KERRY BAKER, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, THE DISABLED AMERICAN VETERANS

STATEMENT OF
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ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV), one of four national veterans' organizations that create the annual Independent Budget (IB) for veterans programs, to summarize our recommendations for fiscal year (FY) 2009.

As you know Mr. Chairman, the IB is a budget and policy document that sets forth the collective views of DAV, AMVETS, Paralyzed Veterans of America (PVA), and Veterans of Foreign Wars of the United States (VFW). Each organization accepts principal responsibility for production of a major component of our Independent Budget-a budget and policy document on which we all agree. Reflecting that division of responsibility, my testimony focuses primarily on the variety of Department of Veterans Affairs' (VA) benefits programs available to veterans.

In preparing this 22nd Independent Budget, the four partners draw upon our extensive experience with veterans' programs, our firsthand knowledge of the needs of America's veterans, and the information gained from continuous monitoring of workloads and demands upon, as well as the performance of, the veterans benefits and services system. Consequently, this Committee has acted favorably on many of our recommendations to improve services to veterans and their families. We ask that you give our recommendations serious consideration again this year.

THE VETERANS BENEFITS ADMINISTRATION IS STILL UNDERSTAFFED AND OVERWHELMED

To improve administration of VA's benefits programs, the IB recommends Congress provide the Veterans Benefits Administration (VBA) with enough staffing to support a long-term strategy for improvement in claims processing and for other programs under jurisdiction of the VBA. Included in our recommendations are new resources needed for training programs and information technologies; however, this testimony primary focuses on solving VA's staffing shortages as well as other initiatives to manage the increase in new claims and reduce the out-of-control claims backlog. In total, if Congress accepts our recommendations, VBA will be better positioned to serve all disabled veterans and their families.

UNDERSTAFFING AND CLAIMS BACKLOG

Mr. Chairman, the claims' backlog is unquestionably growing. Rather than making headway and overcoming the protracted delays in the disposition of its claims, VA continues to lose ground on its claims backlog. According to VA's weekly workload report, as of January 26, 2008, there were 816,211 pending compensation and pension (C&P) claims, which include appeals. Putting this number into perspective, at the end of 2004, 2005, 2006, and 2007, the total number of pending claims was 620,926; 680,432; 752,211; and 809,707 respectively. Therefore, in the three years from the end of 2004 to the end of 2007, the total number of pending C&P claims rose by 188,781 for an average of 62,929 additional pending claims per year. The VA's pending claims rose by 6,504 just from the end of 2007 to January 26, 2008-less than one month. At this rate, VA's caseload will pass one million claims in three years. With the wars in Iraq and Afghanistan still raging, together with the mass exodus from military service that usually occurs following cessation of combat operations, new and re-opened claims received by VA are more likely to increase than decrease. A caseload topping one million claims will truly be a demoralizing moment for America-the time to act is now.

Throughout the foregoing years, many promises were made in public; yet VBA staffing has essentially remained nearly flat at between 9,200 to 9,500 full-time employees (FTE)-9,287 in FY 2006; 9,445 in FY 2007; and 9,559 in FY 2008. (The FY 2008 figure does not currently take into account increased staffing levels authorized in the most recent appropriations bill for 2008.) While we do not suggest additional resources as the solitary answer to the claims backlog, the current VBA staffing levels have proven year after year to be significantly below the levels needed to halt the growth in the claims backlog, much less sufficient to begin reducing the backlog. There is no proverbial silver bullet to solving VA's challenges. Various policy changes can and should be implemented that may collectively have a positive impact on reducing VA's claims backlog while also improving services to VA's clientele. Nonetheless, implementing any policy change will utterly fail without a significant increase in VBA staffing that is at least on parity with VA's increased receipt of new and reopened claims as well as its ever-growing claims backlog,

Based on an estimated receipt of 920,000 claims in FY 2009, Congress should authorize 12,184 FTE for FY 2009. That number equates to 83 cases per year per each direct program FTE. The IB veterans' organizations realize that 83 claims per FTE are below VA's historical projections per FTE. Nonetheless, an infusion of new personnel into VBA's workforce will inevitably result in a reduced output per FTE for a significant length of time. These newly allotted employees will be unable to process claims at rates equal to experienced employees. Additionally, senior staff within VBA will be forced to frequently halt production of their own workload in order to provide necessary training to inexperienced employees. We nonetheless strongly encourage the VA to provide adequate training to ensure that claims are decided properly the first time. Therefore, the reduction in workload per FTE is unavoidable.

