



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

**STATEMENT OF NVLSP
BEFORE THE
SENATE VETERANS AFFAIRS' COMMITTEE
LEGISLATIVE HEARING – REQUESTED VIEWS ON
S. 681, THE 21ST CENTURY VETERANS DELIVERY ACT, AND DISCUSSION DRAFT**

Thank you for the opportunity to present the views of the National Veterans Legal Services Program (NVLSP) on the bills S. 681, the Blue Water Navy Vietnam Veterans Act of 2015; the 21st Century Veterans Benefits Delivery Act; and the Discussion Draft of various introduced legislation.

NVLSP is a nonprofit veterans service organization founded in 1980 that assists veterans and their advocates by publishing educational materials on veterans benefits law, recruiting and training volunteer attorneys, training service officers for various veterans service organization, and conducting local outreach and quality reviews of VA regional offices on behalf of The American Legion. NVLSP has also represented veterans and their families in benefits claims before the VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts, and this representation has thus far resulted in VA payment of more than \$4.6 billion in retroactive disability and death compensation to hundreds of thousands of veterans and their survivors.

S. 681 – Blue Water Navy Vietnam Veterans Act of 2015: this bill would amend Title 38, U.S. Code, section 1116(f), to include the territorial seas of Vietnam as part of the definition of service in the “Republic of Vietnam.” By expanding this definition to expressly include veterans who served in the territorial seas of Vietnam, or “blue water veterans,” thousands of veterans would be eligible to receive presumptive service-connected benefits relating to the exposure of herbicides. NVLSP strongly supports this bill.

By way of background, when 38 U.S.C. § 1116(f) was enacted in 1991, there were two separate VA regulations that defined “service in the Republic of Vietnam,” which, although very similar, contained slight differences resulting in ambiguity in interpreting the regulations.¹ Despite this fact, the legislative history of the 1991 Agent Orange Act is silent concerning what Congress intended “service in the Republic of Vietnam” to mean.

¹ Cf. 38 C.F.R. § 3.311a(a)(1) (1985) (defining “service in the Republic of Vietnam” as “include[ing] service in the waters offshore and service in other locations, if the conditions of service involved duty or visitation in the Republic of Vietnam”), with 38 C.F.R. § 3.313 (1990) (entitled “Claims based on service in Vietnam” and defining such service as “service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam”). Based on the different syntax and punctuation used in these regulations supposedly using the same definition for Vietnam-era service, it easy to see how confusion arose.

Initially, VA conceded “service in Vietnam” when the record showed receipt of the Vietnam Service Medal, without any additional proof that the veteran ever actually set foot on land in the Republic of Vietnam.² However, in February 2002, VA changed its interpretation of “service in the Republic of Vietnam” to require that a veteran actually step foot in Vietnam to be eligible for the presumption of exposure to herbicides. As a result, NVLSP assisted a number of veterans whose claims were denied due to the February 2002 rule change by appealing their cases to the CAVC. Although the CAVC unanimously invalidated the set-foot-on-land requirement, the VA appealed that decision to the U.S. Court of Appeals for the Federal Circuit, which overturned the CAVC’s decision and upheld VA’s interpretation of “service in the Republic of Vietnam” to require “boots on the ground.”

S. 681 would therefore clarify that all Vietnam era veterans who served in the territorial waters of Vietnam would be eligible for presumptive-benefits based on herbicide exposure, regardless of whether they actually set foot in Vietnam. NVLSP strongly supports expanding the definition of “service in the Republic of Vietnam.”

