

JERRY MORAN, KANSAS
CHAIRMAN
JOHN BOOZMAN, ARKANSAS
BILL CASSIDY, LOUISIANA
MIKE ROUNDS, SOUTH DAKOTA
THOM TILLIS, NORTH CAROLINA
DAN SULLIVAN, ALASKA
MARSHA BLACKBURN, TENNESSEE
KEVIN CRAMER, NORTH DAKOTA
KELLY LOEFFLER, GEORGIA

CAROLINE CANFIELD, STAFF DIRECTOR

United States Senate

COMMITTEE ON VETERANS' AFFAIRS

WASHINGTON, DC 20510

JON TESTER, MONTANA
RANKING MEMBER
PATTY MURRAY, WASHINGTON
BERNARD SANDERS, VERMONT
SHERROD BROWN, OHIO
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
JOE MANCHIN III, WEST VIRGINIA
KYRSTEN SINEMA, ARIZONA

TONY McCLAIN, STAFF DIRECTOR

March 31, 2020

The Honorable Robert Wilkie
Secretary of Veterans Affairs
810 Vermont Ave, NW
Washington, DC 20420

Dear Secretary Wilkie,

We write today to encourage you to provide waivers to veterans who may not meet their filing deadlines because of COVID-19. The Department of Veterans Affairs (VA) has broad authority to waive many required deadlines under the law and we believe the current crisis warrants liberal provision of such waivers.

VA has authority under section 3.109(b) of title 38, Code of Federal Regulations (C.F.R.), to extend evidence filing deadlines for good cause. Section 3.1(r) of title 38, C.F.R., allows VA to use the post mark date if there is natural or man-made interference with the normal course of business. We think we can agree that threshold has been met. VA can also waive many of the required deadlines veterans face when applying for benefits, by interpreting the COVID-19 pandemic as "good cause" under existing regulations. Given the unprecedented situation many communities are facing because of this pandemic, VA should be broadly using its regulatory authority to grant waivers or extensions to every veteran during this period.

In late February, states and local communities began declaring emergencies and issued shelter-in-place directives. On March 13, President Trump declared a national emergency in response to the COVID-19 pandemic. As of March 24, twenty-seven states including New York and California issued stay-at-home orders, with those numbers increasing with each day of this crisis. Because of self-isolation instructions and general shelter-in-place orders, many veterans will not be able to file the necessary paperwork for their claims and appeals in a manner that abides by the instructions provided in their states and local communities and keeps them safe.

Veterans make up one of the most vulnerable populations to this virus. The average age of veterans in the United States is 58 years old, and the largest group of veterans are between ages 45 and 64 years old. Many veterans seeking claims already suffer from pre-existing conditions such as heart and respiratory diseases and diabetes. According to the Center for Disease Control and Prevention (CDC), older adults with health conditions are the most vulnerable to COVID-19 and should avoid contact with others by staying at home. We have been encouraging veterans to stay healthy and avoid going out into public, unless absolutely necessary. With these extreme safety measures in-place, veterans are burdened to make sure they

are still filing proper paperwork and confirming it is mailed by statutory deadlines or else suffer from a potential loss-of-benefits. Veterans may feel paralyzed with anxiety and fear over this pandemic and they should not be penalized for missing deadlines when their focus should be on maintaining their own health.

Veterans also may not have access to their representatives to help-guide them through the complicated claims and appeals process during this national emergency. Many veterans rely on Veterans Service Organizations (VSOs), veteran legal clinics, and attorney's offices for assistance. Numerous representative offices are currently closed and deemed non-essential by order of their state and local officials. Law schools that operate legal clinics may be operating virtually. While the post office may still be open, if the claims forms are going to a representative of the veteran, that veteran may not see the Statement of the Case (SOC) from the VA before the sixty-day requirement to respond expires. If the veteran does receive his or her SOC, the options to appeal can be overwhelming. In their response, veterans can file a Supplemental Claim form, ask for a Higher Level Review, appeal to the BVA with a Form 9, or file a Notice of Disagreement (NOD) to be decided by a Veterans Law Judge. Veterans need access to their VSO or legal representative to help decide which is the most prudent option to pursue. This crisis is preventing veterans from consulting with their representatives' in-person. Many future appeals can be avoided if veterans get help up-front with filing initial paperwork, rather than on the backend and needing to file an appeal.

Therefore, we encourage VA to institute a waiver for all veterans who are facing filing deadlines and consider establishing a retroactive date for all new claim submissions. We would like to see the VA use its broad regulatory authority to toll all veteran-facing deadlines for 180 days. Furthermore, we ask VA to consider all new filings between April 1, 2020 and the end of the Presidential emergency declaration, to be treated as if they were filed on March 31, 2020 so that veterans who are unable to file claims or Supplemental Claims during the early days of this crisis benefit from an earlier effective date.

Please provide responses to the following questions and requests as to how VA is currently handling claims and appeals during this crisis:

- Is there legislation needed to grant VA the authority to provide waivers for any filing deadline a veteran may face?
- What is the plan to handle intent to file forms? Will VA provide a grace period, or is it expecting veterans to continue to file initial claims during this national emergency?
- How is VA informing VSOs and all representatives that missing a filing deadline will be waived for "good cause" under existing VA regulations?
- We also request bi-weekly data on the number of veterans filing for waivers, and how many are granted.

We appreciate your work on behalf of veterans during this trying time. We hope we can continue working together ensuring veterans are not faced with an unfair choice, risking their health or receiving their benefits. We look forward to your response.

Sincerely,

Jerry Moran

Jerry Moran
Chairman
Senate Committee on Veterans' Affairs

Jon Tester

Jon Tester
Ranking Member
Senate Committee on Veterans' Affairs