Additionally, VBA's new claims per year continue to increase from one year to the next despite VA's 2008 budget assertion that such claims were going to decline. For example, VBA received 771,115 new rating claims in FY 2004 and 838,141 new claims in FY 2007, equaling an average increase of 16,756 additional claims per year. During this same period, VA received the following Benefits Delivery at Discharge (BDD) claims: 39,885 in FY 2004; 37,832 in FY 2005; 40,074 in FY 2006; and 37,370 in FY 2007, for a total 155,164 new beneficiaries that had never

before been on VA rolls. At this rate, the average number of new BDD claims per year is 38,791 for a total of 232,746 new claims through the BDD process by the end of FY 2009. These figures do not include service members filing claims through either the military's physical disability evaluation systems, or those discharging via end-of-service contracts who then come to VA on their own to files claims after discharge.

The significance of these new beneficiaries is that large portions of VA's workload increase via new claims each year are re-opened claims rather than claims from veterans who have never filed for VA benefits. Therefore, the increase in brand new beneficiaries into the system will inevitably increase further the number of re-opened claims, ultimately causing the total number of claims received by VA each year to continue growing, contrary to VA's FY 2008 budget estimate. VA's 2009 budget submission reveals the VA added 277,000 beneficiaries to its C&P rolls in 2007, which further proves this point.

The complexity of the workload has also continued to grow. Veterans are claiming greater numbers of disabilities and the nature of disabilities such as post-traumatic stress disorder (PTSD), complex combat injuries, diabetes and related conditions, and environmental diseases are becoming increasingly more complex. For example, the number of cases with eight or more disabilities increased 135 percent from 21,814 in 2000 to 51,260 in 2006. Such complex cases will only further slow down VBA's claims process.

We believe that adequate staffing is essential to any meaningful strategy to get claims processing and backlogs under control. In its budget submission for FY 2007, VBA projected its production based on an output of 109 claims per direct program FTE. We have long argued that VA's production requirements do not allow for thorough development and careful consideration of disability claims, resulting in compromised decisions, higher error and appeal rates, and ultimately more overload on the system. In addition to recommending staffing levels more commensurate with the workload, we have maintained that VA should invest more in training adjudicators and that it should hold them accountable for higher standards of accuracy. Nearly half of VBA adjudicators responding to survey questions from VA's Office of Inspector General admitted that many claims are decided without adequate record development. (The Board of Veterans' Appeals (Board) and the Court of Appeals for Veterans Claims' (Court's) remand rate clearly demonstrate this.) The Inspector General saw an incongruity between their objectives of making legally correct and factually substantiated decisions, with management objectives of maximizing output to meet production standards and reduce backlogs. Nearly half of those surveyed reported that it is generally, or very difficult, to meet production standards without compromising quality. Fifty-seven percent reported difficulty meeting production standards while attempting to ensure they have sufficient evidence for rating each case and thoroughly reviewing the evidence. Most attributed VA's inability to make timely and high quality decisions to insufficient staff. In addition, they indicated that adjudicator training had not been a high priority in VBA.

Therefore, we believe it prudent to recommend staffing levels based on an output of 83 cases per year for each direct program FTE. With an estimated 920,000 incoming claims in FY 2009, that effort would require 11,084 direct program FTEs in Fiscal Year 2009. With support FTE added, this would require C&P to be authorized 12,184 total FTE for FY 2009.

Adjudicating veterans' claims is a labor-intensive system of personal decision-making, with lifelong consequences for disabled veterans. During Congressional hearings, VA is routinely forced to defend VBA budgets that it knows to be inadequate to the task. The priorities and goals of Congress, the Administration, and the VA must be on par with the necessity for a long-term strategy to fulfill VBA's mission and confirm the nation's moral obligation to disabled veterans.

OVERDEVELOPMENT OF CLAIMS

Numerous developmental procedures in the VA claims' process collectively add to the enormous backlog of cases. While many of these procedures are mandatory, they are often over utilized. This unnecessarily delays claims for months-when this occurs in, or leads to, the appeals process, claims are delayed for many years. There is no single answer to solving the claims backlog. Therefore, in addition to staffing increases, Congress and VA must attack the problem using alternative methods, particularly when those alternative methods are parallel with the intent of the law, work to save departmental resources, and protect the rights of disabled veterans.