- First, a clear inclusive legislative definition puts to rest various legal battles between veterans and the VA over Congress’s intent over the definition of such service.
- Second, the facts regarding what types of service resulted in herbicide exposure is not conclusive and therefore not a valid excuse to deny some Vietnam veterans presumptive benefits.
 - Specifically, in a May 2011 report, the Institute of Medicine found several ways in which blue water veterans may have been exposed to herbicides, including through drinking water distilled from runoff from offshore waters where herbicides were dumped or sprayed, and wind drift that may have resulted in direct exposure.
 - Further, VA has consistently failed to cite to any explicit scientific evidence that supports a “foot-on-land” requirement – a point recently confirmed by the Court of Appeals for Veterans Claims in *Gray v. McDonald*, U.S. Vet. App. No. 13-3339 (April 23, 2015).
- Finally, as was expressed in support of the Veterans’ Dioxin and Radiation Exposure Compensation Standards Act (the predecessor to the Agent Orange Act of 1991), Congress’s intent in creating presumptive benefits was to make it easier, not more difficult, for Vietnam veterans to assert claims arising from herbicide exposure.

² See VA Adjudication Procedures Manual M21-1, Part III, ¶ 4.08(k) (Nov. 8, 1991).

Accordingly, NVLSP strongly supports the passage of S. 681.

For similar reasons, NVLSP also supports extending the September 30, 2015 sunset date contained in 38 U.S.C. § 1116(e). If this sunset date is not extended, the National Academy of Sciences and the VA will no longer be required to periodically analyze recent scientific studies on dioxin to determine whether there are additional diseases associated with herbicide exposure. Because scientific studies continue to emerge on the long-term effects of herbicide exposure, Congress should extend the sunset date for several additional years.

21st Century Veterans Delivery Act – this bill would amend Title 38, U.S. Code, to improve the processing by the Department of Veterans Affairs of claims for benefits. NVLSP supports most of the content of this bill, with several suggestions that are outlined below.

First, it is important to establish that NVLSP's views are influenced by the widespread frustration and disappointment in the VA claims adjudication system experienced by many of the disabled veterans we assist. Therefore, NVLSP applauds the comprehensive and bipartisan study of the claims process undertaken by Senators Heller and Casey. However, NVLSP also notes that a majority of the provisions outlined in the Act are reporting requirements. NVLSP wishes to emphasize the importance of Congressional action, follow up, and implementation of more substantive reforms based on the results of the reports contained herein.

Title I – Benefits Claims Submission

- Section 101 – Improvements to Transition Assistance Program: NVLSP supports the enabling of online access of the eBenefits system to members of the armed forces and their families. Given the complex nature of many VA benefits, NVLSP supports increased access to information about such benefits to the future-generation of veterans and their families. Further, NVLSP strongly supports the participation of veterans service organizations (VSOs) during any portion of the program relating to the submittal of VA disability compensation claims. It is well established that VSOs can streamline the claims process for veterans by explaining benefits eligibility, assisting in the collection of evidence, and monitoring the progress of the claim. In addition, studies show that veterans represented by a VSO have a greater chance of being awarded benefits than those who are unrepresented. Finally, NVLSP supports the reporting requirements that will assist Congress in understanding the progress of this initiative. Given the large numbers of service members who will transition to civilian life over the next few years, the importance of successful programs to assist the transition process cannot be underestimated. Therefore, NVLSP supports this section in its entirety.
- Section 102 – Requirement that Decision on Claims Explain Advantages of Filing Appeals within 180 Days: Although NVLSP generally supports providing veterans with more detailed notice regarding a denial of benefits, NVLSP does

not support the requirement that decisions on claims explain the advantages of filing appeals within 180 days. There are practical disadvantages to filing an appeal within 180 days. That is because to prevail on a claim, VA claimants often need to gather and submit additional evidence that will substantiate their claims – a process that often takes more than 180 days. Thus, by encouraging claimants to file an appeal earlier than they otherwise would, this provision may have the unintended consequence of discouraging claimants from spending the time necessary to develop additional supporting evidence.

NVLSP does not support this requirement for a second reason. NVLSP helps The American Legion perform quality reviews of the decision-making of various VA regional offices. These reviews are called Regional Office Action Review (ROAR) visits. As a result of the Legion ROAR visits we have observed that VA employees seldom process an appeal within 18-24 months of a Notice of Disagreement (NOD) being filed. Accordingly, even if the veteran were to file their NOD within 180 days, it is unclear what, if any, discernible benefit there would be for the veteran, because it is highly unlikely that a VA employee would process the claim any faster. Further, Congress has designed a uniquely pro-claimant, veteran-friendly adjudication process. Encouraging veterans to file an appeal more quickly misses the mark because it in effect penalizes veterans for VA's inefficiencies in claims processing. Rather than encouraging veterans to file appeals within 180 days, Congress should compel VA to dedicate more resources to the processing of appeals.

