Act of 2023

To increase, effective as of December 1, 2023, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

²¹ https://www.benefits.va.gov/reports/detailed_claims_data.asp

²² <https://archive.legion.org/node/3590>

When servicemembers are discharged, they often return home with disabilities that developed while serving in the military.²³ These disabilities, ranging from physical injuries to mental illnesses, can pose a challenging obstacle for veterans searching for a job to support themselves and their families. To compensate for their service and loss of earning capacity, veterans can apply for and receive a monthly disability payment from the Department of Veterans Affairs (VA). VA bases the disability payments on a schedule of rating of reduction in earning capacity from specific injuries. Unfortunately, high inflation rates are increasing the cost of living worldwide, making disability payments less effective in financially supporting the veterans who receive them. In 2022, the global economy suffered an exceptionally high inflation of 8.6%, followed by 6.6% in 2023,²⁴ much higher than the optimal rate of two percent.²⁵

The American Legion believes that the effectiveness of veterans' earned benefits should not be at the whim of inflation. Congress should periodically review disability compensation and provide a cost-of-living adjustment (COLA) to ensure they have sufficient economic support. This legislation would increase certain VA benefits, including disability compensation, clothing allowances, and dependency and indemnity compensation. The COLA would be determined by the annual COLA adjustment to Social Security benefits, which is determined by the Social Security Administration and is based on the yearly COLA adjustment on the Consumer Price Index. The American Legion Resolution No. 187: *Department of Veterans Affairs Disability Compensation* supports legislation to provide a periodic cost-of-living adjustment increase and to increase the monthly rates of disability compensation.

The American Legion supports H.R. 1529 as currently written.

H.R. 1530 – Veterans Benefits Improvement Act

To amend title 38, United States Code, to improve the requirement to publish disability benefit questionnaire forms of Department of Veterans Affairs, and for other purposes.

The gateway to Department of Veterans Affairs (VA) healthcare is through disability benefits. The backlog of compensation and pension (C&P) examinations, pending original claims, and pending appeals have placed undue hardship on veterans who suffer from physical and mental conditions while they wait for their claims to be adjudicated. The Veterans Benefits Improvement Act aims to improve the process by requiring the VA Secretary to publish all disability benefit questionnaire forms that are available to VA and contracted personnel for completing C&P exams online, excluding those that could not be reasonably completed to a clinically acceptable standard.

Veterans who live abroad are also entitled to VA benefits and services. The American Legion finds it imperative that the VA, in coordination with the Secretary of State and Social Security

²³ "VA disability compensation." U.S. Department of Veterans Affairs. January 25, 2023.

<https://www.va.gov/disability/>.

²⁴ Gourinchas, Pierre-Oliver. "World Economic Outlook Update." International Monetary Fund. January 1, 2023.

<file:///C:/Users/dcki/Downloads/text.pdf>.

²⁵ "Why Does the Federal Reserve Aim for Inflation of 2 Percent over the Long Run?" Board of Governors of the Federal Reserve System. August 27, 2020. https://www.federalreserve.gov/faqs/economy_14400.htm.

Commissioner, report to Congress, and publish their efforts in providing reimbursement to those veterans who travel to a scheduled C&P examination regardless if the facility is inside or outside the United States.

The C&P claims process demands consistent communication. The Veterans Benefits Improvement Act adds requirements that every communication from a VA contractor to a veteran regarding the scheduling of a C&P exam be contemporaneously transmitted to the claimant or organization appointed by a power of attorney executed for the preparation, presentation, and prosecution of claims.

Veterans service organizations play a vital role ensuring veterans receive the benefits they have earned and so rightfully deserve. This bill would require the VA, in partnership with veterans' service organizations, publish two reports that would inform outreach programs; technical limitations of providing governmental veterans service officers enhanced access to certain systems; and whether VA would benefit from the creation or designation of an office or working group to serve as an intergovernmental liaison between the VA and governmental veterans service officers.

Through Resolution No. 14: *Quality Assurance for Department of Veterans Affairs (VA) Contracted Compensation and Pension (C&P) Examinations*, the American Legion urges Congress to pass legislation that will ensure the quality and timeliness of C&P exams performed by VA contractors, and ensure that they provide veterans with professional, high-quality service.²⁶

The American Legion supports H.R.1530 as currently written.

CONCLUSION

Chairman Luttrell, Ranking Member Pappas, and distinguished members of the Subcommittee; The American Legion thanks you for your leadership and for allowing us the opportunity to explain the positions of our 1.6 million members on the importance of these pieces of proposed legislation. Questions concerning this testimony can be directed to Mr. Lawrence Montreuil, Legislative Director at 202-735-2207, or lmontreuil@legion.org.

²⁶ <https://archive.legion.org/node/3595>