For example, rather than making timely decisions on C&P claims when evidence development may be complete, the VA routinely continues to develop claims. These actions lend validity to many veterans' accusations that whenever VA would rather not grant a claimed benefit, VA intentionally overdevelops cases to obtain evidence against the claim. Despite these accusations, a lack of adequate training is just as likely the cause of such overdevelopment.

Such actions result in numerous appeals, followed by needless remands from the Board and/or the Court. In many of these cases, the evidence of record supports a favorable decision on the appellant's behalf yet the appeal is remanded nonetheless. These unjustified remands usually do nothing but perpetuate the hamster-wheel reputation of veterans' law. Numerous cases exemplify this scenario; a list can be provided upon request. One such example is summarized in the IB submission. For the sake of brevity, we will not repeat the summary here, but urge the Committee to review the example titled Improvements in the Claims Process, which can be found in the Compensation and Pension section of the General Operating Expenses Chapter.

This example deals with VA requesting unnecessary medical opinions in cases where the claimant has already submitted one or more medical opinions that are adequate for rating purposes. VA claimants desiring to secure their own medical evidence, including a fully informed medical opinion, are entitled by law to do so. If a claimant does secure an adequate medical opinion, there is no need in practicality or in law for VA to seek its own opinion. Congress enacted title 38, United States Code, section 5125 for the express purpose of eliminating the former 38 Code of Federal Regulations, section 3.157(b)(2) requirement that a private physician's medical examination report be verified by an official VA examination report prior to an award of VA benefits. Section 5125 states:

For purposes of establishing any claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration

if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim. [Emphasis added]

Therefore, Congress codified section 5125 to eliminate unnecessary delays in the adjudication of claims and to avoid costs associated with unnecessary medical examinations. Notwithstanding the elimination of title 38, Code of Federal Regulations, section 3.157, and the enactment of title 38 United States Code section 5125, VA consistently refuses to render decisions in cases wherein the claimant secures a private medical examination and medical opinion until a VA medical examination and medical opinion are obtained. Such actions are an abuse of discretion, which delay decisions and prompt needless appeals. When claimants submit private medical evidence that is adequate for rating purposes, Congress should mandate that VA must decide the case based on such evidence rather than delaying the claim by arbitrarily and unnecessarily requesting additional medical examinations and opinions from the agency. Such enactment will preserve VA's manpower and budgetary resources; help reduce the claims backlog and prevent needless appeals; and most importantly, better serve disabled veterans and their families.

STANDARD FOR DETERMINING COMBAT VETERAN STATUS

Title 38, United States Code, section 1154(b) requires VA to accept lay or other evidence as sufficient proof of service connection of a disease or injury if a veteran alleges that disease or injury occurred in or was aggravated during combat. While VA recognizes the receipt of certain medals as proof of combat, only a fraction of those who participate in combat receive a qualifying medal. Further, military personnel records usually do not document actual combat experiences. As a result, veterans who suffer a disease or injury resulting from combat are forced to provide evidence that may not exist or wait a year or more while the VA conducts research to determine whether a veteran's unit engaged in combat.

Congress should amend title 38, United States Code, section 1154(b) to clarify military service as treatable service in which a member is considered to have engaged in combat for purposes of determining combat-veteran status. Such clarification would properly allow for utilization of nonofficial evidence as proof of in-service occurrence for service connection of combat-related diseases or injuries.

This type of legislation would remove a barrier to the fair adjudication of claims for disabilities incurred or aggravated by military service in combat zone. Under existing law, veterans who can establish that they "engaged in combat" are not required to produce official military records to support their claim for disabilities related to such service. This legislation would not alter the law's current requirement that a veteran confirm a disability through official diagnosis. Further, it would not alter the requirement that a veteran show a nexus between a claimed disability and military service. The only alteration from current law would be a relaxed standard of proof, consistent with Congress' original intent, required to establish a veteran as one who engaged in combat. This relaxed standard of proof would then only apply to those who serve in a combat zone.

Many veterans disabled by their service in Iraq and Afghanistan, and those who served in earlier conflicts are unable to benefit from liberalizing evidentiary requirements found in the current

version of section 1154(b). This results because of difficulty, even impossibility, in proving personal participation in combat by official military documents.