- Section 103 – Determination of Manner of Appearance for Hearings Before the Board of Veterans' Appeals: NVLSP supports this section, which, although not a complete cure, assists with speeding up the appellate process. Specifically, this section permits the Board to schedule the earliest possible hearing, which may often times be a video-conferencing hearing. However, this section also preserves the right of an appellant to request a different type of hearing, to include an in-person travel board hearing or a hearing in Washington, D.C. Because this section works to both speed up the appellate process while preserving the appellant's ability to choose the type of hearing which may work best for them, NVLSP supports this section.

Title II – Practices of Regional Offices

Before discussing the specific provisions outlined in this title, NVLSP would like to highlight that the regional offices (RO) must first produce accurate statistics before any determinations can be made as to what constitutes a high performing RO or any related best practices. As it currently stands, NVLSP does not believe that many RO's are producing accurate statistics. At a July 14, 2014, hearing before the House Committee on Veterans' Affairs, Linda Halliday, the VA OIG Assistant Inspector General for Audits and Evaluations, testified that she did not trust VBA's numbers. Similarly, Halliday's concerns were substantiated in an April 2015 report regarding the Philadelphia RO, where the OIG found mismanagement, data manipulation and poor record-keeping.

Accordingly, NVLSP stresses the importance of those within VBA to report accurate information before the sections outlined below can be implemented successfully.

- Section 201 – Required Comptroller General Audit of Regional Offices of Veterans Benefits Administration: this section would require the VA OIG to assess the consistency of VBA decisions, as well as to identify ways in which consistency of decisions can be improved, to include management practices and other practices that distinguish higher performing VBA regional offices from lower performing regional offices. NVLSP is generally supportive of this section, but wishes to emphasize that additional language is needed to require VBA to implement the VA OIG’s recommendations once the report is completed. As previously mentioned, NVLSP, in conjunction with The American Legion, conducts Regional Office Action Review visits, including quality review checks of regional offices across the country. Our experience conducting such visits confirms that there is a need for greater consistency in decision-making amongst VA’s 57 regional offices. Although VBA maintains that it conducts consistency reviews on its own accord, according to a March 12, 2009, report, the OIG found that VBA’s Systematic Technical Accuracy Review (STAR) process did not effectively identify and report errors in compensation claim rating decisions, and that VBA did not fully implement an adequate rating consistency review plan designed to ensure that compensation claims for similar conditions received the same evaluations and benefits. At that time, VA OIG recommended that VBA develop an annual rating consistency review schedule. Since it has been six years since the most recent comprehensive VA OIG report on this topic, and, because the problem of inconsistency in VBA decisions has not improved despite the implementation of VBMS and associated rules-based claims processing tools, NVLSP supports an additional VA OIG report on ways to improve consistency of claims processing.
- Section 202 - Requirement for Management Training Program for Veterans Service Center Managers of Veterans Benefits Administration: NVLSP supports this section. NVLSP speaks from experience, as training advocates to help veterans has been one of our primary missions and one of the primary keys to our success in representing veterans. Therefore, we understand firsthand how important thorough training programs can be. In the past year, VA has been plagued with allegations of mismanagement and data manipulation throughout the Department. With regards to VBA, the recent VA OIG report on the Philadelphia regional office highlighted the litany of problems that stem from mismanagement and poor training. Although VBA often speaks highly of its Challenge training program for new employees and its Station Enhancement Training (SET) for underperforming offices, there is no equivalent training program tailored specifically for Veterans Service Center managers. Providing management level training will assist VA in improving claims processing consistency and ensure that managers learn how to “lead” as opposed to just shuffle various metrics handed down from Central Office. However, NVLSP cautions that any such training program at the management level must include controls for meaningful

and consistent implementation, rather than just requiring a set number of mandatory hours of power point and presentation review.

