

**STATEMENT FOR THE RECORD
OF
THE AMERICAN LEGION
TO THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"APPEALS REFORM: WILL VA'S IMPLEMENTATION EFFECTIVELY
SERVE VETERANS?"**

JANUARY 30, 2018

Chairman Roe, Ranking Member Walz, and distinguished members of the House Committee on Veterans Affairs, on behalf of Denise H. Rohan, National Commander of The American Legion, the country's largest patriotic wartime service organization for veterans, comprising 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify on the topic of "Appeals Reform: Will VA's Implementation Effectively Serve Veterans?"

The American Legion is a primary Veteran Service Organization (VSO) stakeholder and fully supports the *Veterans Appeals Improvement and Modernization Act of 2017* (P.L. 115-55), which is commonly referred as "Appeals Modernization." The Department of Veterans Affairs' (VA) appeals modernization has always had two components: (1) the legislation establishing "Appeals Modernization" and (2) the efforts to resolve the legacy appeals inventory. We fully support Appeals Modernization and the Department's early efforts to resolve the legacy appeals inventory through the Rapid Appeals Modernization Program (RAMP).

The American Legion has the following comments regarding VA's 11-20-2017 Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals system ('the plan').

I. ENHANCING EXISTING INFRASTRUCTURE

The American Legion looks forward to learning about the U.S. Digital Service's plan to build an enhancement in VA's Veterans Benefits Management System (VBMS) so that previously adjudicated "favorable findings of fact" are tracked in a manner enabling VA claims examiners in the future to avoid undertaking unnecessary claims development and making erroneous decisions. This will support a key provision in the legislation designed to protect the best interests of our veterans while also streamlining VA's adjudication process.

II. VA's OUTREACH PARTNERSHIP WITH VSOs

The American Legion supports the VA's Veterans Benefits Administration's (VBA) outreach efforts in promoting Appeals Modernization. One example of the benefits of this flourishing

partnership, the October 2017 issue of *The American Legion* magazine, featuring Appeals Modernization as the cover story, reached over 2 million member-readers. The purpose of the extended article was to provide useful information to our members and explain the benefits VA and The American Legion recognize for our veterans by virtue of the options offered pursuant to the legislation. The American Legion has worked cooperatively with VA to get monthly lists of veterans for whom we hold power of attorney to the appropriate state department so that our Department Service Officers can explain the benefits of each option offered under the legislation for those who “opt in” to the new system.

III. THE EFFECTIVENESS OF RAMP AS A PROGRAM DESIGNED TO TEST THE NEW FRAMEWORK

While we note some criticism has been directed to RAMP, The American Legion believes VBA’s efforts are completely appropriate given the complexities inherent in the transition from the legacy appeals system to the Appeals Modernization framework.

Although the veterans whose appeals will be adjudicated under RAMP will not have had the benefit of an enhanced notice letter based on the decision which gave rise to the appeal, VA is addressing this by ensuring that any decision rendered after the veteran opts in to RAMP will include an enhanced notice letter fully in compliance with the statutory requirement.

Moreover, criticism that RAMP does not offer an Expedited Lane to the Board of Veterans Appeals (BVA) can be countered by noting that veterans can make that election, though the law will not allow the expedited BVA review before February 2019. So in both instances, VBA is adopting the only procedures lawfully available during this transitional period.

A. CAUTION ABOUT DATA PRODUCED BY RAMP

The American Legion offers comments regarding the fifth and sixth paragraphs in VA’s plan, as shared in VA Secretary Shulkin’s Senate statement on January 17, 2018, which suggest that RAMP will generate data that allows VA to model what choices veterans will make in the new appeals framework and how much effort it will take to process reviews in the new framework.¹ RAMP does not give veterans all the options that will be available in the new framework. This is because a veteran will not be able to choose the Expedited Lane to BVA until full implementation of the statute in February 2019, although as noted a veteran could choose this option knowing it would not be operational for more than a year. In addition, the veterans whose appeals are processed under RAMP unavoidably have not had the benefit of the enhanced decision notice. Without the benefits of the enhanced decision notice and without all options being available, the choices made in RAMP will produce information about what veterans will do in the new framework that is of only limited value. Therefore, The American Legion urges caution in relying on the data compiled under RAMP as a predictor of future behavior after the legislation is fully implemented.

¹ <https://www.veterans.senate.gov/hearings/the-state-of-the-va-01172018>

B. HIGHER LEVEL REVIEWS UNDER THE LEGISLATION

The American Legion looks forward to learning of VBA's plans to ensure that the higher level reviews are done in an appropriate manner, looking carefully for any reasonable basis for granting the issue sought on appeal. We trust that the issue of work measurement credit will be carefully addressed in such a way that VA employees conducting the higher level reviews are totally indifferent to whether the decision is a grant or an affirmation of the prior denial based on work credit considerations. We also encourage VBA to have as many higher level reviews as possible done by a station other than the one which made the decision on appeal. This is to promote objectivity and eliminate the possibility the higher level reviewer might be influenced by a personal relationship with the VA employee who made the decision under appeal. One additional comment would be for VBA and the BVA to consider engaging in joint training to the extent feasible to foster a common understanding as to how appeals decisions should be addressed under the new appeals framework. For example, the American Legion staff notes that the BVA routinely gives probative value to lay evidence where appropriate and all due consideration to non-VA medical evidence, whereas this is sometimes not the case with VBA claims examiners.

CONCLUSION

Secretary Shulkin's statement that the *Veterans Appeals Improvement and Modernization Act of 2017* is the most significant statutory change in decades affecting the process is certainly true, and as a primary VSO stakeholder, The American Legion supports this new law and the efforts through RAMP to begin implementation. We fully intend to support our VA partners in this transformative effort.

The American Legion thanks this committee for the opportunity to elucidate the position of the 2 million veteran members of this organization. For additional information regarding this testimony, please contact Jeff Steele, Assistant Director of The American Legion Legislative Division at jsteele@legion.org, or (202) 861-2700.