Impositions put forth by VA General Counsel opinion 12-99 require veterans to establish by official military records or decorations that they "personally participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality." Oversight visits by Congressional staff to VA regional offices found claims denied under this policy because those who served in combat zones were not able to produce official military documentation of their personal participation in combat via engagement with the enemy. The only possible resolution to this problem without amending section 1154(b) is for the military to record the names and personal actions of every single soldier, sailor, airman, and Marine involved in every single event-large or small-that constitutes combat and/or engagement with the enemy on every single battlefield. Such recordkeeping is impossible.

Numerous veterans have been and continue to be harmed by this defect in the law. In numerous cases, extensive delays in claims processing occur while VA adjudicators attempt to obtain official military documents showing participation in combat: documents that may never be located.

The Senate noted in 1941, in the report on the original bill that the absence of an official record of care or treatment in many of such cases is explained by the conditions surrounding the service of combat veterans. Congress emphasized that the establishment of records for non-combat veterans was a simple matter compared to the combat veteran-either the veteran carried on despite his disability to avoid having a record made lest he or she be separated from his or her organization or, as in many cases, the records themselves were lost. Likewise, many records are simply never generated.

Congress should clarify its intent by amending title 38, United States Code, section 1154(b), with respect to defining a veteran who engaged in combat for all purposes under title 38, as a veteran who during active service served in a combat zone for purposes of section 112 of the Internal Revenue Code of 1986 or a predecessor provision of law.

INFORMATION TECHNOLOGY

Mr. Chairman, in addition to boosting its staffing, we believe VBA must continue to upgrade its information technology infrastructure and revise its training tools to stay abreast of modern business practices, to maintain efficiency, and to meet increasing workload demands. With the continually changing environment in claims processing and benefits administration, anything less is a recipe for failure.

In recent years, however, Congress has actually reduced significantly the funding for such VBA initiatives. In fiscal year 2001, Congress provided $82 million for VBA initiatives. In FY 2002, it provided $77 million; in 2003, $71 million; in 2004, $54 million; in 2005, $29 million; and, in 2006, $23 million, despite VBA's undeniable challenges.

With restored investments in its initiatives, VBA could complement staffing increases for higher workloads with a support infrastructure designed to increase operational effectiveness. VBA

could resume an adequate pace in its development and deployment of information technology solutions, as well as upgrade and enhance training systems, to improve operations and service delivery.

COURT OF APPEALS FOR VETERANS CLAIMS

The Congressional mandate that VA claimants receive the benefit of the doubt in appropriate cases is the cornerstone of veterans' benefits derived from military service. Yet, the Court has ignored the intent of Congress by creating a judicial roadblock that completely isolates claimants from their statutory right to the benefit of the doubt.

Title 38, United States Code, section 5107(b) grants claimants the benefit of the doubt as a matter of law with respect to any benefit under laws administered by the Secretary of Veterans Affairs (Secretary) when there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter. Yet, the Court has been affirming any BVA denial when the record contains only minimal evidence necessary to show a "plausible basis" for such finding. This renders a claimant's statutory right to the benefit of the doubt futile because claims can be denied and the denial upheld when supported by far less than a preponderance of the evidence.

Congress tried to correct this situation by amending the law with the enactment of the Veterans Benefits Improvement Act of 2002 to require the Court to consider whether Board findings were consistent with the benefit-of-the-doubt rule. The intended effect of section 401 of the Veterans Benefits Act of 2002 has not been upheld by the court.

Prior to the enactment of Veterans Benefits Act, the Court's case law provided (1) that the court was authorized to reverse a finding of fact when the only permissible view of the evidence of record was contrary to that found by the Board, and (2) that a finding of fact must be affirmed where there was a plausible basis in the record for the board's determination. However, Congress added new language to section 7261(b)(1) that mandates the Court to review the record before the Secretary pursuant to section 7252(b) of title 38 and "take due account of the Secretary's application of section 5107(b) of this title . . . ." The Secretary's obligation under section 5107(b), as referred to in section 7261(b)(1), is as follows:

(b) BENEFIT OF THE DOUBT - The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

Prior to enactment of Veterans Benefits Act section 401, the Court characterized the benefit-of-the-doubt rule as mandating that "when...the evidence is in relative equipoise, the law dictates that [the] veteran prevails" and that, conversely, a VA claimant loses only when "a fair preponderance of the evidence is against the claim." Nonetheless, such characterizations have historically proven to be nothing more than meaningless rhetoric.