- Section 203 – Analysis of Communication Between Regional Offices of Department of Veterans Affairs and Veterans Service Organizations and Congressional Caseworkers: this section requires that each VBA regional office analyze the communication between the regional office staff, VSOs, and caseworkers employed by members of Congress. NVLSP supports this provision. With regard to VSOs, this provision is particularly important because of VBA's recent emphasis on brokering claims. Whereas VSOs working at a particular regional office previously had the ability to speak to VBA employees at that regional office, such communications have been frustrated recently by the number of claims being brokered to outside regional offices. Therefore, the ability of VSOs to communicate with other regional offices besides the specific one they work at is of increased importance. With regard to Congressional caseworkers, such communication is also important because such caseworkers frequently experience frustration getting in touch with VBA employees. In both scenarios, VBA's work credit system is often to blame, as employees fail to get work credit for communicating case status to a VSO or Congressional caseworker, despite the fact that such communications may result in the obtaining of evidence required to adjudicate and resolve a claim. Accordingly, NVLSP supports this provision and emphasizes the importance and positive results that quality communication between the VA, VSOs, and caseworkers can have for the veterans they all work to serve.
- Section 204 – Review of Practices of Regional Offices Regarding Use of Suspense Dates: this section requires that the VA OIG conduct a report on the use of suspense dates during the disability claims assessment process. NVLSP supports this provision. Throughout the past year, many allegations of data manipulation, including the use of improper suspense dates to improve the appearance of VA's claims processing numbers, have not only surfaced but been substantiated by VA OIG. VBA has asserted that such issues are not systemic; however, VBA has not cited to any comprehensive analyses to support this assertion. As such, a comprehensive study by the VA OIG to determine whether suspense dates are being used appropriately throughout the disability claims process would be welcomed.
- Section 205 – Annual Report on Capacity of Veterans Benefits Administration to Process Benefits Claims: NVLSP supports this provision, which requires the VBA to annually provide more details on its capacity to process claims. However, VBA has a reputation for manipulating data and changing benchmarks in order to meet the appearance of superficial goals, rather than achieve actual progress. In its all-out push to eliminate the backlog by the end of this year, VBA has tried to redefine its workload and what constitutes the backlog, to include diverting employees from other areas such as appeals. Therefore, NVLSP emphasizes that the reporting language must be as specific as possible, to include how VA is

measuring its performance goals and to document any changes it has made to its performance metrics to ensure consistency in reporting from year to year. However, NVLSP strongly supports the provisions regarding VBA staffing needs and production per employee. At a recent Congressional roundtable, VA estimated that without any additional inventory, it would take approximately five years to eliminate the number of pending appeals. Although this was just a rough estimate, such approximations indicate that VBA has not properly calculated its staffing needs. Further, VA has publicly stated that it has enough people to process the number of pending claims, choosing to focus on initiatives such as mandatory overtime rather than the training of new employees. However, VBA employees have reported that continued use of mandatory overtime results in employee burnout, thus necessitating the hiring and training of new employees. Accordingly, the report outlined in this section will give Congress the information it needs to make decisions regarding any necessary increases to VBA staffing.

- Section 206 – Requirement to Complete Efforts to Revise Resource Allocation Model of the Department of Veterans Affairs: NVLSP supports this provision. Although VA, and VBA's, overall budget has increased substantially over the past five years, VA is still ultimately constrained by its resources. Therefore, NVLSP supports any reporting to ensure that VBA's limited resources are allocated in the most efficient way possible.
- Section 207 – Semiannual Report on Progress Implementing the Veterans Benefits Management System: although NVLSP is generally supportive of reporting requirements aimed at improving the efficiency of VBA claims processing, we are unsure whether a semi-annual report on the implementation of VBMS is necessary. VBMS has been in use in all of VBA's regional offices since June 2013, so the system is no longer being "implemented." However, despite being fully implemented, VBMS continues to have issues, particularly in the areas of system updates, access for non-VA users, and the indexing/clarity of scanned documents (particularly in appealed claims). Specifically, in NVLSP's experience, issues arise when a claims file is scanned into VBMS but there are documents that are either missing or unclear. VA does not appear to have any established procedures for re-scanning missing or illegible documents when necessary. Therefore, NVLSP would be more supportive of such a reporting requirement if it were amended to include all VBA technology initiatives, including clarity for procedures of missing and illegible documents after claims files have been scanned into VBMS, rather than just periodic updates on the implementation of VBMS.
- Section 208 – Report on Plans of the Secretary of Veterans Affairs to Reduce Inventory of Claims for Dependency and Indemnity Compensation and Claims for Pension: NVLSP supports this section. As we highlighted earlier in our testimony, due to the nature of VBA's work credit system, dependency and indemnity compensation and claims for pension are often passed over in favor of claims that result in higher production points. Further, given VBA's recent emphasis on

eliminating the backlog of disability claims, other types of claims, such as dependency and indemnity compensation and pension claims, have been placed on the back burner. Therefore, NVLSP supports these reporting requirements that will result in necessary information as to how the Secretary plans to re-prioritize these additional types of claims.

- Section 209 – Increased Transparency in Monday Morning Workload Report: NVLSP supports this provision, which promotes additional transparency in VA’s Monday Morning Workload Reports, but asserts that additional information besides what is enumerated in this section is also necessary. As highlighted earlier in our testimony, VBA has recently changed the manner in which it calculates its metrics several times, making the Monday Morning Workload Reports difficult to track over time. Further, including additional information on partial ratings and fully developed claims is an important step in better understanding the true nature of VBA’s pending workload. However, NVLSP argues that additional metrics regarding appealed claims and the number of brokered claims are also necessary. In this regard, the metrics pertaining to appealed claims on the Monday Morning Workload Report are completely different from those reported on the Board of Veterans’ Appeals Annual Chairman’s Report, therefore making it difficult to determine how long appealed claims have actually been pending. Further, VBA often asserts that certain regional offices have reduced their backlog by a certain number of claims without mentioning that a large percentage of those claims were brokered to other offices, thereby presenting inherently misleading numbers. Although the Monday Morning Workload Reports now include numbers from the station of origin as well as the station of jurisdiction, additional transparency in the reporting of these statistics will help Congress make more informed decisions about the claims process.
- Section 210 – Reports on Appeals of Decisions on Benefits Claims: NVLSP strongly supports this provision. However, we also assert that additional details beyond those enumerated in this section are necessary for a comprehensive report on the appeal of benefits claims. The backlog of appealed claims has continually grown as VBA has been singularly focused on eliminating the backlog of initial claims. The time it takes from the filing of a NOD to the issuance of a Board of Veterans’ Appeals decision is exceedingly long – 1,255 days in FY 2013 (that is, more than three years and five months). In addition to the number of appeals granted by station and the number of claims previously adjudicated by the appeals management center, NVLSP asserts that additional reporting criteria on the reason an appeal was granted or denied should also be included in this report. For example, VA often argues that claims are granted on appeal due to the submission of additional evidence; however, it is unclear whether such additional evidence should have been obtained by VA in the first instance or became necessary due to the long duration in which the VA failed to adjudicate the veteran’s appeal. In either circumstance, the precise reason for the additional evidence will be beneficial to VBA as it continues to focus on potential reforms of the appellate process. Similarly, VA often asserts that changes in the law resulted in the grant

of an appealed claim, rather than a mistake by a VA adjudicator; however, our experience advocating for veterans on appeal demonstrates that mistakes by VA adjudicators are in fact often the reason that a claim is granted on appeal. Therefore, NVLSP asserts that in order to improve the appeals process, information tracking the reason for the grant or denial of an appealed claim is also necessary.