Reading amended sections 7261(a)(4) and 7261(b)(1) together, which must be done in order to determine the effect of the Veterans Benefits Act section 401 amendments, reveals the Court is now directed, as part of its scope-of-review responsibility under section 7261(a)(4), to undertake three actions in deciding whether adverse Board findings are clearly erroneous and, if so, what the court should hold as to that finding. The plain meaning of the amended subsections (a)(4) and (b)(1) require the Court (1) to review all evidence before the Board; (2) to consider the application of the benefit-of-the-doubt rule in view of that evidence; and (3) if after carrying out actions (1) and (2), the Court concludes that an adverse Board finding is clearly erroneous and therefore unlawful, to set it aside or reverse it.

Therefore, as the foregoing discussion illustrates, Congress intended the Veterans Benefits Act section 401 amendments to fundamentally alter the Court's review of Board decisions. This is evident by the plain meaning of the amended language and the amendment's unequivocal legislative history. Congress intended the court to take a more proactive and less deferential role in its judicial review. For example, Congress specifically intended the Court "to examine the record of proceedings-that is, the record on appeal-before the Secretary and BVA. Section 401 also provides special emphasis during the judicial process to the 'benefit of the doubt' provisions of section 5107(b) as the Court makes findings of fact in reviewing BVA decisions. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the benefit-of-the-doubt provision." , This language is consistent with the existing section 7261(c), which precludes the Court from conducting trial de novo when reviewing VA decisions-receiving evidence not part of the record before the Board.

Perhaps the most dramatic of the three court actions directed by section 401 was the mandate that the court "take due account of the Secretary's application of section 5107(b)," i.e., the "benefit-of-the-doubt rule." It is against this more relaxed standard of review that, through the Veterans Benefits Act section 401, Congress has now required the Court to review the entire record on appeal and to examine the Secretary's determination as to whether the evidence presented was in equipoise on a particular conclusion. The foregoing notwithstanding, the Court's equipoise review is no better after the Veterans Benefits Act section 401 than it was before section 401 was enacted. The Court has ignored Congress' intent.

In light of this background, the section 401 mandate supersedes the previous Court practice of upholding a factual finding unless the only permissible view of the evidence is contrary to that found by the Board. Likewise, section 401overrules the requirement that a Board finding of fact must be affirmed where there is a "plausible basis" in the record for the determination. Yet, the nearly impenetrable "plausible basis" standard continues to prevail to this very date as if Congress never amended section 7261. The former Ranking Minority Member of this Committee, spoke in strong support of this amendment and explained that "the bill...clarifies the authority of the [Court] to reverse decisions of the [BVA] in appropriate cases and requires the decisions be based upon the record as a whole, taking into account the pro-veteran rule known as the benefit of the doubt."

Ultimately, the Board sits in near splendid isolation to arbitrarily weigh evidence and unfairly determine its probative value. Such determinations are the lynchpin in claims for benefits by disabled veterans. Regardless of the quantity and quality of evidence in favor of a claimant's

case, a Board's conclusion that an infinitesimal amount of unfavorable evidence, however much lacking in quality, outweighs and is more probative than an immeasurable amount of high quality evidence is practically untouchable by the Court. Worse yet, it is the Court's own doing. Essentially, when the Board renders this type of decision that turns on the weighing of such evidence, the Court is precluded from even considering the benefit-of-the-doubt rule. Evidence must first be in equipoise, or balance, for the benefit of the doubt to apply. As soon as the Board finds the slightest plausible basis that a claimant's evidence preponderates against the claim, the favorable and unfavorable evidence is no longer in balance. Unless the Court finds such a ruling to be clearly erroneous, meaning there is no plausible basis regardless of how trivial such basis may be, the Court cannot overturn the ruling. Consequently, if the Court cannot overturn the ruling, it can never reach a review of the Board's application of the benefit of the doubt. The Court has therefore created a barrier between itself and a VA claimant's statutory right to the benefit of the doubt-a barrier moveable only by Congress.

Congress should not allow any federal court to ignore its legislative power, particularly one charged with the protection of rights afforded to our nation's disabled veterans and their families. To ensure the Court enforces the benefit-of-the doubt rule, Congress should replace the clearly erroneous standard with a requirement that the court will reverse a factual finding adverse to a claimant when it determines such finding is not reasonably supported by a preponderance of the evidence.