- Section 211 – Modification of Pilot Program for Use of Contract Physicians for Disability Examinations: NVLSP supports this provision. In fact, expansion of VBA’s ability to use contract examinations for C&P exams is one of the few areas that VBA, VSOs, and veterans universally agree on. Currently, VBA has the authority to use contract examinations at 18 of its regional offices and in support of its special missions such as the Integrated Disability Evaluation System and the Benefits Delivery at Discharge Program, through the use of both mandatory and discretionary funds. However, VBA’s authority to use mandatory funds for contract exams is limited to 10 regional offices. Expanding this authority will allow physicians at VHA facilities to focus on delivering care, rather than providing unnecessary C&P examinations. Further, including the licensure portability provision facilitates the C&P examination process by allowing contract physicians the ability to travel and assist in areas that are experiencing lengthy delays in scheduling examinations. Although both VA and DoD already provide license portability for physicians working directly for them, this authority is currently not extended to contract examination providers. Because C&P exams are a key component of the disability claims process, expanding the scope and authority of the contract examination process will assist veterans in obtaining the evidence needed to adjudicate a claim more quickly. In addition, by outsourcing more C&P exams, VA medical providers would be able to increase the amount of time devoted to providing much needed patient care to veterans. However, we would also caution that, any expansion of the contract disability exam authority should not be used to order unnecessary C&P exams when there is already sufficient private medical evidence available to grant a disability benefits claim in the file. Accordingly, NVLSP supports this provision, but advises that it must be used appropriately.

Title III – Government Response

- Section 301 – Increased Cooperation Across Government: this section would require additional government entities, mainly the Department of Defense, and the National Archives and Records Administration, to appoint liaisons to assist VA with the time it takes to obtain required documents from the respective entity. Although NVLSP generally supports these government entities working together to facilitate the exchange of information, such relationships between these entities already exist; therefore, creating another program may result in more bureaucracy and less actual assistance to veterans. First, VA’s existing Office of Interagency Collaboration (OIC) already serves this function. Second, the VA/DoD Joint Strategic Plan and the Joint Executive Counsel already present annual reports to

Congress. Thus, although inter-agency communications are an important topic, NVLSP does not believe that this provision contributes any new substance to what the OIC is already doing.

- Section 302 – Report on Interoperability Between Electronic Health Records Systems of Department of Defense and the Department of Veterans Affairs: this section would require a joint report to Congress setting forth a timeline with milestones for achieving interoperability in the respective electronic health records systems of VA and DoD. Over the past several years, coordination of such efforts have proven difficult, and negotiations have even broken down at times. Although VA and DoD have made progress, what currently exists is two separate systems that communicate to one another rather than function with interoperability. Although VA and DoD currently have an Memorandum of Understanding in place regarding the sharing of information, additional efforts to achieve true interoperability are still required. Therefore, NVLSP supports this section.

Discussion Draft – the Discussion Draft includes a number of provisions related to various matters within the Committee’s jurisdiction. For purposes of our testimony, NVLSP is specifically focused on Title II – Compensation Matters, of the discussion Draft.

Title II – Compensation Matters

- Section 201 – Medical Examination and Opinion for Disability Claims Based on Military Sexual Trauma: According to VA, approximately one in four women and one in 100 men report experiencing sexual trauma while in the military. In adjudicating claims for MST experienced during service, a lack of documentation is a frequent obstacle that must be overcome to grant the claim. As a result, NVLSP recently started a new program providing free legal representation to veterans who need assistance obtaining VA benefits for MST or whose disability claims for MST have been denied. Given our work assisting MST survivors in trying to overcome the high hurdles associated with obtaining VA benefits for MST, NVLSP strongly supports this statutory changes that will make it easier for MST claimants to receive a medical examination and opinion in their claim. Although in 2010, VA voluntarily changed its regulations making it easier for veterans who served in combat zones to obtain service connection for PTSD, the same relaxed evidentiary requirements were not extended to MST victims.
- Section 202 – Report on Standards of Proof for Service-Connection of Mental Health conditions Related to Military Sexual Trauma: NVLSP strongly supports this provision. As noted in NVLSP’s comments to the above-section, VA applies differing standards of proof in adjudicating PTSD claims, depending on whether the veteran is claiming PTSD due to (1) combat zone trauma, (2) MST, or (3) any other in-service trauma. In practice, this means that if VA evaluates a veteran’s claimed stressor under 38 C.F.R. § 3.304(f)(3), the veteran’s lay testimony alone

may be sufficient to establish the occurrence of the claimed stressor; however, if VA evaluates a veteran's claimed stressor under 38 C.F.R. § 3.304(f)(5), the veteran's lay testimony must be corroborated by other evidence to establish its occurrence. Despite VA's assertions that 38 C.F.R. § 3.304(f)(5) provides a generous standard of proof already, when compared with 38 C.F.R. § 3.304(f)(3), inequitable results can, and sometimes do, occur. In promulgating its 2010 rule change, VA acknowledged that it received comments that the new relaxed evidentiary standards should also apply to MST. However, VA concluded that such comments were "outside the scope of this rule" and therefore did not make any changes, nor provide any substantive rationale for its decision. Accordingly, a report requiring VA to justify its application of the differing standards of proof applied to PTSD claims, as well as recommended improvements, would be useful in improving the claims process for MST victims.

- Section 203 – Reports on Claims for Disabilities Incurred or Aggravated by Military Sexual Trauma: NVLSP also supports this section. As outlined in our testimony for Sections 201 and Sections 202, additional information and insights into the Department's adjudication of such claims will provide important data to stakeholders and Congress. Ultimately, the analysis of such information should lead to a change in the evidentiary standards applied in the adjudication of MST claims, and thus more equitable treatment for MST survivors.
- Section 204 – Pilot Program on Treatment of Certain Applications for Dependency and Indemnity Compensation as Fully Developed Claims: NVLSP supports this section. In NVLSP's experience, the Fully Developed Claims Program (FDC) has been very successful in improving the initial disability compensation claims process and is one of the VBA's most successful initiatives in many years. Accordingly, NVLSP supports expanding the use of this program to other types of claims such as DIC claims, which are very similar to disability compensation claims in their development and adjudication.
- Section 205 – Review of Determination of Certain Service in the Philippines During World War II: NVLSP supports the full recognition and benefits of all veterans, American of Filipino, who served during World War II. Although the current process for awarding benefits to Filipino veterans was recently studied by the White House's interagency working group, no changes to the benefits process for Filipino veterans resulted from the working group's report. The current policy has created confusion for Filipino veterans and their survivors applying for benefits, and therefore, additional information may provide much needed clarification to the benefits process for Filipino veterans. NVLSP supports, in particular, the section on prohibition of benefits for disqualifying service (characterized as collaboration with the enemy or criminal conduct) as this ensures a thorough evaluation and is on par with the disqualification standards for all American veterans.

- Section 206 – Reports on Department Disability Medical Examinations and Prevention of Unnecessary Medical Examinations: NVLSP strongly supports this section, but also encourages the legislation to do more beyond just a reporting requirement to prevent the VA from relying on unnecessary medical examinations. Based on NVLSP’s experience in appealing thousands of BVA decisions to the CAVC, and in reviewing thousands of VA claims files at various VA regional offices that are part of our quality review work with The American Legion, we have found that, in many cases, VA regional offices and the BVA prolong a claim by seeking additional medical evidence from a VA physician, even though there is sufficient medical evidence from private physicians to decide the claim. This practice of developing more evidence in an effort to deny claims is contrary to the pro-claimant VA adjudicatory process that Congress intended. Thus, although the reporting requirements outlined in this section are a positive first step towards eliminating this practice, it is NVLSP’s position that more needs to be done. Accordingly, NVLSP recommends amending this section to require the ROs and BVA, when they seek to develop additional medical evidence after private medical evidence is submitted, to first explain to the veteran in writing why the existing private medical evidence is not sufficient to adjudicate the claim.

In conclusion, NVLSP would like to thank the Committee for the opportunity to present our views on the above-pieces of legislation. NVLSP is happy to answer any additional questions that the Committee may have.