SOLVING THE COURT'S BACKLOG

The Board and the Court add substantially to the claims backlog by needlessly and frequently remanding numerous cases on appeal. In many of these appeals, the evidence of record fully supports a favorable decision on the appellant's behalf, yet the appeal is remanded nonetheless. These unjustified remands deprive the appellant, usually for many additional years, to benefits awardable based on facts already of record.

The greatest challenge facing the Court is identical to the VA-the backlog of cases. The Court has shown a reluctance to reverse errors committed by the Board. Rather than addressing an allegation of error raised by an appellant, the Court has a propensity to vacate and remand cases to the Board based on an allegation of error made by the VA's counsel for the first time on appeal, such as an inadequate statement of reasons or bases in a Board decision. Another example occurs when the VA argues, again for the first time on appeal, for remand by the Court because VA failed in its duty to assist the claimant in developing the claim notwithstanding an express finding by the Board that all development is complete and where the appellant accepts, and does not challenge such finding by the Board. Such actions are particularly noteworthy because the VA has no legal authority to appeal a Board decision to the Court.

Consequently, the Court will generally decline to review alleged errors raised by an appellant that actually serve as the basis of the appeal. Instead, the court remands the remaining alleged errors on the basis that an appellant is free to present those errors to the Board even though an appellant may have already done so, leading to the possibility of the Board repeating the same mistakes on remand that it had previously. Such remands leave errors properly raised to the Court unresolved; reopen the appeal to unnecessary development and further delay; overburden an already backlogged system; exemplify far too restrictive judicial restraint; and inevitably

require an appellant to invest many more months and perhaps years of his or her life in order to receive a decision that the court should have rendered on initial appeal. As a result, an unnecessarily high number of cases are appealed to the Court for the second, third, or fourth time.

In addition to postponing decisions and prolonging the appeal process, the Court's reluctance to reverse Board decisions provides an incentive for VA to avoid admitting error and settling appeals before they reach the Court. By merely ignoring arguments concerning legal errors rather than resolving them at the earliest stage in the process, VA contributes to the backlog by allowing a greater number of cases to go before the Court. If the Court would reverse decisions more frequently, VA would be discouraged from standing firm on decisions that are likely to be overturned or settled late in the process.

To remedy this unacceptable situation, Congress should amend title 38, United States Code section 7261 to require the Court on a de novo basis, to: (1) decide all relevant questions of law; (2) interpret constitutional, statutory, and regulatory provisions; and (3) determine the meaning or applicability of the terms of an action of the Secretary. The Court's jurisdiction should also be amended to require it to decide all assignments of error properly presented by an appellant.

GENERAL

The benefit programs are effective for their intended purposes only to the extent VBA can deliver benefits to entitled veterans and dependents in a timely fashion. However, in addition to ensuring that VBA has the resources necessary to accomplish its mission in that manner, Congress must also make adjustments to the programs from time to time to address increases in the cost of living and needed improvements. We invite your attention to the IB itself for the details of those issues, but the following summarizes a number of recommendations to adjust rates and improve the benefit programs administered by VBA:

- cost-of-living adjustments for compensation, specially adapted housing grants, and automobile grants, with provisions for automatic annual increases in the housing and automobile grants based on increases in the cost of living
- a presumption of service connection for hearing loss and tinnitus for combat veterans and veterans who had military duties involving high levels of noise exposure who suffer from tinnitus or hearing loss of a type typically related to noise exposure or acoustic trauma
- removal of the provision that makes persons who first entered service before June 30, 1985, ineligible for the Montgomery GI Bill, along with other improvements to the program
- no increase in, and eventual repeal of, funding fees for VA home loan guaranty
- increase in the maximum coverage and adjustment of the premium rates for Service-Disabled Veterans' Life Insurance
- increase in the maximum coverage available in policies of Veterans' Mortgage Life Insurance
- legislation to restore protections for veterans' benefits against awards to third parties in divorce actions

• legislation to increase Dependency and Indemnity Compensation for certain survivors of veterans, and to no longer offset DIC with Survivor Benefit Plan payments.

We hope the Committee will review these recommendations and give them consideration for inclusion in your legislative plans and will support their funding in the Congressional Budget Resolution for FY 2009, as well as subsequent appropriations.

Mr. Chairman, thank you for inviting DAV and other member organizations of the Independent Budget to testify before you today.